

## IN THE SUPREME COURT OF THE STATE OF MONTANA

## Supreme Court Cause No. DA-24-0215

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JACQUELYN M. HUGHES,  Appellant,  vs.  ERIC L. ANDERSON and MID- CENTURY INSURANCE COMPANY.  Appellees.	<b>APPELLANT’S RESPONSE TO MOTION TO STRIKE</b>
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Appellee included numerous false representations in *Appellee’s Response Brief*. Astonishingly, when confronted with concrete evidence that Morgan Sorena knowingly made false representations to the Montana Supreme Court, her solution was not to withdraw the false representations. Her “solution” is to strike the truth

and let the lies remain unchallenged. This is not justice and Sorena's request is not supported by the law.

**I. A party is allowed to include evidence in a brief to support her request for sanction.**

When an attorney proceeds to file an appellate brief “without respect for the integrity of the judicial process,” this Court will award sanctions. *Murphy Homes, Inc. v. Muller*, 2007 MT 140, ¶ 93. “Advocating for a desired result is required and expected, but parties must stop short of advancing arguments that are a misrepresentation of the record or of case holdings.” *Rintoul v. Rintoul*, 2014 MT 210, ¶ 21. Montana Rule of Professional Conduct 3.3 prohibits a lawyer from knowingly making a false statement of fact to the Court.

Montana Rule of Appellate Procedure 8.1 limits the evidence on appeal to the district court record “except as otherwise provided in these rules.” Montana Rule of Appellate Procedure 19(5) expressly allows a party's request for sanctions to be made in a brief. Montana Rule of Professional Conduct 3.1 requires an attorney to have a reasonable basis in fact before advancing an issue. Clearly, a party cannot make a request for sanctions without presenting the factual evidence to support that request. If a request for sanctions can be made within a brief, it stands to follow that evidence which supports the request can also be included in the brief. Every piece of evidence Sorena asks this Court to strike is evidence that shows she is knowingly making false representations to this Court. Hughes requested sanctions on that basis and Hughes provided the evidence to support that

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request.

Sorena sought to convince the Court that Hughes learned from Dr. Saadiq that fibromyalgia is not a diagnosis but rather a “summary” of injuries. *Appellee’s Brief*, 3. Sorena continued to advise the Court that Hughes “was not diagnosed with a new disease” at Mayo Clinic in 2019. *Appellee’s Brief*, 8. Sorena then advised the Court that fibromyalgia “is just a word used to describe all of her complaints.” *Appellee’s Brief*, 21. In an effort to convince the Court that fibromyalgia is not a legitimate medical diagnosis, Sorena knowingly misrepresented the medical testimony. Excerpts from Saadiq’s deposition were provided as evidence to show that Sorena’s representations about Saadiq’s testimony are false. Supp. Appx. 18-22, attached hereto for ease of reference.

Sorena goes on to try to convince the Court that, five years after Hughes’ trip to Mayo Clinic, “Hughes has never received a medical, causal opinion linking fibromyalgia to the April 2014 car accident.” *Appellee Brief*, 15. Sorena goes on to advise the Court that Hughes may “never” be able to provide a causal opinion. *Appellee Brief*, 35. Hughes presented the affidavit of Andrea Chadwick to show that Sorena’s representations in this regard are false. Hughes provided the email to which the affidavit was attached when it was sent to Sorena to show that Court that Sorena had received the affidavit and knew that a causation opinion had been obtained *before* Sorena made false representations to this Court about Hughes’ ability to prove causation. The December 6, 2021 email was provided to show that

Appellee knew Appellant obtained a causal opinion before serving and proceeding with litigation.

Sorena seeks to convince the Court that Lasonya Natividad never gave any indication to Hughes that fibromyalgia could be caused by a car. *Appellee's Brief*, 7. Hughes submitted evidence to the Court that Natividad testified that auto accidents are known to trigger fibromyalgia to substantiate Hughes' request for sanctions based on Sorena's false representations. Supp. Appx. 1-4.

Sorena seeks to advise the Court that Anderson disputes Hughes' representation that Anderson agreed she could take until April 23, 2020 to file the *Complaint*. Sorena claims "There was never any such agreement" and "Anderson, not an attorney, did not represent anything to her." *Appellee Brief*, 5. Sorena calls it "absurd" that Anderson agreed Hughes could wait until April 23, 2020 to file. *Appellee' Br.* 39. Sorena makes these representations knowing that there is no evidence to support them. If Sorena's own client agreed with her, Sorena would have been able to obtain an affidavit. Anderson's email confirming the agreement was provided to Sorena *before* she filed *Appellee's Response Brief*. Sorena was on notice to refrain from misrepresenting Anderson's position to this Court and yet she took advantage of what was not in the record to mislead this Court regarding her client's actual position on the factual issues. The email between Hughes and Anderson was appropriately submitted for the purpose of showing Sorena's representations to be false.

The cases cited by Appellee are not on point in this matter. M.R.App.P. 8.1 acknowledges that other Rules of Appellate Procedure provide grounds for introducing evidence outside the district court record. Rule 19(5) is one of those rules. The cases cited by Appellee do not involve evidence presented to the Court to support a request for sanctions in accordance with Rule 19(5).

The accusation that Sorena is making false representations to the Court is not an unsubstantiated or false allegation. Sorena is not the victim of a personal attack. She is not a new attorney who doesn't know better. She graduated law school in 2013 and works for attorneys that have handled at least fifty cases before this Court. This request for sanctions does not involve an isolated instance wherein Sorena simply overlooked a single piece of evidence. Sorena's conduct involves systematic dishonesty designed to create a false picture about Appellant's ability to prove this case if it is remanded. Worse, Sorena made these representations clearly believing she could rely on M.R.App.P. 8.1 to keep this Court from considering evidence that proves her representations are false.

### **CONCLUSION**

It is saddening that Sorena's need to win is outweighing the duty of honesty and candor. Nonetheless, it is a reality. Issuing sanctions may be unpleasant but if the Court declines to address these matters, attorney dishonesty will continue. When confronted with the reality that the only medical evidence in the district court record is that fibromyalgia is a condition that was triggered by the accident

and developed over the course of time thereafter, Sorena chose to make false representations to the Montana Supreme Court in an effort to support her position.

M.R.App.P. 19(5) expressly allows a request for sanctions to be made in a brief. An attorney cannot advance a position without a factual basis to do so. The evidence Sorena seeks to strike is evidence that concretely proves Sorena is knowingly making false representations to this Court. Hughes properly submitted the evidence that supports the request for sanctions. Sorena is now trying to use M.R.App.P. 8.1 to conceal her misconduct.

The solution is not to strike the truth and let the lies remain. The solution is to review the evidence contained in the record to decide the appellate issues and consider the additional evidence to evaluate the well-founded accusations of attorney dishonesty. Sorena is lying and she knows she is lying. If her actions were accidental, she would have sought to withdraw the offending representations. Instead, she moved to strike the truth. The request for sanctions and the evidence that supports that request are properly before the Court. *Appellee's Motion to Strike* must be denied.

Dated this 8th day of October 2023.

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## **APPELLANT'S CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Brief complies with Rule 16 of the Montana Rules of Appellate Procedure. In accordance with Rule 16(3), the required portions printed in Times New Roman, proportionately spaced, fourteen-point typeface, with a total word count of 1,248 as calculated by this party's word processing system.

/s/ Jacquelyn M. Hughes

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## **CERTIFICATE OF SERVICE**

I, Jacquelyn Marjorie Hughes, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 10-08-2024:

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