IN THE SUPREME COURT OF THE STATE OF MONTANA
DA 25-0306

MARK EUGENE BENTON,

Plaintiff/Appellant,

v.

STEVEN BABCOCK,

Defendant/Appellee.

APPELLEE'S ANSWER BRIEF

On Appeal from the Thirteenth Judicial District Court,
Yellowstone County, Montana
Cause No. DV-56-2024-0000355-OC
Honorable Colette B. Davies

APPEARANCES:

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I. STATEMENT OF THE ISSUES

A. Did the district court properly hold that Benton's claim for ineffective assistance of counsel/attorney malpractice was barred by collateral estoppel;

B. Whether the district court properly held that Benton failed to timely or sufficiently disclose an expert witness;

C. Whether Benton's questions identified in his Opening Brief were previously litigated in Federal district court.

II. STATEMENT OF THE CASE

This appeal is the result of the Montana Thirteenth Judicial District Court in Yellowstone County granting attorney Steven Babcock's Motion for Summary Judgment on April 16, 2025. *See* Or. Granting Def's Mot. S. J. (Doc. 38). Mr. Babcock is an attorney who works for the Federal Defenders of Montana, Inc. Plaintiff Mark Eugene Benton ("Benton") was charged in federal court for Prohibited Person in Possession of a Firearm and Ammunition on May 20, 2021. Mr. Babcock was appointed to represent Benton as his Federal Defender in the case. Mr. Babcock garnered a plea deal for Benton, which he accepted and subsequently pled guilty to in federal court. Judgment was entered against Benton for his federal criminal charges on May 18, 2022. *See* Crim. Docket, D. Mont. 1:21-cr-00032-SPW-1 (Doc. 19 at Ex. D).

On or about March 29, 2024, Benton filed a pro se Complaint against Babcock, alleging Intimidation/Coercion (Count 1), Tampering With or Fabricating Physical Evidence (Count 2), and Conspiracy/Collusion (Count 3). (Doc. 1).[1] He filed an Addendum to Complaint on or about August 13, 2024, to add what can arguably be construed as a legal malpractice claim, though more aptly an ineffective assistance of counsel claim. (Doc. 13). Following the close of discovery, Babcock filed summary judgment to dismiss Benton's claims on the following basis: (1) the claims were collaterally estopped; and (2) Benton did not timely or sufficiently disclose an expert witness. (Doc. 19). The district court found these arguments persuasive and granted Mr. Babcock's Motion for Summary Judgment. (Doc. 38). Judgement was entered on April 16, 2025. (Doc. 41). Benton now appeals the ruling of the district court to the Montana Supreme Court.[2]

III. STATEMENT OF FACTS

A. Factual Background

Mr. Babcock is an attorney who works for the Federal Defenders of Montana, Inc. Benton was previously represented by Mr. Babcock in a federal

[1] Benton has filed a series of civil lawsuits against his former defense attorneys in state court, the majority of which have been dismissed.

[2] Benton also moved for appointment of counsel and for relief under Mont. R. Civ. P. 60(b), which was denied on June 3, 2025.

criminal matter related to a felon in possession of a firearm. *See* Indictment (Doc. 19 at Ex. A). Benton is presently in custody of the Montana Department of Corrections and is housed at the Crossroads Correctional Facility, serving a state criminal sentence for failing to register as a sex offender. *See* Mont. Dept. of Corrections Offender Search (Doc. 19 at Ex. B).

With respect to his representation by Mr. Babcock in federal court, Benton was arrested for a parole violation on or about December 31, 2020. He was charged in Yellowstone County District Court for failing to register as a sexual offender in May of 2021. *See* ROA Summary, *St. v. Benton*, DC-56-2021-0000438-IN (Doc. 19 at Ex. C). Benton was also charged in federal court on May 20, 2021, for Prohibited Person in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1). *See* Crim. Docket (Doc. 19 at Ex. D). Federal Defender Steven Babcock was appointed on or about July 20, 2021. *See* Min. Entry, ECF No. 8 (Doc. 19 at Ex. D).

While in the course of representation, Mr. Babcock worked with prosecuting attorneys to garner a plea deal, which was adequately delivered and discussed with Benton. Benton accepted the plea, and initialed every page of the plea agreement. *See* Plea Agr., ECF No. 26 (Doc. 19 at Ex. E). In the plea, Benton acknowledged that no threats or promises had been made to induce him to enter the plea, and that he accepted the agreement freely and voluntarily. *Id* at ¶ 9. A Change of Plea hearing was held November 23, 2021 in front of the

Honorable Susan Watters, and Benton entered a guilty plea. *See* Min. Entry, ECF No. 30 (Doc. 19 at Ex. D, p. 3).

Benton was given the opportunity to discuss any issues or concerns with the plea, or reject such at the hearing, but failed to do so. *Id*. He also again acknowledged, under oath, that the plea was made voluntarily "without promises, force or threats." *Id*. Following the entry of the plea, Mr. Babcock spoke with Benton by phone on or about March 17, 2022, and determined he could no longer adequately represent Benton. A Motion to Withdraw was filed on March 18, 2022, and granted on March 21, 2022. *See Or.*, ECF No. 35 (Doc. 19 at Ex. F). Benton was subsequently represented by Nicole Gallagher, CJA Panel Attorney. Judgment in a Criminal Case was entered May 18, 2022. *See* J. in a Crim. Case, ECF No. 39 (Doc. 19 at Ex. G).

On or about May 4, 2023, Benton moved to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. As in the pending matter, Benton made claims that he received ineffective assistance of counsel and that the search of his car, phone and residence was unlawful. He also raised issue with the authenticity of the evidence collected, which included a photograph of the firearm. Finally, he asserted Mr. Babcock coerced his plea.

Judge Watters denied Benton's § 2255 Motion on June 25, 2024. *See* Or. Granting Summ. J. (Doc. 38). In her decision, she noted that for Benton to prevail on an ineffective assistance of counsel claim, he must demonstrate

counsel's assistance was "outside the wide range of professionally competent assistance" and that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687-690 (1984). In evaluating his Fourth Amendment claim, The federal court determined that Probation and Parole Officer had grounds to search and arrest Benton without a warrant, in large part due to the fact he was in violation of his probation, and thus the search was lawful.

With respect to Benton's claim of manufactured evidence, the federal court noted that in addition to the firearm, the cellphone also contained images and messages related to a methamphetamine pipe and other drug paraphernalia. These additional photographs and messages provided further support for the search of his residence, further underscoring the fact that Babcock has no obligation to mount a meritless fourth amendment challenge.

Finally, the federal court dismissed Benton's arguments that he was "coerced" into entering his plea because he had testified under oath that his decision was voluntary, made freely without force or threats, and confirmed in writing. Since Benton was competent to enter the plea, the federal court determined that the record firmly contradicted Benton's claim, and that he entered his plea knowingly and voluntarily.

B. Procedural Background

On March 29, 2024, Benton commenced the present action and sued Babcock in the Montana Thirteenth District Court, Yellowstone County, alleging, in essence, ineffective assistance of counsel. *See* Compl. & Demand Jury Tr. (Doc. 1). Benton continued to argue, as he did in the underlying case, that his criminal conviction was due to an improper search of his vehicle while on parole. Additionally, Benton argued that Mr. Babcock was complicit in tampering or fabricating evidence against him. An Addendum to Complaint was filed on or about August 13, 2024, adding what can be construed as a legal malpractice claim, though again relying on defenses and issues in the federal criminal case. (Doc. 13).

A Scheduling Order was filed on July 11, 2024. (Doc. 12). The Order Granting Unopposed Motion for Extension of Expert Witness Disclosures required that expert witness disclosures be filed by October 9, 2024. (Doc. 15). Mr. Babcock filed his expert witness disclosure in compliance with the district court's scheduling order. Benton did not timely disclose an expert. On February 21, 2025, Benton filed an "Expert Disclosure" listing his prior defense attorney, David Garfield, and Defendant Steven Babcock. (Doc. 36).

On December 4, 2024, Mr. Babcock filed a Motion for Summary Judgment. (Doc. 19). The district court ordered supplemental briefing, which Mr. Babcock filed on January 6, 2025. (Doc. 30)

Upon considering both the Defendant's Motion for Summary Judgment and Plaintiff's Response to Defendant's Motion for Summary Judgment, the district court entered an Order Granting Defendant's Motion for Summary Judgment on March 28, 2025. (Doc. 38). Judgment was entered in favor of Mr. Babcock on April 16, 2025. (Doc. 41). Thereafter, Benton filed a Notice of Appeal on April 25, 2025. (Doc. 42).

IV. STANDARD OF REVIEW

The Montana Supreme Court grants review of summary judgment de novo. *Lorang v. Fortis Ins. Co*., 2008 MT 252, ¶ 36, 345 Mont. 12, 192 P.3d 186. This Court reviews an order granting summary judgment based on the same criteria applied by the district court pursuant to Mont. R. Civ. P. 56, and should be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Motarie v. N. Mont. J. Refuse Disposal Dist.*, 274 Mont. 239, 243, 907 P.2d 154, 156 (1995)

The burden is upon the moving party to establish the "complete absence of genuine issues of material fact." *Lorang*, ¶ 37. "If the moving party satisfies its burden, the burden shifts to the non-moving party to prove, by more than a mere denial and speculation, that a genuine issue does exist." *Hutchison v. Old Republic Nat'l Title Ins. Co.*, 2025 MT 29, ¶ 10, 420 Mont. 325, 563 P.3d 737.

"When making this assessment, we view the evidence in the light most favorable to the non-moving party." *Hansen Tr. v. Ward*, 2015 MT 131, ¶ 16, 379 Mont. 161, 349 P.3d 500. However, the court has no obligation to "consider unsupported arguments" or to "formulate arguments" or "locate authority" for a party. *Herman v. St.*, 2006 MT 7, ¶ 22, 330 Mont. 267, 127 P.3d 422. The decision on whether a genuine issue of material fact exists or whether a party is entitled to judgment as a matter of law are conclusions of law reviewed for correctness. *Ereth v. Cascade Cnty*., 2003 MT 328, ¶ 11, 318 Mont. 355, 81 P.3d 463.

V. SUMMARY OF THE ARGUMENT

First, the district court properly held that Benton's claim for ineffective assistance of counsel/attorney malpractice was barred by collateral estoppel. The district court found that the issue being litigated in the civil case was identical to that being litigated in the underlying criminal case (*U.S. v. Benton*), a final judgment was rendered in the criminal case, and Benton was clearly a party in the prior action. Thereby, the district court rightfully granted summary judgment for Mr. Babcock.

Second, the district court properly held in favor of Mr. Babcock because Benton failed to disclose an expert witness timely or sufficiently. The district court correctly found that Benton filed his disclosure of expert witnesses four months after the deadline, rendering his filing untimely. Additionally, the

district court properly recognized that the two witnesses Benton did name were unable to be retained as he had sued both, and his disclosure was incomplete pursuant to Mont. R. Civ. P. 26(b)(4)(A)(i).

Finally, Benton's three "Questions" on appeal are all based upon the evidence obtained during his parole violation arrest, and are thinly cloaked constitutional challenges that firmly fell within the federal court's jurisdiction in his criminal case. These issues were therefore not raised or litigated in this underlying suit, and thus should not be considered on appeal. Since Benton's remedy for constitutional challenges stemming from his arrest were through the federal court, this Court should dismiss his three appeal "Questions" as well.

VI. ARGUMENT

A. The District Court Correctly Concluded Benton's Civil Malpractice Claim was Barred by Collateral Estoppel.

Benton seeks to relitigate his federal criminal conviction by attacking the credibility of the initial search, evidence, and other matters which were raised or could have been raised in the federal criminal case. *See e.g. Pierce v. Barkell*, 2018 MT 53N, ¶ 16, 391 Mont. 539, 414 P.3d 289 (affirming summary judgment on similar grounds). This suit is merely an impermissible attack on the validity of the criminal investigation and his decision to plead guilty, for which the district court properly found was collaterally estopped as a matter of law.

Collateral estoppel, otherwise known as issue preclusion, was developed to "conserve judicial resources and prevent inconsistent judgments by barring a party from relitigating an issue that already has been litigated and decided in a prior suit." *Sticker v. Blaine Cnty.*, 2023 MT 209, ¶ 18, 414 Mont. 30, 538 P.3d 394. Here, Benton clearly had a full and fair opportunity to litigate the issue of his sentence on his federal firearm charge – and the district court properly recognized that he cannot challenge this claim again in a civil malpractice claim. His attempt to raise ineffective assistance of counsel for Mr. Babcock's representation fail because this is not the proper forum to raise those claims, thus underscoring why this Court should affirm the district court and dismiss this appeal.

The doctrine of collateral estoppel precludes litigation of issues determined in an earlier action. *Pierce*, 2018 MT at ¶ 10, 391 Mont. 539, 414 P.3d 289 (citing *Est. of Eide v. Tabbert*, 272 Mont. 180, 183, 900 P.2d 292, 295). This Court has expressly recognized that collateral estoppel "prohibits the litigation of an issue in a civil trial that has been litigated in a prior criminal trial." *Id* (citing *Eide*, 272 Mont. at 183, 900 P.2d at 295; *Aetna Life & Cas. Ins. Co. v. Johnson*, 207 Mont. 409, 414, 673 P.2d 1277, 1280 (1984)). The legal standards for ineffective assistance of counsel in criminal proceedings and for legal malpractice in civil proceedings have been considered in other courts as equivalent for purposes of application of the doctrine of collateral estoppel.

See e.g. Knoblauch v. Kenyon, 163 Mich.App. 712, 719, 415 N.W.2d 286, 289 (Mich. App. 1987); *Slice v. Borg*, 2006 Mont. Dist. LEXIS 323 (Mont. 4th Jud. Dist.).

In the district court's Order Granting Defendant's Motion for Summary Judgment (Doc. 38), the district court applied a three-prong test from *Raush v. Hogan* to determine whether the doctrine of collateral estoppel barred Mr. Benton's claim of professional negligence. *Raush v. Hogan*, 2001 MT 123, ¶ 16, 305 Mont. 382, 28 P.3d 460. The three-prong test requires that the party asserting estoppel must establish that:

> (1) the issue decided in the prior action was identical to that in the present case;
> (2) a final judgment on the merits was rendered in the prior action; and
> (3) the party against whom the doctrine is invoked was a party . . . . in the prior action.

(Doc. 38, citing *Rausch*, ¶ 16).

The district court properly concluded that the *Rausch* test was satisfied. The district court's holding rested upon their finding that Benton raised "the same evidentiary issues" including a wrongful arrest, a wrongful search, a photo of the gun was manufactured, and a coerced plea bargain. (Doc. 38). Discussed *supra*, Benton was criminally sentenced in federal court, and after pleading guilty moved under 28 U.S.C. § 2255 to vacate his sentence, which was denied. *U.S. v. Benton*, D. Mont. 1:21-cr-00032-BLG-SPW. Since the

identical issues were first considered and rejected by the Federal district court, the district court properly determined that the first prong of the Rausch test was satisfied. The district court next found that although Benton's civil claim of professional negligence is different from his federal challenge, the issue had been fully decided by a final judgment in the Federal district court. (Doc. 38). Thus, the district court properly held that the second prong of the *Rausch* test was met. Finally, Benton was clearly a party in this prior action, so the third prong of the *Rausch* test was met.

While not addressed by Benton in his appeal, in 2006, this Court added an additional consideration to the collateral estoppel test, to determine whether "the party against whom preclusion is asserted must have been afforded a full and fair opportunity to litigate any issues which may be barred." *Baltrush v. Baltrush*, 2006 MT 51, ¶ 18, 331 Mont. 281, 130 P.3d 1267. As identified by the district court, Benton had a full and fair opportunity to litigate the evidentiary issues when he raised them in the Federal district court. The doctrine of collateral estoppel therefore applies, and Mr. Babcock requests the Montana Supreme Court affirm the ruling of the district court.

B. The District Court Properly Held That Benton Failed to Timely or Sufficiently Disclose an Expert Witness.

In addition to affirming the district court's decision to hold that Benton's claim was barred by collateral estoppel, the Court should also affirm the district

court's grant of summary judgment for Mr. Babcock because the district court reached the proper conclusion that Benton did not timely disclose an expert witness. The district court's legitimate reasoning for this holding rested upon the fact that Benton did not disclose an expert witness prior to the deadline, which had already been extended, as October 9, 2024. (Doc. 14). Benton did not file his disclosure of expert witnesses until February 21, 2025, and even then, he identified two attorneys he had sued, and gave an incomplete disclosure. (Doc. 36).

To succeed on a professional negligence claim against an attorney, the plaintiff must prove that: (1) the attorney owed plaintiff a duty of care; (2) the attorney breached that duty of care and skill; (3) the plaintiff suffered damages; and (4) the attorney's conduct was the proximate cause of the damage. *Labair v. Carey*, 2012 MT 312, ¶ 20, 290 P.3d 1160, 1165. In *Carlson v. Morton*, this Court established that expert testimony is required in a legal malpractice case to establish that an attorney departed from prevalent standard of care. *Carlson v. Morton*, 229 Mont. 234, 238, 745 P.2d 1133, 1136 (1987).

Here, the district court properly determined that the lack of expert testimony presented by Benton necessarily precludes him from proving the requisite elements of a professional negligence claim against an attorney. (Doc. 38). Even if the timeliness of Benton's disclosure is set aside, the district court correctly identified that Benton failed to sufficiently disclose an expert as

required to establish the standard of care. Although Benton named two expert witnesses, attorney David Garfield and Mr. Babcock himself, neither were retained. The district court emphasized that Mr. Benton filed a lawsuit against Mr. Garfield in *Benton v. Garfield*, DV-56-2021-1015 (Doc. 38), making him extremely unlikely to be retained by Benton. The district court also noted that "[I]t goes without saying that the Defendant Steven Babcock will not serve as an expert on behalf of Plaintiff Benton in the matter at hand." (Doc. 38). Finally, the district court properly recognized that Benton's "disclosure is incomplete" regarding the Montana Rules of Civil Procedure. (Doc. 38).

In its holding of Benton's expert disclosure as untimely and insufficient, the district court properly argued and applied the facts to relevant law. Mr. Babcock respectfully requests this Court to affirm the district court's ruling on these grounds as well.

C. Benton's Three "Questions" Identified in his Opening Brief Merely Attempt to Relitigate his 28 U.S.C. § 2255 Claim.

As the first argument of this brief establishes, the matter of Benton's claim for ineffective assistance of the counsel/attorney malpractice is clearly barred by collateral estoppel. The three arguments posed by Benton are all based upon the federal court criminal procedural proceedings and are nothing more than thinly cloaked constitutional challenges that firmly fell within the Federal district court's jurisdiction. This Court has held that, "[w]hile pro se

litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules." *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124. In addition, this Court has warned it will not address an issue raised for the first time on appeal. *Unified Indus., Inc. v. Easley*, 1998 MT 145, ¶ 28, 289 Mont. 255, 961 P.2d 100.

Mr. Benton raises the three following Questions in his appeal:

1. Was the evidence in Cause No. CR-21-32-BLG-SPW in which Steven Babcock persuaded the Appellant to accept a plea agreement obtained in a Constitutional search incident to arrest?

2. Why are there no photos of the alleged text messages, drugs and drug paraphernalia that was allegedly on Benton's cellphone?

3. Did Mr. Babcock commit fraud when he presented Benton with manufactured false evidence produced by State Probation Officers?

As a pro se litigant, Benton had the opportunity to present these evidentiary challenges in his federal criminal case, which he did through his § 2255 appeal. The first question asks whether the evidence in Benton's federal court criminal proceeding was obtained constitutionally, which was considered and rejected by the Federal district court. (Doc. 38). The second question similarly asks whether evidence was fabricated by probation officers for

Benton's federal court criminal proceeding, which again is refuted by the findings of the Federal district court regarding the sufficiency of evidence to support a search. Finally, the third question asks whether Mr. Babcock committed fraud through his representation of Benton in his federal court criminal proceeding – again an issue fully litigated by Benton in his attack on his decision to enter a guilty plea.[3]

As discussed in section one, these three "Questions" are identical to issues raised and rejected in Federal district court. While stated somewhat differently, they are again barred by collateral estoppel, and thus this Court should affirm the lower court's grant of summary judgment in favor of Babcock.

VII. CONCLUSION

The district court correctly identified that Benton clearly failed to articulate a claim not barred by collateral estoppel, then failed to timely or sufficiently disclose an expert witness. Additionally, the district court clearly operated within their discretion to dismiss the unsupported arguments raised by Benton. Finally, his three "Questions" merely attempt to relitigate his federal criminal court case, again barred by issue preclusion.

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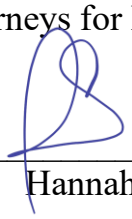
[3] Benton did not include fraud as a cause of action in his Complaint or Amended Complaint, and thus this claim further fails for failure to plead, with particularity, facts to support the nine elements of fraud. *C. Haydon Ltd. v. Mont. Min. Props., Inc.*, 262 Mont. 321, 325, 864 P.2d 1253, 1256 (1993).

Mr. Babcock respectfully requests that this Court affirm the district court's March 28, 2025, Order Granting Defendant's Motion For Summary Judgment, thus affirming the April 16, 2025, Judgment in Favor of Defendant Steven Babcock.

DATED this 31st day of July, 2025.

MILODRAGOVICH, DALE &
STEINBRENNER, P.C.

Attorneys for Defendant



By_____
Hannah Stone

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word 365, is 3,819 words, excluding Certificate of Service and Certificate of Compliance.

DATED this 31st day of July, 2025.

MILODRAGOVICH, DALE &
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Attorneys for Defendant

By 
Hannah Stone

CERTIFICATE OF SERVICE

I, Hannah Stone, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-01-2025:

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