

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO. DA 24-0203

JOEY ZAHARA,

Plaintiff/Appellant

v.

ADVANCED NEUROLOGY SPECIALISTS,

Defendant/Appellee.

DECLARATION OF MARTHA SHEEHY

On appeal from the Eighth Judicial District of the State of Montana, in and for
Cascade County, Cause No. CDV-14-093; The Honorable John Kutzman

Appearances for Plaintiff/Appellant Joey Zahara

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I, Martha Sheehy, under penalty of perjury, swear:

1. I am an attorney licensed to practice law in the State of Montana since 1988.
2. I represent Appellant Joey Zahara in this action, along with co-counsel Daniel Flaherty and Paul Gallardo.
3. On April 2, 2024, I electronically filed and served the Notice of Appeal in this Court.
4. Also on April 2, 2024, I drafted a letter to the Attorney General, Austin Knudsen, attached as Ex. 3 to Brent Mead's Affidavit. This letter, with the Notice of Appeal enclosed, was Zahara's first notice to the Attorney General of Zahara's appellate challenge to § 25-9-411, MCA. Zahara had provided notice of the constitutional challenge to the Attorney General in the district court as well. (Doc. 261).
5. I have a specific memory of the preparation of the April 2 documents because I was in Missoula that week, substitute teaching for Bob Carlson at the Law School. I prepared the letter and the envelope on a borrowed printer, and I stuffed the envelope addressed to the Attorney General with the letter and the Notice of Appeal.
6. I mailed the April 2, 2024 letter (with the Notice of Appeal enclosed) to the Attorney General on April 2, 2024 by depositing the letter in a mailbox in Missoula, Montana.
7. On May 20, 2024, the parties entered into a stipulation staying all deadlines until June 17, 2024. Having not heard from the Attorney General, and with all deadlines suspended, I prepared and mailed a letter on that date informing the Attorney General of these developments, again providing notice of the constitutional challenge. (Ex. 1, Mead Aff.). Given that all deadlines had been stayed, the Attorney General had a renewed opportunity to reply to the notice within 20 days as required by Rule 27.
8. I electronically filed Zahara's Opening Brief on June 18, 2024. Having not heard from the Attorney General, I again provided a copy of the brief to the Attorney General with a cover letter dated June 19, 2024, and I mailed the

documents to the Attorney General. (Mead Ex. 2).

9. I used the same template for all three letters (Mead Exhibits 1, 2 and 3) and presumably for all three envelopes. None of the letters were returned to me by the United States Postal Service.
10. On June 24, 2024, I received a call from Buffy Ekola, a paralegal with the Attorney General's office. Ms. Ekola indicated that she had received the brief, and asked me to send her any prior notices to the Attorney General.
11. Mr. Mead testified by affidavit that "On June 24, 2024, our office called counsel for Mr. Zahara to advise that no Notice of Constitutional Challenge pursuant to Montana Rule of Appellate Procedure 27 had been received by our office and that we had not received any letter from counsel dated April 2, 2024." Mr. Mead was not on the phone call and to my knowledge has no personal knowledge of the call. My memory of the call differs substantially from the summary provided by Mr. Mead in his affidavit. The only person I spoke to was Buffy. She indicated that she was looking at the June 18 letter, which she had just received, and it referenced the letters of April 2 and May 20. She asked me if I would provide copies of those prior letters. I recall no discussion of Rule 27 and I do not remember being informed that the Attorney General had not received the April 2 letter, but just that Ms. Ekola was looking for one or both letters.
12. I gathered the two prior notices in response to Ms. Ekola's inquiry. I called her back to confirm her email address. I emailed the April 2 and May 20, 2024 letters to her with the following email note:

Dear Buffy:

Please find attached the two prior notices of the appeal of the constitutionality of § 25-9-411, Mont. Code Ann. provided to the Attorney General.

Please call if you have any other questions.

13. I did not hear from Buffy Ekola again. I never heard from anyone else at the Attorney General's office regarding this matter.

14. Mr. Mead's affidavit dated July 17, 2024 informed me that Attorney General's "office does not possess any record of any such notice being served on, filed, or mailed to our office on or around April 2, 2024."
15. I do not know why the April 2, 2024 letter was not in the possession of the Attorney General, if that is the case. I know that I mailed the letter on April 2, 2024 by placing it in a mailbox in Missoula, Montana. I know that I used the same letter and envelope template on all three letters, and the Attorney General acknowledges receipt of two of the three letters.
16. On July 18, 2024, Elijah L. Inabnit of Garlington Lohn & Robinson PLLP ("GLR"), attorney for ANS, left me a voicemail at 3:14 p.m. stating that he would be filing the motion to dismiss and had already obtained our position of opposition from co-counsel to include in the motion. When I called him back at 3:57 the motion had been filed.
17. Mr. Inabnit informed me that the Attorney General's office contacted GLR on July 9, 2024. Prior to filing the motion and Mead's affidavit, no one from GLR made any inquiries of me regarding how I served the three letters which are attached to Mr. Mead's affidavit.

Pursuant to 1-6-105, Mont. Code Ann., I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true and correct.

Billings, Montana

DATED this 22nd day of July, 2024.

/s/ Martha Sheehy

Martha Sheehy