

**IN THE SUPREME COURT OF THE STATE OF MONTANA  
CASE NO DA 21-0398**

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**ZACHARY RUSK,**

Petitioner and Appellant,

and

**THOMAS ROSEEN, CINDY ROSEEN, AND SHAWN ROSEEN,**

Respondents and Appellees.

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On Appeal from the Montana Eighteenth Judicial District Court, Gallatin  
County, Judge Rienne H. McElyea, District Court Cause No. DV 21-432B

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**APPELLANT'S PETITION FOR REHEARING**

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**APPERANCES**

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On Behalf of the Roseens

## I. INTRODUCTION

Pursuant to Mont. Code Ann. §§ 27-8-101, et seq. (declaratory relief); Mont. Code Ann. §§ 27-19-101, et seq. (injunctive relief); Mont. Code Ann. §§ 2-4-101, et seq. (Montana Administrative Procedures Act); this action was filed originally in Montana's Eighteenth District Court of Gallatin County, City of Bozeman. In this proceeding that began and remains on diaphanous legal footings, the Court's January 25th, 2022, Opinion exacerbates inordinate enumerations as to very serious unaddressed and undeterred violations of Title 42 U.S. Code § 1983 and the Judicial Canons. It is deeply flawed, sets dangerous precedent, and Petitioner therefore, (1) petitions for rehearing, and in so doing (2) implores the Court to disengage from pitched battle and reengage as a necessary party to fruitful application of the law — in the interest of justice. Evidence docketed, confirms relevant information and its application to this dispute and it should inform the Court's reconsideration of its Opinion. As it currently stands, the Court may have just shown that it lacks prudential standing, violates due process, and worsens an already disqualifying conflict of interest. Issuing an expansive, disarming Opinion against this backdrop confirms that Petitioner cannot obtain due process from this Court under these circumstances.

## II. JUDICIAL MISCONDUCT<sup>1</sup> (ALSO SEE EXHIBITS A-C<sup>2</sup>)

Judicial misconduct is an area of valid legislative interest. The Constitution instructs the Legislature to establish a Judicial Standards Commission (“JSC”). See Mont. Const. art. VII, § 11(1). But that directive doesn’t close the door to other, concurrent legislative oversight. See, e.g., *id.* at §11(4) (“The proceedings of the commission are confidential except as provided by statute”); see also McLaughlin, ¶ 50 (conceding the JSC is subject to the oversight of the Legislative Auditor—and thus the Legislature). Without some textual evidence, a specific constitutional delegation like Article VII, § 11 doesn’t preclude other forms of legislative action and oversight, like the current investigation. See *Sheehy v. Comm’r of Political Practices for Montana*, 2020 MT 37, ¶ 43, 399 Mont. 26, 458 P.3d 309. The Legislature may investigate to learn whether parties before state courts receive fair, impartial justice, and that inquiry isn’t limited to misconduct proceedings. See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009). The Court’s actions in this case and others, similar to *Brown v. Gianforte*, OP 21-0125, make the legitimacy of legislative inquiry even clearer. ***This courts decision, like McLyea’s, is a stunning, counterfactual denial, and rather counterfeit Opinion. The evidence speaks for itself. The evidence raises obvious questions about judicial***

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<sup>1</sup> See pages 12-17 in OP 21-0173 BETH McLAUGHLIN V The MONTANA STATE LEGISLATURE, and the MONTANA DEPARTMENT OF ADMINISTRATION “PETITION FOR REHEARING”.

<sup>2</sup> EXHIBIT A JUDICIAL CANNONS (pages 14-16); EXHIBIT B Title 42 U.S. Code § 1983 (Pages 18-22); & EXHIBIT C PRO SE CASE LAW (Pages 24-29).

*impartiality and improprieties.*

### **III. MONTANA UNIFORM RULE6(C)**

Respondent failed to deny the claims made against him.<sup>3</sup> Under Montana Uniform Rule6(c), a failure to file an is an admission and that the motion is well taken. An answer includes either an admit or deny. Neither an admit nor deny was expressly indicated in Respondent's Responses to any of his cases, including two recent Memorandums to Petitioners two Motions for Orders to Show Cause in Petitioners Protective Order (CL-115-21-109) against Roseen. Likewise, this is not uncommon behavior for these two. See Ammon's Voicemail about Respondent Thomas Roseen choosing not to deny that he drugged and raped Petitioner three times last spring.

### **IV. RULE 7-1(B)(1)(A)**

Respondent's Responses violate local Rule 7-1(b)(1)(A), because it contains a motion within a response memorandum. "No motion ... may be included in a

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<sup>3</sup> It should be further noted that Thomas Roseen promised Rusk if Rusk w/d the case that he and his siblings would sign & return C&D's, as well as correct and fix all their past slander and libel of me, in addition to agreeing to never slander and libel Petitioner again. While in the abusive control relationship, Thomas said I must w/d the case. Thomas told Rusk to come up with different reasoning so that it doesn't look like Rusk was blackmailed or extorted and that if Rusk did not do this, he would suffer for it. Thomas including his payment for half rent, food bills, etc., in this. Thomas told Rusk that Thomas and his family would make up lies about Rusk if Rusk didn't secede to Thomas' demands. Jason Armstrong also lied again in his responsive pleading in this court - Armstrong stated petitioner sued all Roseen's. Petition has never sued Mary, Kathy or Eric Roseens. This is half of this immediate Roseen family. That said, Mary, Kathy and Eric Roseen have made patently false statements in their affidavits in this district court case, as shown through a preponderance of evidence. They stated that they have never met petitioner, but this is false because evidence shows that they have indeed met petitioner. The Court allowing Armstrong and attorney's to lie to it and mislead it, is judicial misconduct and demonstrates the courts ineffective administration of the courts business. It also incentives others to lie to the court.

response or reply memorandum. Such motions must be made in a separate document.” CivR 7-1(b)(1)(A). Without responding to the facts, evidence and merits of Petitioner’s Motion’s for Orders to Show Cause against Roseen and Armstrong, Defendant’s Response, requests that the Court file a frivolous and cross OSC motion. (Armstrong was already well aware of this from former cases, as the evidence shows, yet Armstrong continues to willfully violate the rules.) Respondent’s motion contained within it’s Response memorandum is not permitted by Rule 7-1(b)(1)(A). Therefore, the Response should be stricken for not complying with local rules, and judgement entered in favor of Petitioner as placing a motion in a response to an objection or motion undermines procedural due process. Petitioner does not have an opportunity to respond or make his objection known to this new motion, because there is no responsive pleading permitted per Rule of Civil Procedure 72(b)(2) (permitting an objection to a report and recommendation and a response). Again, *Roseen and Armstrong are vexatious litigants, here too.*

## **V. FRIVOLOUS, MALICIOUS AND VEXATIOUS CONDUCT**

*Regarding the Roseen, Armstrong, et al., unaddressed and undeterred slander, libel, criminal defamation and perjury in the following as well: A vexatious litigant is one who files the “same” information in the “same” place*

requesting the “same” relief “more than once”.<sup>4</sup>

Thomas Roseen filed the “same” information in the “same” place requesting the “same” relief “more than once”. This includes Thomas Roseen’s filings on June 25th, 2021, and two practically identical filings on or around August 11th, in the above noted regard in August 2021 — all in the Bozeman Courthouse). Thomas Roseen has not succeeded in any of his three filed Purjurous, frivolous, malicious and vexatious cases against Petitioner littered and riddled with Thomas Roseen’s purjury and patently false statements. Further discovery has lead to actus reas and mens rea evidence of Thomas Roseen’s criminal intent being to annoy, harass, obstruct service of process, obstruct justice, criminally defame, etc., with regard to petitioner, in retaliation for Petitioner engaging in constitutionally protected activity. *Evidence further discovered at a trial<sup>5</sup> against Thomas Roseen in SM-21-33 (Rusk v. Roseen) on January 24th in Gallatin County Montana’s Bozeman City Justice Court between 3-5pm, coupled with Tyler Restvedt’s December 26th 2021 damning declaration against Jason Armstrong, Thomas Roseen, et al.* Thomas Roseen has done this **three times**. The Courts should label **Roseen as a vexatious litigant**.

Jason Armstrong filed the “same” information in the “same” place

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<sup>4</sup> A proceeding is said to be vexatious when the party bringing it is uot acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result. Black’s Law Dictionary.

<sup>5</sup> This Court’s opinion was issued than 24 hours after judgement was issued against Roseen and in favor of Petitioner in case SM-21-33 Bozeman Justice Court. This case included Roseen’s damage to and theft of Petitioners property, including costs to litigate.

requesting the “same” relief “more than once”. This includes Jason Armstrong’s filing in or around July 29th, July 2021, and two more practically in and of the same as noted above on or around August 6th, 2021 and August 11th, 2021 — all in the Bozeman Courthouse). ***Jason Armstrong has not succeeded in any of his three filed frivolous, malicious and vexatious cases against Petitioner, while riddled and littered with purjury and patently false statements.*** Jason Armstrong has done this **three times**. The Courts are bound to label **Roseen and Armstrong as vexatious litigants**.

In this case, *Respondents motions and responses included tremendous amounts of frivolous, controverted, patently false, redundant, immaterial, impertinent, and scandalous filings [in violation to Rule 12(f)2<sup>6</sup>] that were malicious actions done to annoy or harrass Petitioner* in this and others cases before courts. They have filed information that is shown to be consistent with the *Motion in Limine* contents that the Court failed to rule on, let alone *expeditiously (as well as, ineffectively..)*, yet chose to allow ***Respondents to continue their vexatious conduct***. This constitutes clear and direct **prejudice** in and of itself, in addition to **judicial interference**, stemming from **judicial misconduct and improprieties**.

The Court also failed to recognize at least *nine duplicate* entries of filings in

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<sup>6</sup> Rule 12(f)2 Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

the ROA report. These are entitled ‘email/mailed’ along with the ‘original’ filings of the same, given the Court requires original’s to be sent in, in addition to the emailed version. *Absent the petition itself, IFP and supporting document filings*, as required, not including *filings related to objection to final order and notice of appeal related filings*, the Court makes **grossly mischaracterized statements** as to Petitioners filings. The Court fails to expand on their gross mischaracterizations as to how just nine filings from Petitioner, **out of fifty-one** filings total in this case, constitutes an apparently clearly fabricated, fairly invisible ratio (one made with *fanciful leaps in logic*, or that within the realms of *basic elementary arithmetic*), evidently intended to be utilized to mislead and deflect through it’s order. These nine include:

*Plaintiff’s Petition for Injunctive (sic) and Declaratory Relief; Petitioner’s Notice of Additional C&D Violations; Plaintiff’s Motion in Lamine; Plaintiff’s (July 12th 2021) Response to Defendants Motion <sup>7</sup>; Petitioner’s Combined Objection, Motion to Strike and Motion for Leave to Reply; Petitioner’s Expedited Motion to Order Opposing Counsel and Respondents to Discontinue their Slander, Libel, Harassment, Extortion and Blackmail of Petitioner; Petitioner’s Motion for Directed Verdict for Petitioner in Res Ipsa Loquitur; Expedited Ex-Parte Motion for Order for Respondents and Opposing; Counsel from Contacting Me Absent Through a Service Processor; Petitioner’s Notice of New Evidence Re Respondents Rule 11 Violating False Claims*

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<sup>7</sup> Oddly, the Court classified this as stating: “(attachments not scanned; located in small storage)”.

*Filings.*

## **VI. ROSEEN'S FIRST FRIVOLOUS FILING**

Roseen filed a retaliatory 601 page frivolous petition on June 25th, two days after he was served the SM-21-33 action against him (which Petitioner received favorable judgement in, *less than 24hours* prior to ***this Court's fallible Opinion***).

The Petition was denied, of course, especially considering it's own content's **frivolousness** based on statements made in Roseen's affidavit. It is further frivolous because it ***exceeds the 20 page limit per filing***. Likewise, Armstrongs filings have exceeded the twenty page limit per filing rule in this matter — and others. As a result, Thomas Roseen and Jason Armstrong, have engaged in vexatious conduct and should be labeled vexatious litigants, as any and all of their filings can be found as frivolous, vexatious and malicious, let alone perjurous, rule 11 and rule 60 violating.

## **VII. FACTS AND EVIDENCE**

The court erred in failing to consider relevant facts and evidence filed with the district court and from petitioner. See for example, ***page 37 of around 65 in the exhibit section of the petition***. This is an email from Thomas Roseen to all Roseen family members, with Rusk cc'd. In this April 8th email, Thomas Roseen writes “I lied to all of you in my communications”, including Roseen writing “I said that Zach may send you all lies about me, **but this was not true**” and that he said it because he was worried that Rusk would ‘show the objective picture’. Thomas

wrote that he [and Cindy, per texts from Cindy] called Rusk a [one of many derogatory name that Cindy wrote in text messages as to Rusk] **“but this is also not true”**. Thomas wrote that he “I did not call him a(nother) [derogatory term], but that term [from Shawn Roseen’ arose in our texts. **This is also not true.**

**Page 41**, shows evidence regarding **Cindy Roseen’s low income housing fraud. Pages 57, 58, 64, 65**, among others, **show supporting legal authorities, citations, etc.** Referencing the respondents 12(b)1 motion, the court erred in stating that petitioner failed to state a claim for which relief may be granted. See pages 19-25 & 52-65 of Petition three Exhibits named REQUEST TO CEASE AND DESIST ALL DEFAMATION, SLANDER AND/OR LIBEL OF CHARACTER AND REPUTATION. The court erred in failing to consider petitioners exhibits including emails, texts, cease and desist letters and failing further to find that they set forth facts and direct evidence of wrongdoing to support the legal cause against the respondents. In petitioners 92 page Motion for a Directed Verdict with statement of facts section proved through the corresponding exhibits. This is also noted in pages 8-13 in the Petitioners Amended Brief.

### **REQUEST FOR RELIEF.**

WHEREFORE, Petitioner prays for judgment as follows:

1. For a declaration affirmatively stating Respondents have violated and are liable to MCA 27-1-801 & 45-8-212; and for mandatory injunctive relief directing Respondents compliance with such laws, statutes, rules, et cetera;

2. For a declaration affirmatively stating the obligation of Respondents to comply with Mont. Code Ann. MCA 27-1-801 & 45-8-212.

For permanent injunctive relief prohibiting Respondents from violating MCA 27-1-801 & 45-8-212.

4. For a declaration that Respondents' actions constitute a public nuisance and order for Respondents to abate the nuisance;

5. For an award to Petitioner of its attorney fees and costs as provided by law and equity; and

6. For such other relief as this Court may deem proper.

#### **X. CONCLUSION.**

Pursuant to MCA 25-21-20(1)A(i-ii) and for the foregoing reasons, Petitioner requests that the Court grant his motion for re-hearing and issue corrected judgement in this matter and on the pleadings as a matter of law.



Dated February 3rd 2021.

/s/ Zachary Rusk  
*in propria persona*

## CERTIFICATE OF COMPLIANCE

Pursuant to MCA 25-21-20(3), I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points and does not exceed 2,500 words.<sup>8</sup>

Dated February 3rd 2021.

A handwritten signature in black ink, appearing to be 'ZR', written in a cursive style.

/s/ Zachary Rusk  
*in propria persona*

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<sup>8</sup> Petitioners word processor states that the Petitioner is only 2,058 words to be exact.

## CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing Petition for Rehearing have been served on the following:

Jason Armstrong  
Cromwell Law, PLLC  
1871 S 22nd Ave., Ste. 2  
Bozeman, MT 59715  
Ph. (406) 570-7652  
[jason@cromwellpllc.com](mailto:jason@cromwellpllc.com)  
On Behalf of the Roseens



Dated February 3rd, 2022.

/s/ Zachary Rusk  
*in propria persona*

# **EXHIBIT A**

**JUDICIAL CANNONS (pages 14-16)**

## JUDICIAL CANNONS

*An abuse of discretion is a polite way of saying a trial judge has made such a bad mistake ("clearly against reason and evidence" or against established law) during a trial or on ruling on a motion that a person did not get a fair trial. A court of appeals will use a finding of this abuse as a reason to reverse the trial court judgment. Examples of "abuse of discretion" or judges' mistakes include not allowing an important witness to testify, making improper comments that might influence a jury, showing bias, or making rulings on evidence that deny a person a chance to tell his or her side of the matter. This does not mean a trial or the judge has to be perfect, but it does mean that the judge's actions were so far out of bounds that someone truly did not get a fair trial.*

*Judicial-Conduct and Judicial-Disability Proceedings. Rule 3(h) defines "cognizable misconduct" as including "conduct prejudicial to the effective and expeditious administration of the business of the courts" and "conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people." See <https://www.law.upenn.edu/newsevents/calendar.php/seminars/regblog.org#date/20130220>*

*Canon 2 of the Code of Conduct for United States Judges provides: "A Judge Should Avoid Impropriety And The Appearance of Impropriety In All Activities." The Commentary to Canon 2A states that "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances . . . would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges." (Emphasis added.) Canon 3A provides that a "judge should be patient, dignified, respectful, and courteous" to all persons "with whom the judge deals in an official capacity." (Emphasis added.) See Code of Conduct for United States Judges, Canon 1 (" . . . A judge should maintain and enforce high standards of conduct and should personally observe those standards[.]").*

*The Judicial Conference's Commentary on Rule 3 states that the Code of Conduct for United States Judges may be "informative" in determining whether a judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." The Code "is designed to provide guidance to judges . . . ," and federal judicial discipline decisions have cited and relied on the Canons. See, e.g., *In re Complaint of Judicial Misconduct (Paine)*, 664 F.3d 332, 335 (U.S. Judicial Conference 2011) (stating that the Judicial Conference adopted the Code to "provide standards of conduct for application in judicial- conduct and judicial-disciplinary proceedings brought pursuant to the Act. Commentary to Canon 1.*

*Canon 1 of the Code of Conduct for United States Judges provides that "[a] judge should uphold the integrity and independence of the judiciary." (Emphasis added.) The explanation of Canon 1 states that an "honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards,*

*so that the integrity and independence of the judiciary may be observed.” (Emphasis added.) The Commentary to Canon 1 further provides that “[d]eference to the judgments and ruling of courts depends on public confidence in the integrity and independence of judges.” (Emphasis added.)*

*A Judges lack of expeditiousness by failing to rule on pending motions for periods or lengths of up to a year at times, especially on motions which require expedited treatment such as discovery motions, along with added commentary, devoid of evidence of fact, violate Canon 1. When a judge does this, they have repudiated fundamental national, moral, and constitutional principles of equality. They have repudiated basic, indisputable principles of federal constitutional law as established by decisions of the United States Supreme Court. They have expressed “contempt” toward the United States Supreme Court rules and generally disparaged the Supreme Court. Their conduct neither “maintains” nor “observes” a “high standard of conduct,” as required by Canon 1. Their inflammatory, hostile rhetoric severely undermines “public confidence” in the federal judiciary.*

*Canon 2 of the Code of Conduct for United States Judges provides that “a judge should avoid impropriety and the appearance of impropriety in all activities.” (Emphasis added.) Canon 2A is entitled “Respect for Law.” It provides that “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Emphasis added.) This rule is “critical—the judiciary’s ability to decide cases efficiently and effectively would be severely impaired, and public confidence in the courts would be undermined, if litigants had reason to suspect judicial bias. In other words, ‘to perform its high function in the best way “justice must satisfy the appearance of justice.”’” (In re Complaint of Judicial Misconduct (Paine), 664 F.3d 332, 335 (U.S. Judicial Conference 2011) (citing and quoting In re Murchison, 349 U.S. 133, 136 (1955) (quoting Offutt v. United States, 348 U.S. 11, 14 (1954)).)*

*The Commentary to Canon 2A provides in relevant part: “An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen.” (Emphasis added.) (See also In re Complaint of Judicial Misconduct (Paine), 664 F.3d 332, 335 (U.S. Judicial Conference 2011) (“The judiciary therefore must take every appropriate measure to instill public confidence in the impartial administration of justice. For this reason, and especially in view of the ‘constant public scrutiny’ that ‘judge[s] must expect,’ Commentary to Canon 2A, members of the judiciary are required to accept unique and heightened restrictions on their personal lives that would not pertain to ordinary citizens.”).)*

*A lack of expeditiousness can constitute extreme impropriety and the appearance of impropriety that violate Canons 2 and 2A. A complainant can then submit that any “reasonable mind” would*

conclude that the judge's "integrity, impartiality, temperament, [and] fitness to serve as a judge" are "impaired" ( See Hon. Carl E. Stewart, *Abuse of Power and Judicial Misconduct: A Reflection on Contemporary Ethical Issues Facing Judges*, 1 U. St. Thomas L.J. 464, 477 (Issue no. 1, 2003) ("A hallmark of the judiciary has been its historical posture of neutrality and impartiality toward litigants and the disputes they bring to the courts for resolution. Ascendancy to the bench therefore represents more than a mere cloak of repudiated and criticized fundamental constitutional principles declared by the United States Supreme Court.

Canon 3 of the Code of Conduct of United States Judges provides that "a judge should perform the duties of the office fairly, impartially, and diligently." (Emphasis added.) Canon 3A (3) provides that "[a] judge should be patient, dignified, respectful, and courteous" to all persons "with whom the judge deals in an official capacity." The Commentary to Canon 3A states that "[t]he duty to be respectful includes the responsibility to avoid comment or behavior that could be interpreted as harassment, prejudice or bias."

A Judge's unduly delaying tactics, evince a dramatic and appalling lack of "fairness" and "impartiality." Based upon the afore, Plaintiff cannot reasonably expect "fairness" or "impartiality" from that Judge. Further, no objective observer could conclude that the treatment of the party in such a case would be consistent with "the duty to be respectful."

Canon 3A(6), states: "A judge should not make public comment on the merits of a matter pending or impending in any court." (Emphasis added.) The Commentary explains that the prohibition against public comment "about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity or impartiality, which would violate Canon 2A."

Canon 4 recognizes that a judge may engage in "extrajudicial activities, including lecturing on both law-related and nonlegal subjects." However, Canon 4 imposes important limitations on such activities, including that "a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office [or] reflect adversely on the judge's impartiality . . ." (Emphasis added.) Similarly, Canon 4 states that participation in extrajudicial activities is permissible only "[t]o the extent that the judge's . . . impartiality is not compromised . . ."

# **EXHIBIT B**

**Title 42 U.S. Code § 1983 (Pages 18-22)**

## Title 42 U.S. Code § 1983

*Title 42 U.S. Code § 1983 reads as follows: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.*

*The essential elements of due process law are notice, an opportunity to be heard, and the right to defend in an orderly proceeding." Fiehe v. R.E. Housholder Co., 125 So. 2, 7 (Fla. 1929). "To dispense with notice before taking property is likened to obtaining judgment without the defendant having been summoned." Mayor of Baltimore vs. Scharf, 54 Md. 499, 519 (1880).*

*"An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski. 45 Ill2d 405, 259, N.E.2d 282. 290." Black's Law Dictionary, 6th Edition, page 500.*

*"Aside from all else, 'due process' means fundamental fairness and substantial justice. Vaughn v. State, 3 Tenn, Crim.App. 54, 456 S.W.2d 879. 883." Black's Law Dictionary, 6th Edition, page 500. Owen v. City of Independence.*

*"The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury." Ryan v. Commission on Judicial Performance, (1988) 45 Cal. 3d 518, 533.*

*Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including stricter adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but aggravating factor. Duncan v. Missouri, 152 U.S. 377,382 (1894).*

*Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." Giozza v. Teiman, 148 U.S. 657, 662 (1893), Citations Omitted.*

*"Undoubtedly, it (the Fourteenth Amendment) forbids any arbitrary deprivation of life, liberty or property, and secures equal protection to all under like circumstances in the enjoyment of their rights.... It is enough that there is no discrimination in favor of one against another of the same class. ...And due process of law within the meaning of the [Fifth and Fourteenth] amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." Traux v. Corrigan, 257 U.S. 312, 332. "Our whole system of law is predicated on the general fundamental principle of equality of application for the law. "All men are equal before the law," "This is a government of laws and not of men," "No man is above the law," are all maxims showing the spirit in which legislatures, executives, and courts are*

*expected to make, execute and apply laws. But the framers and adopters of the (Fourteenth) Amendment were not content to depend...upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty." When a judge is known that s/he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him or her of jurisdiction, judicial immunity is lost. Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2D 326.*

*Some Defendants urge that any act 'off a judicial nature' entitles the Judge to absolute judicial immunity. But in a jurisdictional vacuum, (that is, absence of all jurisdiction) the second prong necessary to absolute judicial immunity is missing. Stump v. Sparkman, id., 435 U.S. 349.*

*Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." Piper v. Pearson, 2 Gray 120 cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872).*

*A Judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)*

*"No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." Ableman v. Booth 21 Howard 506 (1859)*

*No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it. United States v. Lee, 106 U.S., 196,220, 1 S. Ct. 240, 27 L.Ed. 171 (1882) Buckles v. King County 191 F.3d 1127. \*1133 (C.A.9 (Wash.),1999)*

*Purpose of statute that mandated any person who under color of law subjected another person to deprivation of his constitutional rights would be liable to the injured party in an action at law was not to abolish immunities available at common law, but to insure that federal courts would have jurisdiction of the constitutional claims against state officials. Act March 3, 1875, 18 Stat. 470. Butz. v. Economou 438 U.S. 478, 98 S.Ct. 2894 (U.S.N.Y.,1978)*

*Case law HAS held that judges are accountable.*

*See Com. v. Ellis, 429 Mass. 362, 371 (1999), where the Supreme Judicial Court of Massachusetts recognized that "Article 5 ... provides that officers of government 'are at all times accountable to [the people] "The relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." 435 U.S. 349, 362 (emphasis added)*

*The Eleventh Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability and wrongs inflicted or*

*injuries threatened. Public agents must be liable to the law, unless they are to be put above the law. See OLD COLONY TRUST COMPANY v. CITY OF SEATTLE ET AL. (06/01/26) 271 U.S. 426, 46 S. Ct. 552, 70 L. Ed at page 431. No officer of the law may set that law at defiance with impunity. See United States v. Lee, 106 U.S. 196,220 and Burton v. United States, 202 U.S. 344.*

*The Court in Yates v. Village of Hoffinan Estates, Illinois, 209 F. Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in the exercise of his judicial function.... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse. When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect. Simmons v. United States, 390 U.S. 377 (1968)*

*"The claim and exercise of a Constitution right cannot be converted into a crime"... "a denial of them would be a denial of due process of law". Butz v. Economou, 98 S. Ct. 2894 (1978): United States v. Lee, 106 U.S. at 220, 1 S. Ct. at 261 (1882). "No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law and are bound to obey it. Cannon v. Commission on Judicial Qualifications, (1975) 14 Cal. 3d 678, 694.*

*Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards requirements of fairness and due process. \*Gonzalez v. Commission on Judicial Performance, (1983) 33 Cal. 3d 359, 371, 374.*

*Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. Owen v. City of Independence.*

*"The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury." Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974).*

*Note: By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person). When a judge acts as a trespasser of the law, when a judge does not follow the law, the Judge loses subject matter jurisdiction and then judges' orders are not voidable, but VOID, and of no legal force or effect.*

*The U.S. Supreme Court stated that "when a state officer acts under the state law in a manner violative of the Federal Constitution, he comes into conflict with the superior Authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." U.S. Fidelity & Guaranty Co. (State use of). 217 Miss. 576, 64 So. 2D 697.*

*When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a*

*decision made in good faith, that he had jurisdiction. Elliot v. Piersol, 1 Pet 328, 340, 26 U.S. 328, 340 (1828).*

*Under federal law, which is applicable to all states, the U.S. Supreme Court stated that "if a court is without authority, its judgments and orders are regarded as nullities. They are no voidable, but simply void, and from no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers."*

*Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil rights; Robert Craig Waters. Tort and Insurance Law Journal, Spr. 1986 21 n3, p509-516"*

*"...the particulate phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." Marbury v. Madison, 1 Cranch 137 (1803)*

*See also Thomas v. Collins, supra, 323 US 516, 531. Hence, the act of filing suit against a governmental entity represents an exercise of the right of petition and those invokes constitutional protection." City of Long Beach v. Bozek, 31 Cal. 3D 527, at 533-534 (1982).*

*"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws when he receives an injury." 1 Cranch 137 at 163 (1803).*

*"As the U.S. Supreme Court has held, the right to petition for redress of grievances is 'among the most precious of the liberties safeguarded in the bill of rights'. (Cities) Insep- arable from the guaranteed rights entrenched in the First Amendment, the right to petition for redress of grievances occupies a 'preferred place' in our system of representative government and enjoys a 'sanctity and a sanction not permitting dubious intrusions.' Thomas Collins, 323 US 516: 65 S.Ct. 315, 322. Indeed, 'It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition for redress of grievances.' Id. at 323."*

*It seems to reason that if the filing is protected, then surely the object of the protected right of obtaining a due process guaranteed fair hearing of the grievance and redress thereon - is the very essence of the petition clause. In fact, the characteristic which distinguishes petition through court from other forms of petition is the access to compulsory process of law, wherein the parties are equal before the law. Without ultimate recourse to that compulsory process, there is no reason for government to listen to grievances at all, let alone to redress them fairly. "The purpose of the statute was to deter public officials from using the badge of their authority to violate persons' constitutional rights and to provide compensation and other relief to victims of constitutional deprivations when that deterrence failed." Carey v. Piphus, 435 U.S. 247,253 (1978)*

*"On summary judgment, the judge appropriately may determine, not only the currently applicable law, but whether that law was clearly established at the time an action occurred. If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. ....If the law was clearly established, the immunity defense ordinarily should fail." Harlow et al v. Fitzgerald, 457 U.S. 800, 818 (1981).*

# **EXHIBIT C**

**PRO SE CASE LAW (Pages 24-29)**

## PRO SE CASE LAW

*Haines v. Kerner, 404 U.S. 520 (1971)*

*Plaintiff-inmate filed pro se complaint against prison seeking compensation for damages sustained while placed in solitary confinement. In finding plaintiff's complaint legally sufficient, Supreme Court found that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.*

*Ellis v. Maine, 448 F.2d 1325, 1328 (1st Cir. 1971)*

*Pro se petitioner who asserted complete ignorance of the law subsequently presented a brief that was manifestly written by a person with legal knowledge. Court held that a brief prepared in any substantial part by a member of the bar must be signed by that member.*

*Nichols v. Keller, 19 Cal.Rptr.2d 601 (1993)*

*Plaintiff who consulted defendants' law firms regarding workers' compensation claim was not advised of potential for additional third party claim before statute of limitations expired. Defendants argued that plaintiff's representation was limited only to filing workers' compensation claim and no duty existed to advise plaintiff in any other matter. Court found that representation was not limited solely to workers compensation claim, and defendants should have advised plaintiff regarding third party claim.*

*Johnson v. Board of County Comm'rs, 868 F.Supp. 1226 (D. Colo. 1994)*

*Former sheriff department workers bring sexual harassment suit against county sheriff in his individual and official capacities. Attorney representing sheriff enters limited appearance on behalf of his official capacity. Court finds that attorney cannot enter limited appearance on behalf of sheriff's official capacity. Attorney representing sheriff must act for the entire person, including individual and official capacities. Entering such limited appearance is not competent and zealous representation as required by ethical rules as it leaves officer undefended on individual capacity claims. Court further finds that ghostwriting of documents for pro se litigants may subject lawyers to contempt of court. Ghostwriting gives litigants unfair advantage in that pro se pleadings are construed liberally and pro se litigants are granted greater latitude in hearings and trials. Ghostwriting also results in evasion of obligations imposed on attorneys by statute, code, and rule, and involves lawyers in litigants' misrepresentation of pro se status in violation of ethical rules.*

*Laremont-Lopez v. Southeastern Tidewater Opportunity Ctr., 968 F.Supp. 1075 (E.D. Va. 1997)*

*Over a period of time, pro se plaintiffs submitted pleadings that had been written by attorneys pursuant to discrete-task representation contracts. The attorneys did not sign the pleadings, and in most cases did not appear as counsel of record. When ordered to show cause by the court as to why they should not be held in contempt of court, attorneys argued that the professional relationships created with the litigants ended once they had drafted the pleadings. Court held that there was insufficient evidence to show that the attorneys knowingly misled the court or intentionally violated ethical or procedural rules and declined to impose sanctions. However, court stated that the practice of ghostwriting pleadings without acknowledging authorship and*

*without asking court approval to withdraw from representation was inconsistent with Fed. R. Civ. P. 11 and Rule 83.1(G) of the Local Rules for the United States District Court for the Eastern District of Virginia. Court stated that allowing attorneys to ghostwrite pleadings for pro se plaintiffs abused additional leeway given to pro se filings.*

*U.S. v. Eleven Vehicles, 966 F.Supp. 361 (E.D.Pa. 1997)*

*Court finds that ghostwriting by attorney for a pro se litigant implicates an attorney's duty of candor to the court, interferes with the court's ability to supervise the litigation, and misrepresents the litigant's right to more liberal construction as a pro se litigant.*

*Wesley v. Don Stein Buick, Inc., 987 F.Supp. 884 (D.Kan. 1997)*

*In suit brought by pro se plaintiff, defendants sought order requiring plaintiff to disclose whether she was an attorney or received the assistance of a lawyer. In expressing legal and ethical concerns regarding the ghostwriting of pleadings by attorneys, the court held the defendants were entitled to the order.*

*Ricotta v. California, 4 F.Supp.2d 961 (S.D. Cal. 1998)*

*Attorney licensed in the State of California did not violate procedural, substantive, and professional rules of a federal court by lending some assistance to friends, family members, and others with whom she shared specialized knowledge. Attorney performed research and prepared rough drafts of portions of pro se litigant's pleadings in an action against various official defendants, but did not sign the documents. Because attorney did not gather and anonymously present legal arguments with the actual or constructive knowledge that plaintiff would use them in court, and because attorney did not engage in extensive, undisclosed participation that permitted plaintiff to falsely appear as being without professional assistance, attorney had not violated any rules.*

*Ostrovsky v. Monroe (In re Ellingson), 230 B.R. 426 (Bankr.D.Mont. 1999)*

*Paralegal who helped a business draft and file bankruptcy papers was found to be engaged in the unauthorized practice of law. Court notes that if an attorney acted in the same manner as paralegal, that person would be guilty of "ghost writing," which is described as the act of undisclosed attorney who assists a self-represented litigant by drafting his or her pleadings as part of "unbundled" or limited legal services. Court also notes that ghostwriting violates court rules, particularly Fed.R.Civ.P. 11, as well as ABA Standing Committee Opinion 1414 in Ethics and Professional Responsibility.*

*Jones v. Bresset, 2000 W: 3311607 (47 Pa. D. & C 4th 60)*

*Defendant was an attorney hired by plaintiff in the midst of plaintiff's bankruptcy proceedings. The plaintiff had already obtained counsel of record, and hired defendant solely for the purpose of securing an accounting in the bankruptcy proceeding. The defendant alerted plaintiff of limited scope of his representation, advising plaintiff that problems may arise outside the scope of his representation. Plaintiff commenced a legal malpractice suit against his attorney of record stating negligence, and included the defendant in the claim. The court found that since the defendant distinctly limited the scope of his representation and urged the plaintiff to hire*

*separate counsel for other matters, the defendant had no legal duty to investigate or advise plaintiff on existence of malpractice by attorney of record.*

*Ostevoll v. Ostevoll, 2000 WL 1611123 (S.D. Ohio)*

*Respondent argues that the Petition should be stricken pursuant to Fed.R.Civ.P. 11 because, although allegedly filed pro se, petitioner clearly received substantial assistance from counsel in the preparation and filing of the Petition. Court finds that if a pleading is prepared in any substantial part by a member of the bar, it must be signed by that attorney to avoid misrepresentation.*

*Streit v. Covington & Crowe, 82 Cal.App. 4th 441 (2000)*

*In a lawsuit, plaintiff's counsel of record requested that another firm make a "special appearance" at a summary judgment motion, appearing on behalf of counsel of record. Plaintiff filed a legal malpractice suit after a summary judgment was entered against her, arguing that the special appearance created an attorney-client relationship. The appellate court found that an attorney making a special appearance represents the client's interests and has a professional attorney-client relationship with the client. Further, the voluntary appearance created a limited representation status and not a true "special appearance".*

*Armor v. Lantz, 207 W. VA 672, 535 S.E.2d 737 (2000)*

*Appellants brought legal malpractice suit against local attorney retained by Ohio lawyer in products liability case. Appellants claimed that West Virginia lawyer who acted as local counsel was liable for malpractice of Ohio lawyer. Court found that, while it was difficult to clearly define the role of local counsel according to West Virginia rules, the local attorney had effectively entered a limited representation agreement and was therefore not responsible for all aspects of the case or for the Ohio lawyer's conduct.*

*Duran v. Carris, 238 F.3d 1268 (10th Cir. 2001)*

*Lawyer participated in ghostwriting appellate brief for a pro se litigant. Court holds that participation by an attorney in drafting otherwise pro se appellate brief is per se substantial legal assistance, and must be acknowledged by signature. An attorney must refuse to provide ghostwriting assistance unless purported pro se client specifically commits to disclose attorney's assistance to the court upon filing.*

*Lynne v. Laufer, No. A-2079-01T2, (N.J. Super. App. Div. Apr. 8, 2003)*

*Attorney, with matrimonial client's consent after consultation, limited the scope of his representation to a review of the terms of a mediated agreement without going outside its four corners. Court holds that it is not a breach of the standard of care for an attorney under a signed precisely drafted consent agreement to limit the scope of representation to not perform such services in the course of representing a matrimonial client that he or she might otherwise perform absent such a consent.*

*Melvin Finance, Inc. v. Artis, 157 N.C. App. 716, 2003 WL 21153426 (N.C.App.)*

*Defendant retained an attorney on a limited basis, following an action filed by the plaintiff to recover costs on a defaulted loan. Limited representation attorney agreed to file responsive*

*pleadings and negotiate a settlement agreement, and filed a notice of limited appearance. While the defendant received notice of a scheduled hearing and forwarded it to his limited representation attorney, neither defendant nor attorney appeared at the hearing and, consequently, an arbitration award was entered for the plaintiff. Defendant filed a motion to set aside judgment, which was denied. On appeal, the defendant claimed the limited representation attorney's failure to appear at the hearing amounted to excusable neglect and that the judgment should be set aside. The court found that since the defendant received notice of the hearing and had retained the attorney on a limited basis, that the limited representation attorney's conduct did not constitute excusable neglect. The lower court decision was affirmed.*

*Sharp v. Sharp, 2006 WL 3088067 (Va.Cir.Court)*

*Complainant and respondent were co-tenants of real estate property. The respondent appeared pro se during a hearing before the commissioner in chancery, but then hired an attorney who appeared in a limited capacity at several other hearings. On appeal, the court sought to determine whether or not the attorney could appear in a limited capacity and whether the attorney's appearance qualified him as official "attorney of record". The court found that it was not bound by agreements made between client and attorney and that a court may "require more of an attorney than mere compliance with the ethical constraints of the Rules of Professional Conduct". The court found that the attorney could make a motion to withdraw once he completed the tasks agreed upon, but that the court had ultimate discretion in granting the withdrawal.*

*Discover Bank v. McCullough, 2008 W: 248975 (Tenn. Ct. App.)*

*In a dispute over a bank card balance, cardholders chose to represent themselves after card issuer filed suit. The self-represented litigants mailed a response to court but then failed to appear at the hearing, which prompted the court to grant a default judgment to the card issuer. During the appeals process, the self represented filed papers not known within the jurisdiction. When the case reached the appellate court, the Court found that it did not have subject matter jurisdiction because the self represented litigants failed to file a court recognized notice. The court found that while it appreciated the difficulties encountered by self-represented litigants, it could not "abdicate its role as an impartial, neutral arbiter and become an advocate for the self-represented litigant".*

*Burgess v. Vitola, 2008 WL 821539 (N.C.Super.)*

*In a legal dispute that surfaced over an alleged invasion of personal property, the plaintiff resided in North Carolina and the defendant resided in California. The defendant filed papers with the assistance of a California attorney but, on record, represented herself. The plaintiff sought recourse, arguing that assistance from counsel amounted to the unauthorized practice of law since the attorney was not licensed in North Carolina. As the Rules of Professional Conduct do not require an attorney who has provided drafting assistance to make an appearance as counsel of record, the court found that it had no authority to sanction the California attorney. It did, however, require that the defendant file an affidavit that she intended to proceed pro se and not seek legal assistance unless the attorney is licensed to practice in North Carolina.*

*Future Lawn, Inc v. Steinberg, 2008 Ohio 4127*

*Attorney was hired by appellant to handle a legal malpractice claim. The attorney was referred by appellant's general counsel, to act in a matter concerning the handling of an environmental report in a real estate transaction several years prior. A settlement was reached in the matter and around the same time, general counsel was replaced. Following a dispute regarding unpaid legal fees, appellants were sued by former general counsel. Appellants responded with a separate suit, alleging counsel had committed malpractice. They implicated the limited representation attorney, suggesting the attorney had an obligation to advise them of issues surrounding claims of general counsel's malpractice. The court found that representation by attorney was expressly limited to the original malpractice claim, and that no requirement existed for client consultation before limited the scope of representation. The attorney had no duty to investigate actions of general counsel.*

*Elmore v. McCammon (1986) 640 F. Supp. 905*

*"... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."*

*Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233*

*Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.*

*Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938)*

*"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."*

*Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)*

*It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson (see case listed above, Pro Se Rights Section).*

*Picking v. Pennsylvania Railway, 151 F.2d. 240, Third Circuit Court of Appeals*

*The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."*

*Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)*

*It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson (see case listed above, Pro Se Rights Section).*

*Roadway Express v. Pipe, 447 U.S. 752 at 757 (1982)*

*"Due to sloth, inattention or desire to seize tactical advantage, lawyers have long engaged in*

*dilatory practices... the glacial pace of much litigation breeds frustration with the Federal Courts and ultimately, disrespect for the law."*

*Sherar v. Cullen, 481 F. 2d 946 (1973)*

*"There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights."*

*Schware v. Board of Examiners, United State Reports 353 U.S. pages 238, 239.*

*"The practice of law cannot be licensed by any state/State."*

*Sims v. Aherns, 271 SW 720 (1925)*

*"The practice of law is an occupation of common right."*

# **EXHIBIT D**

**ADDITIONAL UNDISPUTED STATEMENT OF FACTS (Pages 31-42)**

### **Additional Statement of Facts:**

On Nov 26th 2021 10:49am Tom Roseen texted Rusk stating “We have a family zoom at 12. I’m going for a run now. If you want, you could come over when I’m back to hang-out and say hi to my family :)”

Rusk attended that zoom with all six roseens as requested. Jason Armstrong had all this evidence too, but chose to have them write Purjurous declarations and submit them in this case in their responsive memorandum with declarations as to motion to reinstate case. In Mary’s, Kathy’s and Eric Roseen’s declarations, they each declare “I have never met petitioner”. This is clearly patently false, too.

On June 13th 2021 at 10:17pm Roseen admitted a piece of evidence he filed himself of an email he wrote himself at this time stating: “[Tom] send Zach a text....happening another time too...as a violation of the request to cease and desist all contact and communication that [Tom] was served last Thursday.” Tom further went on to state “[Tom] needs to correct the false information he wrote Zach’s former freind, Collin, today”.

Police reports have had to be filed against Cindy Roseen for stalking Rusk, following Rusk in and out of the grocery store closest to him while Cindy whistled behind Rusk’s back to harass him and try and intimidate him to w/d his meritorious case against them through her intent to help her family obstruct justice against their victims. There was a text Kathy Roseen wrote, that I was sent, apparently stating something about her boasting about falsely reporting someone she injured back east.

After Sgt Owens called Petitioner in early July stating that he will tell Jason Armstrong to stop harassing me and to only serve me via third party process server, Jason sent me an inordinate enumeration of harassing emails, hand fulls a day, one of the first days being July 15th, where he started off his harassing emails to me with the fact that he received my C&D as to discontinuing his slander, libel, defamation, rule 11 violations, rule 60 violations, harassment, abuse, etc. When I told him I must file a rule 11 motion and bar complaint with the supportive evidence, Jason Armstrong began making his slew of false police reports and perjury, criminal defamation, etc. Armstrong encourages others to make false police reports too, in order to try and help Armstrong shirk accountability for his malpractice and gross wrongdoings.

Jason Armstrong claimed that Rusk served a museum (of the Rockies) on 4-15-2021. In a text from Tyler Restvelt, process server, Tyler texted Petitioner stating that Shawn Roseen asked Tyler to serve Shawn at the Museum of the Rockies. On July 21st 2021 Shawn violated the C&D as to not contact and called Petitioner from his cell 603-581-8972.

March 8th 2021 8:59am Tom texted Rusk stating “I recognize that my family is unhealthy. Cindy is particularly unhealthy. Mary is too...” (sic)

March 13th 2021 3:36pm Tom texted Rusk stating “ [I want you to tell me: “I am seeing person X today, and we are probably meeting at their house, the car or a hotel around this time.”] “

March 6th 2021 6:59pm Tom emailed Rusk stating “Zach, I have decided to try [more illicit drugs].”

March 13th 2021 9:19AM Tom texted Rusk stating “I do not want you to take that plane ticket....call me. I will come [to your residence] if you do not answer me.”

March 2nd 2021 8:54pm Tom forwarded an email he wrote his sister Cindy on Feb 22 2021 6:03pm stating in his email to his sister: “Zach feels uncomfortable around you two, understandably.” “He is resilient and knows when he is wasting his time.” “I have a difficult time in the mornings and evenings related to my long-term clinical depression. which you have no idea about.” “[Zach and I] communicate well and make our own decisions.” “[Your] sarcastic comment invalidated my concerns.” “I am viewed and treated as the sensitive, fragile, anxious brother, and I am tired of it.” “I felt foolish” “I am angry and I need to teach people how to treat me.”

On April 2nd 7:21am Tom wrote Rusk an email stating “I want to find ways to decrease my alcohol intake.” In this email Tom also said he needs to work on stepping back and asking himself “wait, why did I say that? Is that true?” That he needs to learn to “go to bed at a consistent, early time”. “Use my phone to be more organized, set reminders, such as the appropriate advance time to call for med refills”. “Try not to raise my voice when I feel triggered or upset”. He also described and talked about his “thinking errors”.

In or around August 11th, in a sworn affidavit, Tom wrote “My alcohol consumption has increased significantly...I am having difficulty curbing it.”

On Feb 20th 2021 6:41pm Tom wrote Zach via email stating “You can pay for this month’s rent for my original lease.” “We will stay on the current gym contract.”

In an email Thomas Roseen wrote Zach Rusk at 8:11pm on June 1st 2021 entitled “some thoughts” (sic), Thomas Roseen expressly stated “I have already accepted the promissory note loss”. Thomas Roseen had written the likewise in a number of prior texts and email correspondence to Zach Rusk.

On Jan 24th at the SM trial against Tom, around the time Tom was ordered to indemnify Rusk for damages Tom caused Rusk as shown through a preponderance of evidence, Tom stated he didnt feel that he owed Rusk anything, and that he categorized Rusk’s meritorious lawsuit against him as harassment. At this hearing, the Judge admonished Roseen for his continuous

stalking and harassment of Rusk including recent violations of Roseen's as to Rusk's protective order against Roseen.

July 12 2020 5:54pm Tom wrote Rusk an email stating "I easily flew under the "problem child radar." "involves a lot of shame, lack of control in my life, years of unhealthy stress levels." "I relate well to self-guarding. I have pushed a lot of people away." "I have not reciprocated" "I dislike the idea that people are assuming things about me and trying to figure me out." "my modo ...people cannot know about me...it would make me angry when people would pick up on a detail about me that I did not have control of." "I tend to way overthink and become very stuck in my head."

April 6th 2021 9:04pm, Tom forwarded an email from his therapist Greg (Entitled "Easter Sermon") to Rusk after Rusk kept telling Tom to not do so and how inappropriate that is. (Note Rusk is very spiritual, but Tom has made very clear that he is not when Rusk had asked if Tom would go to Church with Rusk early spring.)

March 7 2021 8:28pm Tom wrote Rusk an email talking about how he, Tom Roseen, is trying to make Rusk feel bad for himself, Thomas Roseen, injuring Rusk. He goes on to talk about defending his family for oppressing him. In this email Tom demands I come with him to his therapy appts with his therapist Greg. He sends me Greg's text to him stating "It's not couples counseling. It's facilitating a conversation to help me explain myself to you. This is part of my therapy." After that appt, Tom told me how he didnt like how it went and that Zach just sat and listened to [Tom] talk about all of [Tom's] personal issues and family drama queens. Tom states "[his] trouble accepting Zach's need to have sexual contact with other people-Do I feel envious or jealous? Do I take it as being inadequate? I think some of it comes from feeling left out". Tom knew well before that Rusk did not feel they were sexually compatible. Tom pujured himself in his sworn affidavits further about this and with regard to his small package as it relates to this, as Tom told Rusk 'apparently everyone is hung these days' when he got upset about their talk about sexual compatibility and why Rusk is not "feeling it". Albeit, Tom wrote in email to Rusk that Tom feels he is more asexual. Tom also states that he doesnt have a high sex drive. Tom further states that he wants Rusk for himself but doesn't want to commit to Rusk. Tom related this to when he was 'reckless' with a named girl Emily's heart in college, when Tom said he didnt want to date her, but felt that he owned her and was very mean to her parter because Tom felt he owned Emily.

In a June 2021 pleading submission of Tom's in district court, that has also been filed in the muni and justice court, Tom admitted to lying in an email dated for around June 13th and again to Zach's former freind Collin Mensch and Tom stated in the email how it is a violation to Rusk's C&D's served on him as to no contact and the Roseen's, et al, unaddressed and undeterred, continuous slander and libel.

Feb 17th 2021 12:47pm Tom texts Rusk “I know you are frustrated about the court’s inactivity, but I think you’re getting closer. They are scared and know that you’re not going away”

Jason Armstrong insists on continuing to file his frivolous filings while this issue itself remains completely unaddressed and undeterred by the Court. Jason started doing this to Rusk in his own cases, commencing in late April of last year. These two cases of Rusks (one filed on June 23rd) show a preponderance of evidence as to Roseens and Armstrongs Slander and Libel of Rusk, stalking and harassment of Rusk, drugging and raping of Rusk three times between April and May of 2021, as well as stealing and damaging Rusk’s property (all again shown through an incontrovertible preponderance of evidence including admissions made in writing). Moreover, Rusk has already provided widely accepted, if not completely mandated legal reasoning as to why his motion must be granted.

To attempt to build their frivolous, malicious and vexatious cases with a house of cards and with information the Court should have stricken based on Rusk’s Motion in Limine, Armstrong again brought in false information, controvertible evidence to try and mislead the court that included a filing over 20 pages again.

The Court failing to rule on Rusk’s Motions in Limine filed long ago, has proven the Court has failed in its duty to administer the courts business in an effective and efficient manner and has lead to so many unnecessary costs and unaddressed, undeterred, incentivized and continued criminal conduct from Armstrong, Roseens, and so many others.

This breach of the courts oath of office, strips the court of its jurisdiction and therefore strips the court from acting in it’s official capacity, when violating rules, laws, and the oath of office which bound it.

Rusk did not even receive any information on Armstrong’s allegedly Jan 4th filing until the time of the hearing on June 5th (waiting until at least 10:33am to finally receive and be handed the docs by Clerk Michelle Westberg — re: Armstrongs Jan 4th filing and the Order on it) which was prejudicially, frivolously and maliciously continued in Judge Seals, Armstrongs, Roseens, et al attempts for the past almost six months or rather more.. -- to obstruct justice.

In case CL-115-21-000109, Armstrong is already subject to a number of very serious motions for orders to show cause for contempt as to Armstrongs aiding, abetting and willfully malicious direct violations to CL-115-21-000109. Including the below:

#### **JULY 21 2021-JANUARY 4th 2022 STATEMENT OF FACTS:**

1. On January 4th 2022, Jason Armstrong filed a rule 11 violating pleading with Bozeman Municiple Court in CL-115-21-2022 that included patently false statements of his.

2. In this pleading signed and filed by Jason Armstrong, Jason stated “Respondent files this Response to Motion for Continuance. Respondent does not oppose Petitioners Motion to continue this matter...”

3. This statement is false because this matter is CL-115-2021-0000109 and Petitioner never filed a motion to continue this matter.

4. On December 26th 2021, at 9:03pm, Tyler Restveld emailed a declaration he Tyler wrote and signed under penalty of perjury:

“Declaration of Service

I, Tyler Restvedt, under penalty of perjury, do hereby certify that the foregoing information is true and correct to the best of my knowledge.”

“On August 7th, 2021, I, Tyler Restvedt, of Valley Process Service, served a box of documents to Jason Armstrong. This was a routine service, however, Jason’s reaction to service kind of took me aback, as I could tell Jason was upset with the service...”

“Jason invited me to visit with him in a separate room within his office building. He then asked me if I had any idea who Zach Rusk was. He asked how, and if, Zach was compensating me, as he believed Zach was unemployed. I assured him that Zach had been very good about paying me for my services, and in a timely manner.”

Jason gave me a stern warning with regards to working with Zach, as the legal proceedings that Zach was invoking, were causing much duress to his client(s)...”

5. On Wednesday, July 21, 2021 3:56 PM usa1610@fedex.com wrote Petitioner the following in the entitled email subject name “Subject: Reason for non delivery of docs”:

“Zach,

On 7/19/2021 we were unable to complete the delivery to your requested address of: Jason Armstrong CROMWELL LAW, PLLC 1871 South 22nd Ave Bozeman, MT 59718.

Our Assistant Manager attempted delivery with the door being locked. No one came to open the door so he had to leave and returned the documents to our FedEx store where we informed Zach Rusk of the failed delivery. In addition around last week another associated attempted delivery of documents and was not let in by an employee who saw him at the door so he had to return the following day to deliver the documents.”

6. Note: The assistant manager at the time checked out Petitioner for a print job at a later point. He told Petitioner his name was “Tom”, the “assistant manager”, and that he is “friends with Shawn Roseen” (respondents brother) for some odd reason or another.

7. Judge Seals Order dated for January Fifth states the following:

“This matter comes before the Court on the Respondent’s unopposed motion for Continuance. The Court having reviewed the Motion, the Petitioner having no objection, and good cause appearing, it is hereby ordered that the Hearing set for January 5, 2022 at 10:30am, and the Temporary Order of Protection Hearing currently set for January 13, 2022 at 10:00am is continued..”

8. Petitioner, again, never made a motion to continue the hearings in this case.

9. Respondent did not make a motion to continue the hearings. Respondent, however, through counsel, Jason Armstrong, did provide his “response to motion for continuance’ in this case, but there has been no express “motion” for continuance in this case at all.

10. Thus, Judge Seal did not review the motion, because there was no motion for a continuance in this case.

11. In Petitioners case against Roseen in District Court DV 21-432B / MSc DA 21-0398, as to Roseens slander and libel of Rusk, Jason Armstrong, on behalf of Roseen filed a declaration stating that Rusk served the Museum of the Rockies. This is patently false again, and is shown through the exhibit of text messages between Tyler Restveld and Rusk stating the following:

Petitioner to Tyler: can you also send me corrected past certs of service? Jason lied about me trying to serve a museum you had listed on one...assumed they were all correct and didnt say that until after he brought it up and after they were filed. You listed “museum of the rockies” one you served for me he said.”

Tyler replied to Petitioner via text message stating “I served Shawn AT the museum” (sic)

Rusk texted Tyler back stating “why did you serve shawn at the museum? Did he ask you to?”

Tyler replied via text stating “I met him there - I think tree was working nearby, or something” (sic)

12. The evidence attached and above demonstrate that the Respondent and Jason Armstrong had the criminal intent to commit pjury to obstruct justice, interfere with service of process, obstruct service of process, harass, annoy and intimidate Petitioner.

Respondent Thomas Roseen (“Roseen”), and his counsel Jason Armstrong (“Armstrong”) have violated CL-115-21-000109, MCA 45-5-626, MCA 45-6-203, MCA

45-5-220, MCA 45-2-301; MCA 45-2-302(3); MCA 45-2-303 coupled with 18 U.S.C. § 401 and Fed. R. Civ. P. 41(b).

**NOV 27TH STATEMENT OF FACTS:**

On November 27th 2021 between 6:46pm and 7pm MT, texts between Zac Carvey and Petitioner expressly state the following:

Petitioner to Zac Carvey: “white small suv, glasses?” (sic)

Zac Carvey to Petitioner: “Huh?” (sic)

Petitioner to Zac Carvey: “is that her? your mom's freind that Roseen hired to follow me” (sic)

“passed her in that vehicle with lights out on my way to the gym walking” (sic)

Zac Carvey to Petitioner “Oh, no she has a silver car and doesn’t have glasses” (sic).

**DECEMBER 1ST STATEMENT OF FACTS:**

Pursuant to M.C.A. Title 26 Ch. 10 Article II M.R.E 202 — Applicability Of Federal Law In Civil Cases: In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.

Respondent failed to deny the claims made against him. Under Montana Uniform Rule6(c), a failure to file an answer is an admission and that the motion is well taken. An answer includes either an admit or deny. Neither an admit or deny was expressly indicated in Respondent’s Response Memorandum to Petitioners two Motions for Orders to Show Cause. Likewise, this is not uncommon behavior for these two. See Ammon’s Voicemail about Respondent Thomas Roseen choosing not to deny that he drugged and raped Petitioner three times last spring.

Respondent’s Response also violates Rule 72(b)(2), because it contains a motion within a response memorandum. “No motion ... may be included in a response or reply memorandum. Such motions must be made in a separate document.” FRCP 72(b)(2). Without responding to the facts, evidence and merits of Petitioner’s Motion’s for Orders to Show Cause against Roseen and Armstrong, Defendant’s Response, requests that the Court file a frivolous and counter OSC motion. (Armstrong was already well aware of this from former cases, as the evidence shows, yet Armstrong continues to willfully violate the rules.) Plaintiff’s motion to strike contained within its Response memorandum is not permitted by Rule 72(b)(2). Therefore, the Response should be stricken for not complying with local rules, and judgement entered in favor of Petitioner as placing a motion in a response to an objection undermines procedural due process. Mr. Rusk does not have an opportunity to respond or make his objection known to this

new motion, because there is no responsive pleading permitted per Federal Rule of Civil Procedure 72(b)(2) (permitting an objection to a report and recommendation and a response).

Attorney Jason Armstrong is Thomas Roseen's attorney in this matter. Armstrong, represented Roseen and was present on this matter at the Wednesday December 1st 11am MT hearing. At this hearing, Armstrong disrespectfully interrupted the Court when the Court was asking Petitioner to make his opening statements. During Armstrong's inappropriate interruptions in the court room, Armstrong stated a reason why this petition was granted, regarding his client and Respondent Thomas Roseen's drugging and raping of Petitioner three times in two months — April to May of 2021. After acknowledging the afore in open Court, Armstrong moved for a harassing evidentiary hearing and fishing expedition based on Respondent Roseen's claim of 'sexual history' as to raping of Petitioner when he was a minor. As an attorney, Armstrong knew his request violates MCA 45-2-301; 45-2-302(3); 45-2-303 as to CL-115-2021-0000109 with regard to FRE 412, among others. Armstrong knows that through his own violations, Respondent Thomas Roseen also violated the order — again. In addition and through this very serious additional bad faith rules, laws, statutes and order violating action of Armstrong and Roseen, Armstrong and Roseen attempted to not just stay this matter, but to delay it's justice (obstructing justice) like they have repeatedly and practically identically in this case like the others since late spring in cases DV-21-423B; DA-21-0398; SM-33 and a number of others, regarding the Roseens', Armstrong's, etc ongoing perjury and criminal defamation of Petitioner, damage to his property (Tom admitted to in writing as the record reflects), et cetera.

In this matter, Armstrongs motion for an evidentiary hearing on the above topic is a violation of CL-115-2021-0000109 because it is intended to harass and embarrass petitioner, as per FRE 412. Specifically, evidence of sexual history can be used to harass and embarrass victims of sexual misconduct, making them less likely to report or prosecute sexual offenses. The humiliation that rape victims suffered under prior law was thought to be a major factor causing rape to be an underreported crime. According to the ACN, FRE 412 "encourages victims of sexual misconduct to institute and participate in legal proceedings against alleged offenders" and safeguards against "sexual stereotyping that is associated with public disclosure of intimate sexual details." FRE 412(a) imposes a general prohibition against evidence of an alleged victim's "other sexual behavior" or "sexual predisposition." It bars such evidence whether offered as substantive evidence or for impeachment, subject to four exceptions (discussed in the next section) where the probative value of the evidence is viewed as significantly outweighing potential harm to the alleged victim.

On Monday November 15th, the Court found that Petitioner is in danger of harm and that it has jurisdiction over the parties and subject matter. The Court Ordered that Respondent Thomas Roseen be restrained from committing further acts of abuse or threats of abuse to Petitioner and ordered Respondent Thomas Roseen to stay at least 300 feet away from Petitioner and his residence.

The Court further ordered Respondent Thomas Roseen restrained from assaulting, threatening, abusing, harassing, following, or stalking Petitioner and that Respondent Thomas Roseen must not harass, annoy, or disturb my peace or do anything Petitioner's family members and friends, witnesses to Respondent Thomas Roseens offenses, and other victims of Respondent Thomas Roseens offenses.

The Court additionally ordered that Respondent Thomas Roseen must not again take, hide, sell damage or dispose of Petitioners property, as well as ordering Respondent Thomas Roseen to not telephone, email, write, contact or otherwise communicate, directly OR indirectly OR through a third party with Petitioner including Petitioner's family members and friends, witnesses to Respondent Thomas Roseens offenses, and other victims of Respondent Thomas Roseens offenses.

At the bottom of the first page of the order, footnotes make clear the following:

45-2-301. Accountability for conduct of another. A person is responsible for conduct that is an element of an offense if the conduct is either that of the person or that of another and the person is legally accountable for the conduct as provided in 45-2-302, or both.

45-2-302(3). When accountability exists. A person is legally accountable for the conduct of another when: (3) either before or during the commission of an offense with the purpose to promote or facilitate the commission, the person solicits, aids, abets, agrees, or attempts to aid the other person in the planning or commission of the offense.

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another that is an element of an offense may be convicted upon proof that the offense was committed and that the person was accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

Armstrong moved for a harassing evidentiary hearing and fishing expedition based on Respondent Roseen's claim of 'sexual history' as to raping of Petitioner when he was a minor. Armstrong's request violated MCA 45-2-301; 45-2-302(3); 45-2-303 as to CL-115-2021-0000109 with regard to FRE 412, among others.

On January 4th 2022, Jason Armstrong filed a rule 11 violating pleading with patently false statements. In this pleading signed and filed by Jason Armstrong, he stated "Respondent files this Response to Motion for Continuance. Respondent does not oppose Petitioners Motion to continue this matter..."

This statement is false because this matter is CL-115-2021-0000109 and Petitioner never filed a motion to continue this matter.

On December 26th 2021, at 9:03pm, Tyler Restveld emailed a declaration he Tyler wrote and signed under penalty of perjury: (EXHIBIT A)

"Declaration of Service

I, Tyler Restvedt, under penalty of perjury, do hereby certify that the foregoing information is true and correct to the best of my knowledge."

"On August 7th, 2021, I, Tyler Restvedt, of Valley Process Service, served a box of documents to Jason Armstrong. This was a routine service, however, Jason's reaction to service kind of took me aback, as I could tell Jason was upset with the service..."

“Jason invited me to visit with him in a separate room within his office building. He then asked me if I had any idea who Zach Rusk was. He asked how, and if, Zach was compensating me, as he believed Zach was unemployed. I assured him that Zach had been very good about paying me for my services, and in a timely manner.”

Jason gave me a stern warning with regards to working with Zach, as the legal proceedings that Zach was invoking, were causing much duress to his client(s)…”

Per attached exhibit, on Wednesday, July 21, 2021 3:56 PM usa1610@fedex.com wrote Petitioner the following in the entitled email subject name “Subject: Reason for non delivery of docs”: (EXHIBIT B)

“Zach,

On 7/19/2021 we were unable to complete the delivery to your requested address of: Jason Armstrong CROMWELL LAW, PLLC 1871 South 22nd Ave Bozeman, MT 59718.

8. Petitioner, again, never made a motion to continue the hearings in this case.

Respondent did not make a motion to continue the hearings. Respondent, however, through counsel, Jason Armstrong, did provide his “*response to motion for continuance*” in this case, but there has been no motion for continuance in this case at all.

Thus, Judge Seal did not review the motion, because there was no motion for a continuance in this case.

In Petitioners case against Roseen in District Court, as to Roseens slander and libel of Rusk, Jason Armstrong, on behalf of Roseen filed a declaration stating that Rusk served the Museum of the Rockies. This is patently false again, and is shown through the exhibit of text messages between Tyler Restveld and Rusk stating the following:

*Petitioner to Tyler: can you also send me corrected past certs of service? Jason lied about me trying to serve a museum you had listed on one...assumed they were all correct and didnt say that until after he brought it up and after they were filed. You listed “museum of the rockies” one you served for me he said.”*

*Tyler replied to Petitioner via text message stating “I served Shawn AT the museum” (sic)*

*Rusk texted Tyler back stating “why did you serve shawn at the museum? Did he ask you to?”*

*Tyler replied via text stating “I met him there - I think tree was working nearby, or something” (sic)*

The evidence attached and above demonstrate that the Respondent and Jason Armstrong had the criminal intent and motive of filing their frivolous, malicious and vexatious cases against Rusk to delay, obstruct justice, interfere with service of process, etc.

Petitioner has plenty of direct evidence, including written communications from Armstrong and Roseen demonstrating their statements under oath were Purjurous in their

pursuits to lie to law enforcement and the Court, and through lying to law enforcement and the Court, to obtain frivolous, malicious and vexatious orders.

Mens Rea, and Actus Reas can absolutely be overwhelmingly satisfied if these two are prosecuted as they must be.

This is just some of the evidence Petitioner has been looking forward to presenting but the Court has not allowed for Petitioner to submit.

The Court's own order is false in and off itself, causes tremendous prejudice to the Petitioner, while the Order relies on and a motion that is not even there.

See MCA 45-2-301; MCA 45-2-302(3); MCA 45-2-303.

*See* Remarks of Rep. Elizabeth Holtzman, 124 Cong. Rec. H11945 (daily ed. Oct. 10, 1978) (“Too often in this country victims of rape are humiliated and harassed when they report and prosecute the rape. Bullied and cross-examined about their prior sexual experiences, many find the trial almost as degrading as the rape itself. Since rape trials become inquisitions into the victim’s morality, not trials of the defendant’s innocence or guilt, it is not surprising that it is the least reported crime.”).

Because FRE 412 is designed to further social policy by protecting rape victims and encouraging the reporting of sex crimes, some commentators have characterized it as a rule of privilege. *See* Tuerkheimer, A Reassessment and Redefinition of Rape Shield Laws, 50 Ohio St. L.J. 1245, 1272-1273 (1989). The prevailing view, however, is that the Rule is predominantly concerned with relevance and countervailing prejudice, a view consistent with its legislative placement in Article IV of the Federal Rules of Evidence. *See* Althouse, Thelma and Louise and the Law: Do Rape Shield Rules Matter?, 25 Loy. L.A. L. Rev. 757, 764 n.34 (1992).

The term “sexual predisposition” presumably includes sexual orientation, sexual preferences, and a person’s propensity to engage or not to engage in sexual activity of various types.

*This is notice that I am working on filing a meritorious 2254/2255 petition alleging serious prosecutorial misconduct using the Givens rationale (direct constitutional action). It shall also take into consideration the Speedy Trial Act of 1974, as amended, and may also include Citizen's Protection Act of 1998, 28 U.S.C. Section 530B, among other very important items.*

*I am also working on a Motion with a demand for the taking of pre-trial depositions of bribed prosecutorial witnesses as a constitutional right, or demand an evidentiary hearing in the alternative, to ensure all relevant facts in are appropriated recorded, as it will also assist in the 2254 petition.*

*I will also be seeking to stay the criminal proceeding as additionally unconstitutionally selective, arbitrary and discriminatory enforcement of law for until which stay will require holding up the frivolous, malicious and vexatious prosecution until the prosecution has commenced criminal proceedings against all others similarly situated.*

*If and as need be, I will seek a jury charge to let the jury be told that it is lawful for a jury to nullify the court's instructions to the jury by finding in favor of the defendant if the jury wishes, under whatever standards for upholding jury nullification exist under law; this shall include any need to make a proper request as to a charge on the law which governs the extent to which a jury may find for the defendant in spite of the governing substance law as charged to the jury; and will do this with an eye toward raising this issue on appeal if and when the defendant's request to charge is denied by the judge.*

*As if needed, I will demand the right of defendant to appear before the federal grand jury to explain my side of the issues.*

*I will also make a motion to require the prosecution to answer under oath that it has turned over all listed categories of exculpatory evidence that will be set forth in the motion in preparation for the 2254 or 2255 motion based on the prosecutorial wrongdoings (As the prosecution has not provided the defense with all exculpatory evidence that it did in fact receive, and has failed to accept when it was obtaining evidence from various persons).*

*I may likely make a motion to request the judge to permit the the defense to testify at trial with substantial restrictions on the prosecutions right to cross-examine on certain matters -- on the grounds that such testimony is too prejudicial and the jury's need to hear the defendant's side of the story far outweighs the prejudice which the extraneous cross-examination would create for the defense (thereby making the defense unable to testify in his/her own behalf); and do this for purposes of using any denial of the motion as a basis for appeal. If so, I would do this for purposes of using any denial of the motion as a basis for appeal, and for possible 2255 prosecutorial abuse in denying a request for appeal, and for possible 2255 prosecutorial abuse in denying a reasonable request.*

*I shall make a motion to have the judge hold that expert witness reports and all documents upon which the reports are based is not covered by the grand jury secrecy provisions for various reasons, including that experts are not fact witnesses; their testimony is purchased and revealing of the whole relationship is required to limit expert-witness abuse; experts were not envisioned or used when the grand-jury secrecy doctrine was first established, and it was judicial oversight by which expert testimony was swept within the grand-jury secrecy provisions.*

*If even necessary, I may also file a motion to preclude the prosecution from using any testimony of prisoners who have been promised mitigation of sentence as violating the Citizen's Protection Act of 1998, 28 U.S.C. Section 530B; and take this issue up on appeal, if even necessary, and in my 2255 or 2254 petition.*

*These are my rights and the facts and evidence support such. I absolutely intend to exercise them.*