Gene Kirschbaum
2231 Middle Road
Columbia Falls, MT 59912
406-407-1467
Kirschbaum.Gene@gmail.com

Jerry O'Neil
985 Walsh Road
Columbia Falls, MT 59912
406-250-2503
JerryONeil5@gmail.com

Voters as listed on list of Assembled Voters

FILED
DEC 29 2023
Clerk, U S District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Jerry O'Neil, Gene Kirschbaum,
Russell Sias,
Barbara Levitt (Assembled Voter),
Darell Levit (Assembled Voter), and other
Assembled Voters,

Petitioners,

vs.

The Montana Supreme Court,
The State Bar of Montana, and,
The Montana Supreme Court and the
State Bar of of Montana, joined together
as the Integrated Bar of Montana, and
Montana Secretary of State Christi Jacobsen.

Respondents.

Cause No. _____

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION AND VENUE

This court has jurisdiction by virtue of 42 U.S.C. Chapter 21, §§1981, 1983, & 1988(a),

as well as by 28 U.S.C. Chapter 28, §§2201, 2202; & Chapter 85, §§ 1331, 1337(a) & 1343(a); 15 U.S C. Chapter 1, §§ 4, 15 & 26; the Montana Unfair Trade Practices and Consumer Protection Act MCA § 30-14-101 et seq., and Article III of the United States Constitution. Insofar as this action asserts certain state-law claims that are inextricably related to the federal Constitutional claims under Article III of the United States Constitution, this Court has supplemental jurisdiction over any such state-law claims pursuant to 28 U.S C. § 1367(a).

1. Petitioners are residents and citizens of the State of Montana;

2. Petitioner **Jerry O'Neil** is well versed in the legal system, having earned the equivalent of a JD degree from the "School of Hard Knocks." He has been involved with the Montana legal system since, at least 1979 when he handled the legal affairs of his family's business. [See *O'Neil Lumber Company v. Nickelodeon Companies*, 617 P.2d 1291 (Mont 1980).

3. To save his family, in 1975 O'Neil filed suit against Bishop Francis K. Schuckardt and the Fatima Crusade, an Idaho based cult. The attorney who did a good job handling his divorce was too busy to sue the cult that caused the divorce. Every chance they got, members of the cult were coming to Montana and brainwashing his children in violation of the divorce decree. Therefore, he hired another Coeur d'Alene, Idaho attorney with a $2,000.00 retainer fee up front, and a promise to share the proceeds at the conclusion. (This attorney was validly licensed in Idaho, having graduated from an ABA approved law school, passed their character and fitness examination, and passed the bar examination.) Three years after paying the $2,000.00 -- while the cult was still

meddling with his children every chance they had -- O'Neil called this attorney and inquired how the case was coming. The reply was, "we are just waiting on the court." Having a questioning mind, O'Neil then phoned the Clerk of Court and asked how the case was coming. He was informed, "the case (was) going to be put on the dismissal list for lack of action." Therefore, when he was unable to find an attorney who had time to take on the case, and that he trusted, O'Neil took it over himself.

4. In order to take the *Schuckardt* case to the six day jury trial, O'Neil read the books at law libraries in Washington, Idaho, and Montana. He went to Flathead Valley Community College where he took a course in speaking so he could face the jury. He learned what a trial notebook was. Then he conducted discovery. His hands were shaking when he questioned witnesses on the stand and addressed the jury, but his elation was unbounded when, in August 1983, the jury returned a $1,000,000.00 verdict in favor of O'Neil and his children.

5. Soon after the jury rendered the verdict, some other boys who attended the cult with their parents, testified to the abuse done to them by the cult. With their images and voices disguised, appeared on a Spokane, Washington television station and reported the abuse, including sexual abuse, they suffered while Schuckardt was leading the cult. According to Wikipedia[1]:

> On June 3, 1984, Schuckardt and a small group of his followers were expelled from the CMRI and left the Spokane area, taking the name Tridentine Latin Rite Church (TLRC). In addition to Fr. Alphonsus, Schuckardt was followed by 4 religious sisters and 10 religious clerics and

[1] https://en.wikipedia.org/wiki/Congregation_of_Mary_Immaculate_Queen

> brothers.[18] A larger group of the priests, religious, and laity remained with Chicoine at Mt. St. Michael, retaining the CMRI name and the bulk of the church property. Chicoine accused Schuckadrt of abuse & drug addiction.[1] Local media in 1984 reported that there were 5000 followers of the group in the United States, 800 of whom live in the Spokane area.[17] In 1986, local media reported that about half the members of the church's religious orders left.

6. It was about a year later, after Francis Schuckardt and some of his followers departed amidst some gunfire, before the trial judge overturned the jury's verdict.

7. Then O'Neil got busy writing briefs on appeal. The Idaho Supreme Court turned down his appeal, but, on rehearing O'Neil persuaded them that if their children were put in the same place as O'Neil's children had been, they would want to have the court system open to them, rather than be forced to use a shotgun to protect their families. But this court made up of Idaho licensed attorneys, who were validly licensed in Idaho, having graduated from an ABA approved law school, passed their character and fitness examination, and passed the bar examination, couldn't swallow giving a million dollar judgment to a "pro-se." Therefore word got to the attorney who handled O'Neil's divorce that, "a mouse in the corner informed (this attorney) that (O'Neil) needed to have an attorney of record to prevail." Not being too stiff necked, O'Neil had Dean Jellison, a good friend of his who was licensed to practice in Montana, appear before the Idaho Supreme Court as his attorney of record. The court then returned the invasion of privacy cause of action, while discarding the alienation of affections cause in Idaho.

8. When the case returned to the district court his five children, who each were less than 8 years old when the case started, were now over the age of 18, and because of

Idaho's monopolistic licensing requirement, he was no longer allowed to represent them as their guardian ad litem. Therefore he once again retained the Idaho attorney who had handled his divorce, who also was validly licensed in Idaho, having graduated from an ABA approved law school, passed their character and fitness examination, and passed the bar examination.

9. When the case went to the second trial, O'Neil discovered that this attorney whom he considered to be a trustworthy friend had dismissed a necessary defendant without discussing it with him. On the last day of trial the cult's attorney put this lady that had previously been a named defendant on the stand. There she lied to the jury and was not impeached and basically took the verdict away from the O'Neils.

10. While he had the million dollar verdict in his basket, O'Neil was invited to speak before a Kalispell, Montana organization named "Children's Rights for Parents." The wife of one of the members of the group had filed for divorce against him in the Blackfeet Tribal Court system at Browning, Montana. When this member requested that O'Neil help him with the divorce, O'Neil accompanied him to the tribal court at Browning, Montana and was allowed to take the bar examination and become licensed to practice before the Blackfeet Tribal Court System in 1984.

11. O'Neil feels his actions resulted in the moderation of the cult, changing it to a religion. After Pauline, the mother of O'Neil's five children died on December 9, 2010, the current head of the Fatima Crusade, Father Benedict Hughes, spoke at her memorial at Kalispell, Montana. Included in his words was a public apology to O'Neil. While there is no chance O'Neil will ever join the faith, he does enjoy attending their services

sometimes with some of his grandchildren. He wonders how much credit should be given his battles to save his family should be given to his having 5 of the greatest children, and 14 of the greatest grandchildren that exist on this earth.

12. O'Neil has served two four-year terms in the Montana State Senate where he sat on the Senate Judiciary Committee for four sessions. He also served a couple of two-year terms in the Montana State House of Representatives, where he sat one session on the House Judiciary Committee. While serving in the legislature, O'Neil received recognition for his ability to decipher and amend the bills that came before these judiciary committees.

13. He is a member of the Indian Law, and the Family Law Sections of the Montana Bar Association and has participated in many Continuing Legal Education courses.

14. Petitioner **Gene Kirschbaum** practiced law in the United States Air Force and then in private practice in Wisconsin before he retired and moved to Montana approximately five years ago. He practiced in Federal and State Courts, litigating or offering advice on a multitude of legal matters including: Contracts, Environmental, Landlord/Tenant, Real Estate, Aviation, Medical Malpractice, Divorce, Custody, Guardianship, Estates, Torts, Law of War, Geneva Conventions, and the defense and prosecution of criminal matters. Although he is well versed in the practice of law, he has never been licensed to practice by the Integrated Bar of Montana.

15. Petitioners O'Neil and Kirschbaum intend to run for, and be elected to, the offices of Justice and Chief Justice of the Montana Supreme Court. O'Neil previously

filed for the position of Montana Supreme Court Justice, paid his filing fee, but his name did not appear on the ballot, and his filing fee has never been returned to him. Therefore, Petitioners are filing this action for Declaratory and Injunctive Relief to have this Court declare that Petitioners do not have to be members of the Integrated Bar of Montana in order to run for the office of Justice, or Chief Justice, of the Montana Supreme Court before they pay their filing fees to run for said offices.

16. The Montana voters who are joining in petition to be allowed to vote for O'Neil and Kirschbaum desire to vote for Petitioners O'Neil and Kirschbaum so they will get elected to the offices of Justice, and Chief Justice, of the Montana Supreme Court. Unless this Court directs the Respondents to allow Petitioners to run for judicial office in the State of Montana these voters will not be allowed to vote for either O'Neil nor Kirschbaum, and against the anti-competitive monopolistic practices that presently control their Judicial Branch of Government.

17. The State Bar of Montana was integrated by order of the Montana Supreme Court on January 23, 1975. [*In re the Unified Bar of Montana*, 530 P.2d 765 (Mont 1975).

18. Due solely to the Integrated Bar of Montana's monopolistic practices, it appears that both a retired JAG officer's right to practice law in Montana, and a long time licensed practitioner of a Montana located tribal court, Petitioners O'Neil and Kirschbaum are presently being denied their right to run for the office of Justice and/or Chief Justice of the Montana Supreme Court. But this shouldn't be the case. As applied to O'Neil, Article VII, Section 9, Qualifications, states:

> (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

O'Neil has resided in the state most of his life, has been admitted to the practice of law in Montana (before the Blackfeet Tribal Court) for at least five years (since 1984) prior to the date of appointment or election. It appears that in 1972, when the delegates composed the new constitution, they wanted to create the opportunity for tribal representation on the Montana Supreme Court.

THE MONOPOLY

19. Respondent The Integrated Bar, through their head, the Montana Supreme Court, in order to maintain their monopoly over helping the public with their legal affairs, has made up the requirement than only graduates of ABA accredited lawschools may be members of the integrated bar, and that only members of the integrated bar are allowed to be appointed or elected to join their members as judges and justices of the courts of Montana. Their intent appears to be to prevent competition from "scoundrels" such as O'Neil and Kirchsbaum.

20. The Integrated Bar, the organization that has determined who can be admitted to the practice of law before the courts in Montana, and by extension, who can be on the ballot as Judge of a district court, or Justice of the Montana Supreme Court, is

composed by a majority of the practitioners who are protected by the monopoly that they define and enforce. They do not answer to the Montana Legislature, the Governor of Montana, nor to the people of Montana. [See: *Matter of McCabe*, 544 P. 2d 825 - Mont: Supreme Court 1975, and *McLaughlin v. Montana State Legislature*, 493 P. 3d 980 (Mont 2021). They are also acting in violation of the federal anti monopoly laws and are not protected by the Parker doctrine.

21. The Integrated Bar has used their power to limit who can practice law before the courts in Montana only to law schools graduates, and then only to law schools that are accredited by the American Bar Association.

ANTITRUST LAW

22. Montana's Integrated Bar has limited who can run for judicial positions as district court and supreme court judges and justices to their chosen few, ie: those who have graduated from ABA accredited law schools; have been certified by the Commission on Character and Fitness; have submitted a qualifying MPRE score; have submitted a qualifying Unified Bar Exam score; have attended the Montana Law Seminar; and have paid their license tax and dues to the State Bar of Montana.

https://www.montanabar.org/Membership-Regulatory/Admissions/Admissions-Home#Eligibility%20for%20Admission

23. The United States Department of Justice, Antitrust Division states:

> The Justice Department is concerned about efforts across the country to prevent non-lawyers from competing with lawyers through the adoption of excessively broad unauthorized practice of law restrictions by state

> courts and legislatures. Some of these proposals appear to be little more than overt attempts by lawyers to eliminate competition from alternative, lower-cost non-lawyer service providers; others, while appearing to be good faith efforts to protect consumers, have not been tailored narrowly enough to avoid unnecessary harm to competition. . . [See *U.S. Department of Justice April 17, 2009 letter to Montana Supreme Court* attached]

24. The Integrated Bar of Montana, through its head, the Montana Supreme Court -- without supervision by the Legislative or Executive branches of the Montana government, took it upon itself to limit admission to the practice of law in Montana to a cartel of their choosing.

25. In order to bolster the monopoly of Montana's integrated bar, they will only allow "out of state" attorneys such as Petitioner Kirschbaum to help Montana litigants with their legal problems if they have been admitted *Pro Hac Vice*, and have been engaged in the active proctice of law for five of the past seven years.

26. The Integrated Bar excludes on-the-job experience such as O'Neil has through his practice before the Blackfeet Indian Tribal Court System since 1984, his service on legislative judiciary committees, his practice as an independent paralegal for at least 40 years, and his successfully conducting jury trials.

27. According to *The Justice Gap In Montana: As Vast as Big Sky Country*[2]:

> The Montana Access to Justice Commission learned that nearly half of all low-income Montanans have at least one civil legal problem each year that they do not address. . .

28. O'Neil had an office on the Confederated Salish and Kootenai Indian

---

[2] https://courts.mt.gov/portals/189/supreme/boards/a2j/docs/justicegap-mt.pdf

Reservation until the Integrated Bar's bar counsel wrongfully stated that he was only a "lay advocate" in his tribal court practice which caused the CS&K Tribal Court take his license away.

29. O'Neil has a tendency to give help to those in need, regardless of the politics involved. He successfully represented the mother of a previous chief prosecutor's grandchildren on a charge of spousal abuse in the Blackfeet Tribal Court. When the jury found her not guilty of the charge, the Chief Prosecutor "got even" with O'Neil by having a state licensed attorney who was sitting as a tribal court judge take his license away. This Montana attorney was validly licensed to practice in the Montana courts, having graduated from an ABA approved law school, passed his character and fitness examination, and passed the Montana bar examination.

30. Following his successful appeal to the Blackfeet Tribal Court of Appeals, O'Neil successfully regained his privilege to practice before the tribal court. However, O'Neil closed his office on the reservation because of the lengthy interval when he was not allowed to practice law on the reservation. [See *Opinion and Order* filed *In the Matter of the Admission to Practice of: Jerry O'Neil,* attached]. This opinion conclusively shows that O'Neil is more than a "lay advocate".

31. Even if the monopoly can rule that Kirschbaum and O'Neil can not appear before the Montana courts, that does not justify them forbidding O'Neil and Kirschbaum from running for the public office of justice or judge of the Montana Supreme Court. It is the voting public's prerogative to choose or reject them, not the Integrated Bar's.

32. The right to practice law is protected by the Privileges and Immunities

Clause, Article IV, Section 2 of the United States Constitution [*Supreme Court of NH v. Piper*, 470 US 274 - Supreme Court 1985].

33. Respondents' concerted action to exclude Petitioners' (and others with similar credentials) from the market of the practice of law in Montana constitutes an anticompetitive and unfair method of competition under the Federal Trade Commission Act. The anticompetitive and unfair conduct of the Integrated Bar of Montana does not receive the active supervision of the State, and thus is not cloaked with *Parker* immunity. [See: *State Bd. of Dental Examiners v. FTC*, 574 US 494 - Supreme Court 2015].

34. The Montana "Legislature cannot impose any additional conditions to those enumerated in the Constitution." *Reichert v. State ex rel. McCulloch*, 278 P.3d 455 (Mont. 2012) (internal brackets removed).

35. It is a monopolistic violation to exclude O'Neil from running for justice on the Montana Supreme Court because his license to practice law comes from a tribal court rather than from the Montana Integrated Bar, and his legal experience and training did not include attending a law school that was accredited by the American Bar Association.

36. It is a monopolistic violation to exclude Kirschbaum from running for justice on the Montana Supreme Court because his license to practice law comes from the Wisconsin court system rather than the Montana Integrated Bar and his legal experience was largely through the United States Airforce's Judge Advocate General's Office.

37. Except for the antitrust violations of the Integrated Bar of Montana, both Kirschbaum and O'Neil would have been allowed to practice before the courts of Montana for more than five years preceding the date of this action.

STATUTES AND CONSTITUTIONS

38. With some exceptions, such as reasonable residency requirements, and age, the act of running for office is protected by the United States Constitution, and by federal law.

39. The act of voting for your candidate of choice, are similarly protected by the United States Constitution, and by federal law.

40. The right to help those in need before a court of law is protected by the Montana Constitution, Article II, Section 25, and, for criminal charges, by the Sixth Amendment of the United States Constitution.

41. The right to appear before the courts of Montana and represent those charged with violations of the criminal law should be afforded to anyone who has the ability - as determined by the person being charged.

42. It is the policy of the federal government to promote cooperation and coordination among tribal justice systems and the Federal and State judiciary systems. [25 USC 3611(c)(4)]

43. Respondents are in violation of 42 USC § 1983 and our state and federal anti competition statutes and laws.

STRUCTURAL AND FUNCTIONAL TITLES OF NOBILITY

44. Two clauses of Article I of the US Constitution of 1787 prohibit "Titles of Nobility" without defining what that phrase means. Plaintiffs submit that a "Nobility" is a

special class of individuals with special power within the government to apply, construe, or implement law, analogous to but not necessarily identical with either the membership of the "House of Lords" of the United Kingdom or the First and Second Estates of Estates General of the French "Ancien Régime" until July of 1789. Neither in England or France were all "Titles of Nobility" necessarily inherited, although parallels to the Hindu Caste system are readily apparent.

45. Plaintiffs submit that requiring admission to the Bar as a prerequisite for service as an Officer of one of the three elemental branches of government, the Judiciary, constitutes an analogous title of nobility inconsistent with two clauses of Article I: Section 9, Clause 8 (which forbids the United States from granting any title of nobility), and Article I, Section 10, Clause 1.5 (which prohibits the states from doing so).

46. The Constitution's comprehensive, state and federal, prohibition on titles of nobility reflects both the American aversion to aristocracy and the republican character of the government established by the Constitution. The Clause thus complements other constitutional provisions—most notably the Thirteenth, Fourteenth, and Fifteenth Amendments—that prohibit invidious governmental distinctions between classes of American citizens.

47. As James Madison observed in the Federalist No. 44: The prohibition with respect to titles of nobility is copied from the articles of Confederation and needs no comment. Alexander Hamilton, in the Federalist No. 84, was only slightly more loquacious:

Nothing need be said to illustrate the importance of the prohibition of titles

> of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

48. Very few courts have had occasion to interpret the meaning of the federal Title of Nobility Clause. The Supreme Court has only discussed the Title of Nobility Clause in passing, as when Justices cite the Clause to make a rhetorical point in a concurring or dissenting opinion. For example, See *Zobel v. Williams*, 457 U.S. 55, 70 n.3 (1982) (Brennan, J., concurring) (noting that both the Title of Nobility Clause and the Fourteenth Amendment forbid degrees of citizenship); and Fullilove v. Klutznick, 448 U.S. 448, 533–55 (1980) (Stevens, J., dissenting) (discussing the Title of Nobility Clauses as one aspect of our commitment to the proposition that the sovereign has a fundamental duty to govern impartially):

> As Justice Brennan wrote in his concurrence in Zobel v. Williams:
>
> But it is significant that the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship only with simple residence.2 That Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence.3 And the Equal Protection Clause would not tolerate such distinctions.

49. "[A] citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State." Slaughter-House Cases, 16 Wall. 36, 80 (1873). See id., at 112-113 (Bradley, J., dissenting)

> A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen.

50. The American aversion to aristocracy developed long before the Fourteenth Amendment and is, of course, reflected elsewhere in the Constitution. See Art. I, § 9, cl. 8 ("No Title of Nobility shall be granted by the United States"). See also Virginia Declaration of Rights (1776), in R. Rutland, *The Birth of the Bill of Rights*, App. A (1955)

> no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of publick services. 457 U.S. at 69.

51. Plaintiffs submit that the reservation of the third branch of the government, charged with "ultimate decision making" and "final sovereignty" over questions of the validity of laws and the rights of all other people, to ONE class of professionals certified by ONE state professional organization, and educated according to the standards and accreditation of ONE private national association of professionals, (a) creates an invidious governmental distinction between classes of American citizens, in that it (b) creates degrees of citizenship and (c) denies even the possibility of impartial government. Experience has taught that state bar and ABA lawyers and judges inevitably favor those "of their own kind" of like "class" or "caste" and this is the inevitable experience of every non-state bar attorney participant in the judicial process. This violates Article II, Section 4 of the Montana Constitution, which states:

> **INDIVIDUAL DIGNITY.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any pwerson in the exercise of his civil or political rights on account of

> race, color, sex, culture, social origin or condition, or political or religious ideas.

The comparisons and parallels between caste and class and the provisions of Article VII, Section 9 of the Constitution of the State of Montana manifest themselves particularly in the career and history of Plaintiff Jerry Bryant O'Neil, who has served eight years as a Senator in the State of Montana and 4 years in the Montana House of Representatives.

52. Legislators, by definition and etymology, MAKE THE LAW OF THE LAND. How can it be anything other than a class or caste distinction that those who are qualified to be elected to MAKE THE LAW OF THE LAND cannot also pass ultimate judgment on how law can or should be applied, construed, implemented and to interpret the law, or what penalties should be imposed on those who violate the law?

53. The Montana Constitution, Article VII, Section 9, irrationally and invidiously establishes that Legislators, who make our laws, are a LOWER CLASS, require less education and qualification than those who apply, construe, implement and interpret the law. Do the members of the Integrated Bar, constitute a HIGHER and EXCLUSIVE class, superior to the voters (at the bottom), the legislators who make the law, and the executives who enforce the law.---for NONE of these First or Second Branch offices are there any qualifications other than age, citizenship, and residency. There is no reason that the state bar licensed attorneys should be the only citizens eligible for election to judicial office.

54. Article VII, Section 9, creates invidious classes and hence DEGREES of

citizenship, placing the vast majority of the population at the mercy of a tiny minority. Montana's Population in 2023 is said to be 1,139,507. (https://worldpopulationreview.com/states/montana-population). That is while the number of individuals qualified to run for judicial office is only 3,183 (https://www.ilawyermarketing.com/lawyer-population-state/) = 2.28% of the population.

55. As the Ninth Circuit held in 1991, when one of us, O'Neil, previously challenged Article VII, Section 2, purely on equal protection grounds, without reference to any of the issues we raise for the first time here:

> The Supreme Court has not recognized the right to run for elective office as a fundamental right, and only applies heightened scrutiny if the restriction involves classifications based on wealth or access to the ballot by new or small political parties. Clements v. Fashing, 457 U.S. 957, 964 (1982). O'Neil v. Supreme Court of Montana, 935 F.2d 275 (Hug, Kozinski, and Leavy, "per curiam" 9th Circuit, June 4, 1991).

56. But in fact, the requirements of the Montana state bar, to attend and graduate from an ABA approved law school, is in fact a classification based on wealth. On this ground, again, it is too clear and plain that both structurally and functionally, the limitation of eligibility to judicial office to those who graduated from ABA law schools, constitutes the erection of a noble class, "a professional caste", which alone is allowed to occupy the highest decision making role in the government of the state of Montana.

57. The professional limitation on lawyers licensed in Montana as the sole source of Judges has the structural and functional effect of creating a professional class equivalent to a title of nobility, but the existence of this class clearly denies both due process and the equal protection of the laws under the Fourteenth Amendment, and also

has the equally invidious effect of suppressing freedom of speech, freedom of the press, and freedom of association by denying to non-lawyers the equal rights to render "valid" opinions or conclusions about the law, or even to argue for the judicial extension, modification, or reversal of existing law, or to make new law.

58. Our Montana Supreme Court is not even in sync with Montana's Constitution. They sometimes have the opinion that litigants are entitled to trial by a jury of their peers in the Montana courts. But they do not grant such a right in the Montana Water Court. Of course this fits into their pattern since cases before the Water Court in the litigation over the Water Compact with the Confederated Salish and Kootenai Tribes are sent to mandatary mediation before a mediator who says at the first of the session that the compact supporters are unable to make any changes in their position.

OTHER STATUTES, LAWS, AND CONSTITUTIONAL PROTECTONS

59. As Justice Harlan stated in his historic dissent in the infamous case of *Plessy v. Ferguson,* 163 US 527 (Supreme Court 1890):

> The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. This court has so adjudged. But that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the Fourteenth Amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty, by declaring that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," and that "no State shall make or enforce any law which shall abridge the privileges or immunities of

> citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. Finally, and to the end that no citizen should be denied, on account of his race, the privilege of participating in the political control of his country, it was declared by the Fifteenth Amendment that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

60. Plaintiffs Kirschbaum and O'Neil submit that the U.S. Fourteenth Amendment, adopted in 1868, prohibits STATES from abridging the equal Constitutional rights of citizens without due process of law. As it is found in the Fourteenth Amendment:

> - - - No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States - - -
>
> - - - But when the right to vote at any election for the choice of - - - the - - - judicial officers of a state, - - - or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

61. In terms of strict linguistic construction, the existence of the State Bar Monopoly creates certain privileges and immunities for attorneys and judges not otherwise authorized by the federal or state constitutions. The existence of a bar membership monopoly, with its restriction on how one must learn the law, on eligibility for the judiciary violates the guarantees of due process and equal protection of the laws required of the states by the Fourteenth Amendment. The statutes and Supreme Court rules having the force or effect of law in Montana restrict the pool of eligible judges by stating that only people who have graduated from ABA approved law schools may

practice law, hold state bar licenses, and run for Judicial Office for the district courts and for the Montana Supreme Court.

62. The essence of "equal protection" is that laws must be applied to all citizens equally, absent either rational, important, or compelling governmental interests. All expressly enumerated constitutional rights are by definition "fundamental" in nature.

63. Unlike the Constitution of the United States, Montana, under the Montana Declaration of Rights (Article II of the State Constitution) acknowledges, enumerates and expressly guarantees governmental respect for a number of individual rights. Plaintiffs submit that Article VII, Section 9 of the Montana Constitution denies equal protection of each of the following fundamental rights guaranteed by the Montana Constitution, over and above the First, Fifth, and Ninth Amendments to the Constitution of the United States, in addition to violations of Article I, Sections 9 and 10, as described above.

64. Specifically, Plaintiffs allege that the existence of the Integrated Bar violates the specific Montana Declarations of Right enumerated in Article II, which are subject to "strict scrutiny" and may only be circumscribed, limited or infringed upon a showing of compelling governmental interest:

> Section 1: Popular Sovereignty: "All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."
>
> Section 3: Inalienable rights: "The[se] include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways."
>
> Section 4: Individual dignity: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall

discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."

Section 6: Freedom of Assembly: "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action."

Section 7: Freedom of speech, expression and press: "No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts."

Section 8: Right of Participation: "The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

Section 9: Right to Know: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Section 13: Right of Suffrage: "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

Section 16: The Administration of Justice: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay."

Section 31: Ex post facto obligation of contracts and irrevocable privileges or immunities: "No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature."

65. Article VII, Section 9 of the Montana Constitution violates and infringes upon the fundamental rights articulated in Article II, of the Declaration of Rights, of the Constitution of the State of Montana.

66. Plaintiffs submit that these rights are legitimately protected by strict scrutiny in the tradition of "USA v. Carolene Products, Footnote 4" federal constitutional rights. But whether strict or rational basis scrutiny be applied, these constitutional rights cannot be applied, construed, enforced, implemented, or interpreted so as to create hierarchically ranked classes or "professional castes" which place certain classes of people a priori above others in their right to seek and hold public office.

67. Article III, Section 3 provides that no special tests shall be given to discriminate among eligible citizens for election to office in any of these three branches:

> "Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust."

68. Plaintiffs submit that "no...other test" should be construed literally, according to the plain meaning of its words, and that the imposition of the State Bar requirements constitutes an unconstitutional test of qualification for any office or public trust. Comparing Article III, Section 3, with Article II, Section 13 "Right of Suffrage," it will be seen that the Montana Constitution, outside of Article VII, Section 9, does not contemplate any limitation on the right of the people to vote for a candidate for judicial office. Indeed, even Article VII, Section 8, makes no mention of membership in the bar as a prerequisite for service as a judge or justice in Montana:

Supreme court justices and district court judges shall be elected by the qualified electors as provided by law."

69. Plaintiffs would note that the Supreme Court of Montana has now abolished their Commission on the Unauthorized Practice of Law on the grounds that it was impossible to define, with constitutionally required precision, what was the "practice of law," based in part on a letter from the United States Department of Justice - Antitrust Division. attached.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request the following relief:

1. A declaration Petitioner Kirschbaum qualifies to be a candidate for judicial office in the State of Montana, and that his practice of law that is limited to the State of Wisconsin and the United States Air Force does not does not disqualify him to be a candidate for the Montana Supreme Court, as such would violate the Dormant Commerce Clause and Privileges and Immunities Clause of the U.S. Constitution, as well as the First and Fourteenth Amendments to the U.S. Constitution.

2. A declaration that Petitioner O'Neil's practice of law on the Blackfeet Indian Reservation, other courts, and on legislative judiciary committees, qualifies him to be a candidate for the Montana Supreme Court under the Dormant Commerce Clause and Privileges and Immunities Clause of the U.S. Constitution, as well as the First and Fourteenth Amendments to the U.S. Constitution.

3. Petitioners request this Court to direct the Respondents to allow Petitioner Jerry O'Neil, and others similarly situated as being licensed to practice before the Tribal

Courts located in Montana, to run for the offices of Justice and Chief Justice of the Montana Supreme Court.

4. Petitioners request this Court to direct the Respondents to allow Petitioner Gene Kirschbaum, and others similarly situated as being honorably retired from the practice of law from Montana, and from all other states, to run for the offices of Justice and Chief Justice of the Montana Supreme Court.

5. And, Petitioners request this Court to direct the Respondents to reimburse their court costs and to award them attorney fees as allowed under MCA § 30-14-133, or other proper fees for their time expended pursuing this case.

DATED: 12/28/2023

Jerry O'Neil

Eugene Kirschbaum

FILED
April 20 2009
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

U. S. Department of Justice

Antitrust Division

Office of the Acting Assistant Attorney General

950 Pennsylvania Ave., NW, Suite 3218
Washington, D.C. 20530-0001

April 17, 2009

via overnight mail

FILED
APR 20 2009
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Montana Supreme Court
Clerk's Office
Room 323, Justice Building
215 N. Sanders
Helena, Montana 59620-3003

Re: Comments on Proposed Revisions to the Rules on the Unauthorized Practice of Law

Dear Honorable Justices:

The Justice Department is pleased to provide comments to the Supreme Court of Montana on the proposal by the Commission on the Unauthorized Practice of Law ("Commission") to revise the rules on the unauthorized practice of law. The proposal would, among other things, add various "indicia" of the practice of law to the existing definition of the unauthorized practice of law. If adopted, the revised definition could bar non-lawyers from competing with lawyers for a range of services and could unnecessarily increase the prices paid by Montanans for those services.[1]

Consumers generally benefit from competition between lawyers and non-lawyers. Accordingly, the Justice Department believes that the definition of the unauthorized practice of law should be limited to activities for which specialized legal knowledge and training is demonstrably necessary to protect consumers and an attorney-client relationship is present. We are concerned that the Commission's proposal, by identifying broad categories of activities that may constitute the practice of law, such as "giving of advice or counsel to others as to their legal rights or responsibilities or responsibility of others," "[s]electing, drafting and completing legal papers, pleadings, agreements and other documents which affect the legal rights or responsibilities of others," and "[n]egotiating the legal rights or responsibilities of others," will unduly restrict non-lawyers from competing with lawyers.[2]

We recognize that, in *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, this Court reviewed the indicia proposed here by the Commission and

[1] This letter focuses on the effects of the Commission's proposal on consumer welfare, and does not address whether the revised definition and potential competitive restraints arising from enforcement under it would be immunized from the federal antitrust laws under the state action doctrine.

[2] Revised Rule 2(h).

found them to be precise and readily understood.[3] However, the indicia could be interpreted to suggest that participation in a wide range of activities constitutes the unauthorized practice of law. If adopted, the proposed definition could force Montanans to hire a lawyer to provide a host of services where legal expertise should not be necessary, such as:[4]

- real estate agents explaining to consumers such things as the (i) ramifications of failing to have the home inspection done on time, (ii) meaning of a mortgage contingency clause, (iii) meaning of an easement, (iv) possible need to lower the price of a home because of an unusually restrictive easement, or (v) requirements for lead, smoke detector, and other inspections imposed by state law;
- tenants' associations informing renters of landlords' and tenants' legal rights and responsibilities, often in the context of resolving a particular landlord-tenant dispute;
- abstractors or title insurance agents, licensed by the State, issuing real estate title opinions and title reports;
- income tax preparers interpreting federal and state tax codes on behalf of their clients;
- financial institutions, investment bankers, securities brokers and other business planners or advisors providing advice to their clients that includes information about various laws;
- lay organizations, advocates, and consumer associations that provide citizens with information about legal rights and issues and help them negotiate solutions to problems; and
- human resources management and other specialists advising employers about employment discrimination and sexual harassment issues, as well as federal, state and local labor, immigration, zoning, safety and other regulatory compliance issues.

---

[3] 147 P.3d 200, 215 (Mont. 2006). This Court found that indicia of the practice of law identified by the District Court were "precise, comprehensible to a reasonable person and sufficient to prevent a person of common intelligence from having to guess at their meaning." *Id.* Here, the Commission proposes that those same indicia be added to the definition of the unauthorized practice of law.

[4] Non-lawyer providers of many services in Montana, including real estate brokers, are licensed and regulated under Title 37 of the Montana Code. *See* Mont. Code Ann. § 37 (2007). Depending on how the relevant provisions of the Code are construed, non-lawyers may be permitted to provide some of the services listed here even if the Court adopts the proposed definition of the unauthorized practice of law.

After providing background information and further explanation of our concerns, we suggest that the definition of the unauthorized practice of law be limited to situations where specialized legal skills are required and an attorney-client relationship is present.

The Interest and Experience of the U.S. Department of Justice and the Federal Trade Commission

The Justice Department is entrusted with enforcing the federal antitrust laws. We work to promote free and unfettered competition in all sectors of the American economy. The United States Supreme Court has observed that "ultimately competition will produce not only lower prices, but also better goods and services. 'The heart of our national economic policy long has been faith in the value of competition.'"[5] Like all consumers, consumers of professional services benefit from competition,[6] and if competition to provide such services is restrained, consumers may be forced to pay higher prices or accept services of lower quality.

The Justice Department is concerned about efforts across the country to prevent non-lawyers from competing with lawyers through the adoption of excessively broad unauthorized practice of law restrictions by state courts and legislatures. Some of these proposals appear to be little more than overt attempts by lawyers to eliminate competition from alternative, lower-cost non-lawyer service providers; others, while appearing to be good faith efforts to protect consumers, have not been tailored narrowly enough to avoid unnecessary harm to competition. In addressing these concerns, the Justice Department encourages competition through advocacy letters and *amicus curiae* briefs filed with state supreme courts. Through these letters and filings, the Justice Department has urged states, the American Bar Association, and state bar associations to reject or narrow proposed restrictions on competition between lawyers and non-lawyers.[7] In

---

[5] *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695 (1978) (quoting *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951)); *accord FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 423 (1990).

[6] *See, e.g., Prof'l Eng'rs*, 435 U.S. at 689; *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 787 (1975); *see also United States v. Am. Bar Ass'n*, 934 F. Supp. 435 (D.D.C. 1996), *modified*, 135 F. Supp. 2d 28 (D.D.C. 2001).

[7] *See* letters from the Justice Department to the Wisconsin Supreme Court (Oct. 10, 2008, Feb. 28, 2008 and Dec. 10, 2007); letter from the Justice Department and the FTC to the Supreme Court of Hawai'i (Jan. 25, 2008); letters from the Justice Department and the FTC to the Committee on the Judiciary of the New York State Assembly (Apr. 27, 2007 and June 21, 2006); letter from the Justice Department and the FTC to the Executive Director of the Kansas Bar Ass'n (Feb. 4, 2005); letter from the Justice Department and the FTC to the Task Force to Define the Practice of Law in Massachusetts, Massachusetts Bar Ass'n (Dec. 16, 2004); letter from the Justice Department and the FTC to Unauthorized Practice of Law Committee, Indiana State Bar Ass'n (Oct. 1, 2003); letter from the Justice Department and the FTC to the Standing Committee on the Unlicensed Practice of Law, State Bar of Georgia (Mar. 20, 2003); letters from the Justice Department to Speaker of the Rhode Island House of Representatives and to the President of the Rhode Island Senate, *et al.* (June 30, 2003 and Mar. 28, 2003); letter from the Justice Department and the FTC to Task Force on the Model Definition of the Practice of Law, American Bar Ass'n (Dec. 20, 2002); letter from the Justice Department and the FTC to the Speaker of the Rhode Island House of Representatives, *et al.* (Mar. 29, 2002); letter from the Justice Department and the FTC to the President of the North Carolina State Bar (July 11, 2002); letter from the Justice Department and the FTC to the Ethics Committee of the North Carolina State Bar (Dec. 14, 2001); letter from the Justice Department to the Board of Governors of the Kentucky Bar Ass'n (June 10, 1999 and Sept. 10, 1997); letter from the Justice Department and the FTC to the Supreme Court of Virginia (Jan. 3, 1997); letter from the Justice Department and the FTC to the Virginia State Bar

addition, the Justice Department has obtained injunctions prohibiting bar associations from unreasonably restraining competition by non-lawyers in violation of the antitrust laws.[8] Our comments on the Commission's proposal are part of our ongoing efforts in this area.

Restrictions on Competition Should Be Closely Examined to Determine Whether They Are in the Public Interest

Restrictions on competition generally are harmful to consumers. Such restrictions are in the public interest only if they are needed to achieve some overriding benefit – such as preventing significant consumer harm from the provision of services by providers who lack the requisite knowledge and training – and are narrowly drawn to minimize their anticompetitive impact.[9] The Justice Department recognizes that there are some services that should be provided only by lawyers because they require legal knowledge and training. For example, only someone who understands law and litigation procedures should represent clients in open court in matters involving their legal rights. Such a requirement protects consumers as well as the court. But consumers also benefit when non-lawyers compete with lawyers to provide many other services that do not require legal training, knowledge or skills.[10] Allowing non-lawyers to provide such

---

(Sept. 20, 1996). Brief *Amicus Curiae* of the United States of America and the FTC in *Lorrie McMahon v. Advanced Title Servs. Co. of W. Va.*, No. 31706 (filed May 25, 2004), available at http://www.usdoj.gov/atr/cases/f203700/203790.htm; Brief *Amicus Curiae* of the United States of America and the FTC in On Review of ULP Advisory Opinion 2003-2 (filed July 28, 2003), available at http://www.usdoj.gov/atr/cases/f201100/201197.htm; Brief *Amicus Curiae* of the United States of America in Support of Movants Kentucky Land Title Ass'n *et al.* in *Ky. Land Title Ass'n v. Ky. Bar Ass'n*, No. 2000-SC-000207-KB (Ky., filed Feb. 29, 2000), available at http://www.usdoj.gov/atr/cases/f4400/4491.htm. The letters to the American Bar Ass'n, Wisconsin, Hawai'i, Indiana, New York, Rhode Island, Massachusetts, North Carolina, Georgia, Kansas, and Virginia may be found on the Justice Department's website, http://www.usdoj.gov/atr/public/comments/comments.htm.

[8] In *United States v. Allen County Bar Ass'n*, the Justice Department sued and obtained a judgment against a bar association that had restrained title insurance companies from competing in the business of certifying titles. The bar association had adopted a resolution requiring lawyers' examinations of title abstracts and had induced banks and others to require the lawyers' examinations of their real estate transactions. Civ. No. F-79-0042 (N.D. Ind. 1980). In *United States v. N.Y. County Lawyers Ass'n*, the Justice Department obtained a court order prohibiting a county bar association from restricting the trust and estate services that corporate fiduciaries could provide in competition with lawyers. No. 80 Civ. 6129 (S.D.N.Y. 1981). *See also United States v. County Bar Ass'n*, No. 80-112-S (M.D. Ala. 1980). In addition, the Justice Department has obtained injunctions against other anticompetitive restrictions in professional associations' ethical codes and against other anticompetitive activities by associations of lawyers. *See, e.g., United States v. Am. Bar Ass'n*, 934 F. Supp. 435; *Prof'l Eng'rs*, 435 U.S 679; *United States v. Am. Inst. of Architects*, 1990-2 Trade Cas. (CCH) ¶ 69,256 (D.D.C. 1990); *United States v. Soc'y of Authors' Reps.*, 1982-83 Trade Cas. (CCH) ¶ 65,210 (S.D.N.Y. 1982).

[9] *Cf. FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 459 (1986) ("Absent some countervailing procompetitive virtue," an impediment to "the ordinary give and take of the marketplace cannot be sustained under the Rule of Reason.") (internal quotations and citations omitted).

[10] "Several jurisdictions recognize that many such [law-related] services can be provided by nonlawyers without significant risk of incompetent service, that actual experience in several states with extensive nonlawyer provision of traditional legal services indicates no significant risk of harm to consumers of such services, that persons in need of legal services may be significantly aided in obtaining assistance at a much lower price than would

services permits consumers to select from a broader range of options, considering for themselves such factors as cost, convenience, and the degree of assurance that the necessary documents and commitments are sufficient. As the United States Supreme Court stated:

> The assumption that competition is the best method of allocating resources in a free market recognizes that *all elements of a bargain - quality, service, safety, and durability* - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.[11]

Sound competition policy calls for any restriction on competition to be justified by a valid need, such as protecting the public from harm, and for the restriction to be narrowly drawn to minimize its anticompetitive impact.[12] The inquiry into the public interest involves not only an assessment of the harm that consumers may suffer from allowing non-lawyers to perform certain tasks, but also consideration of the benefits that accrue to consumers when lawyers and non-lawyers compete.[13]

The Justice Department is not aware of evidence of harm to Montana consumers arising from non-attorneys providing services such as those referenced above that do not require the skill or knowledge of a lawyer. In the absence of such evidence, we believe that the revisions to the definition of the unauthorized practice of law proposed by the Commission unnecessarily limits competition between lawyers and non-lawyers and likely will cause more harm to consumers than it will prevent.

Evidence suggests that lay people can and do competently perform many of the services that the proposed rule could limit to lawyers.[14] Academic research indicates that consumers likely face little risk of harm from non-lawyer competition in many areas. For example, studies of lay specialists who provide bankruptcy and administrative agency hearing representation find

---

be entailed by segregating out a portion of a transaction to be handled by a lawyer for a fee, and that many persons can ill afford, and most persons are at least inconvenienced by, the typically higher cost of lawyer services. In addition, traditional common-law and statutory consumer-protection measures offer significant protection to consumers of such nonlawyer services." Restatement (Third) of Law Governing Lawyers § 4 cmt. c (2000).

[11] *Prof'l Eng'rs*, 435 U.S. at 695 (emphasis added); *accord*, *Superior Court Trial Lawyers Ass'n*, 493 U.S. at 423.

[12] *Cf. FTC. v. Ind. Fed'n of Dentists*, 476 U.S. 447, 459 (1986) ("Absent some countervailing procompetitive virtue," an impediment to "the ordinary give and take of the market place . . . cannot be sustained under the Rule of Reason.") (internal quotations and citations omitted).

[13] *See Prof'l Eng'rs*, 435 U.S. at 689; *Goldfarb v. Va. State Bar*, 421 U.S. 773, 787 (1975). *See also In re Opinion No. 26 of the Comm. on Unauthorized Practice of Law*, 654 A.2d 1344, 1345-46 (N.J. 1995) (lawyer/non-lawyer competition benefits the public interest).

[14] Significantly, a 1999 survey found that in most states complaints about the unauthorized practice of law did not come from consumers, the potential victims of such conduct, but from attorneys, who did not allege any claims of specific injury. Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 Geo. J. Legal Ethics 369, 407-08 (2004).

that they perform as well as or better than lawyers.[15] Similarly, a study comparing five states where lay providers examined title evidence, drafted real estate-related instruments, and facilitated the closing of real estate transactions with five states that prohibited lay provision of such services found, "The only clear conclusion . . . is that the evidence does not substantiate the claim that the public bears a sufficient risk from lay provision of real estate settlement services to warrant blanket prohibition of those services under the auspices of preventing the unauthorized practice of law."[16]

If non-lawyers were barred from providing the services encompassed by the proposed rule, fees for those services likely would rise. The potential harm from increasing the cost for these services may deter some consumers from seeking assistance of any kind. Consumers who otherwise would receive assistance from non-lawyer service providers – tenants' associations, lay organizations, and others – would be forced to choose between hiring a lawyer and going without assistance altogether. Similarly, a 1996 ABA task force survey concluded that low income and middle-income households were underserved by the legal system, with cost being a major reason why these groups avoided the legal system.[17]

Even Montanans who would choose a lawyer over a lay service provider likely will pay higher prices if the revised definition is adopted. Evidence gathered in a New Jersey Supreme Court proceeding indicated that, in communities in New Jersey where non-lawyers frequently competed with lawyers to close real estate transactions, buyers represented by counsel paid on average $350 less for closings, and sellers represented by counsel paid $400 less, than in the New Jersey communities where lay closings were not prevalent.[18] Likewise, the Kentucky Supreme Court concluded that prices for real estate closings by lawyers dropped substantially–by as much as one percent of the loan amount plus fees–as a result of competition from lay title companies, explaining that the lay competitors' presence "encourages attorneys to work more cost-

---

[15] Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 Geo. J. Legal Ethics 369, 407-08 (2004). *See also* Herbert M. Kritzer, *Legal Advocacy: Lawyers and Non Lawyers at Work* 50-51 (1998) (finding that in unemployment compensation appeals before the Wisconsin Labor and Industry Review Commission, "[t]he overall pattern does not show any clear differences between the success of lawyers and agents").

[16] Joyce Palomar, *The War Between Attorneys and Lay Conveyancers – Empirical Evidence Says "Cease Fire!"*, 31 CONN. L. REV. 423, 520 (1999).

[17] Am. Bar Ass'n Fund for Justice & Ed., Legal Needs & Civil Justice: *A Survey of Americans* (1996). The most common legal needs reported by respondents were related to personal finances, consumer issues, and housing. For low- and middle-income households, the most common response to a legal problem was "handling the situation on their own." For low-income households, the second most common response was to take no action at all. The second-most common response for middle-income households was to use the legal system, including contacts with lawyers, mediators, arbitrators, or official hearing bodies.

[18] *See In re Opinion No. 26 of the Comm. on Unauthorized Practice of Law*, 654 A.2d 1344, 1348-49 (N.J. 1995).

effectively."[19] And, in Virginia, where the legislature passed a law upholding the right of consumers to continue using lay closing services, proponents of lay competition presented survey evidence suggesting that lay closings in Virginia cost on average $150 less than lawyer closings.[20]

Restrictions on Lawyer/Non-Lawyer Competition Should Be Limited to Services Provided Pursuant to an Attorney-Client Relationship

The revised definition appears to be overbroad because it could bar non-lawyers from providing services in many instances where it is apparent that specialized legal skills are not required and an attorney-client relationship does not exist. To preserve competition, and to benefit consumers, the Court should consider adopting language similar to that found in Rule 49 of the District of Columbia Court of Appeals. Although Rule 49 defines the practice of law, as opposed to the unauthorized practice of law, the reasoning behind it is informative for consideration of a definition of the unauthorized practice of law. Rule 49 defines the practice of law as "the provision of professional legal advice or services where there is a client relationship of trust or reliance."[21] The Commentary to Rule 49 makes clear that giving advice or counsel to others as to legal rights or responsibilities is not necessarily the practice of law. Rather, such services may be the practice of law if they are provided in the context of an attorney-client relationship. The Commentary explains:

> As originally stated in . . . the prior Rule, the "practice of law" was broadly defined, embracing every activity in which a person provides services to another relating to legal rights. This approach has been refined, in recognition that there are some legitimate activities of non-Bar members that may fall within an unqualifiedly broad definition of the law. The definition set forth in section (b)(2) is designed to focus first on the two essential elements of the practice of law: The provision of legal advice or services, and a client relationship of trust or reliance. Where one provides such advice or services within such a relationship, there is an implicit representation that the provider is authorized or competent to provide them; just as one who provides any services requiring special skill gives an implied warranty that they are provided in a good and workmanlike manner. . . . The presumption that one's engagement in [an activity] is the 'practice of law' may be rebutted by showing that there is no client relationship of trust or reliance, or that there is no explicit or implicit representation of authority or competence to practice law, or that both are absent. . . [T]he Rule is not intended to cover conduct which lacks the essential features of an attorney-client relationship. . . . Tax accountants, real estate agents, title company attorneys, securities advisors, pension consultants, and the like, who do not indicate they are providing legal advice or services based on competence and

---

[19] *See, e.g., Countrywide Home Loans, Inc. v. Ky. Bar Ass'n*, 113 S.W.3d 105, 120 (Ky. 2003) ("before title companies emerged on the scene, [the Kentucky Bar Association's] members' rates for such services were significantly higher").

[20] *See* letters to the Virginia Supreme Court and Virginia State Bar, *supra* n.7.

[21] D.C. Court of Appeals Rule 49(b)(2) (2004) (outline letters omitted).

> standing in the law are not engaged in the practice of law, because their relationship with the customer is not based on a reasonable expectation that learned and authorized professional legal advice is being given. Nor is it the practice of law under the Rule for a person to draft an agreement or resolve a controversy in a business context, where there is no reasonable expectation that she is acting as a qualified or authorized attorney. . . .[22]

Adding the requirement of an attorney-client relationship and similar commentary to the proposed definition would protect Montana consumers from harm caused by persons engaged in the unauthorized practice of law, while also preserving lawyer/non-lawyer competition that benefits consumers.

Conclusion

The choice of whether to use a lawyer or non-lawyer service provider should rest with the consumer unless it is clear that specialized legal skills or training are required. Lawyer/non-lawyer competition benefits consumers, particularly when there is no evidence that consumers have been harmed by non-lawyer service providers. We urge the Court to revise the proposed definition to preserve competition in service areas for which the knowledge and skill of a lawyer is not required.

The Justice Department thanks you for this opportunity to present our views. We would be pleased to address any questions or comments regarding this letter.

Yours Sincerely,

Scott D. Hammond
Acting Assistant Attorney General

[22] *Id.* Commentary on Rule 49(b)(2).

FILED
April 20 2010
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

No. AF 09-0068

IN THE SUPREME COURT OF THE STATE OF MONTANA

2010 MT 82

IN RE DISSOLVING THE COMMISSION ON THE UNAUTHORIZED PRACTICE OF LAW	)))	OPINION AND ORDER

¶1 On February 4, 2009, the Commission on the Unauthorized Practice of Law (CUPL) filed a Petition and Memorandum in Support of Revision of the Rules on the Unauthorized Practice of Law (Petition). The proposed rule changes were attached to the Petition. On February 19, 2009, this Court issued its Order submitting the Petition and proposed rule changes for public comment. Over the period during which public comment was accepted (February 19, 2009 through April 20, 2009), attorneys, other interested persons, organizations, institutions, businesses, and local governments filed voluminous, thoughtful comments with the Clerk of this Court. Indeed, we cannot recall a matter on which there has been more comment by members of the public on a matter before us. On June 23, 2009, the CUPL filed its response to the comments and matters raised therein.

¶2 Subsequently, on March 19, 2010, the CUPL filed its Motion to Withdraw the Petition and Memorandum in Support and to Dissolve the Commission (Motion). To this latter document, the CUPL attached a Memorandum of Understanding entered into on March 19, 2010, between the State Bar of Montana and the Attorney General's Office of Consumer Protection. Under that Memorandum of Understanding, the Office of Consumer Protection has agreed to receive, process, evaluate, and—in appropriate cases—assign attorneys to address complaints of unauthorized practice of law by non-attorneys. The Office of Consumer Protection has further agreed to direct complaints of

unauthorized practice of law by attorneys not licensed in Montana to the State Bar of Montana for possible referral to the Office of Disciplinary Counsel.

¶3 We conclude that the CUPL's Motion should be granted. However, in order to explain our decision in this regard, we summarize the evolution of this matter following the filing of the CUPL's Petition.

Background

¶4 Following the close of the comment period on the Petition, we carefully studied and deliberated the comments and the CUPL's response. As a result of these deliberations and consultations with the CUPL, the State Bar of Montana, and the Montana Attorney General, we reached several conclusions, which are summarized here.

¶5 First, we conclude that this Court is not authorized either directly or through a Commission to regulate the "unauthorized practice of law." Article VII, Section 2(3) of Montana's Constitution empowers this Court to "make rules governing appellate procedure, practice and procedure for all other courts, *admission to the bar and the conduct of its members* [subject to the legislature's power to disprove rules which we adopt]" (italics added). Pursuant to this Constitutional scheme, the legislature has historically defined what constitutes the practice of law (§ 37-61-201, MCA)[1] and has charged the executive branch with the duties of investigating and prosecuting the "unauthorized" practice of law (§ 37-61-214, MCA).

¶6 Second, we conclude that the array of persons and institutions that provide legal or legally-related services to members of the public are, literally, too numerous to list. To name but a very few, by way of example, these include bankers, realtors, vehicle sales and finance persons, mortgage companies, stock brokers, financial planners, insurance agents, health care providers, and accountants. Within the broad definition of § 37-61-201, MCA, it may be that some of these professions and businesses "practice law" in one fashion or another in, for example, filling out legal forms, giving advice about "what this

[1] The legislature has also enacted other laws under Title 37, Ch. 61, MCA, which are not at issue here.

or that means" in a form or contract, in estate and retirement planning, in obtaining informed consent, in buying and selling property, and in giving tax advice. Federal and state administrative agencies regulate many of these professions and businesses via rules and regulations; federal and state consumer protection laws and other statutory schemes may be implicated in the activities of these professions and fields; and individuals and non-human entities may be liable in actions in law and in equity for their conduct. Furthermore, what constitutes the practice of law, not to mention what practice is authorized and what is unauthorized is, by no means, clearly defined. Finally, we are also mindful of the movement towards nationalization and globalization of the practice of law, and with the action taken by federal authorities against state attempts to localize, monopolize, regulate, or restrict the interstate or international provision of legal services.

¶7 Third, we conclude that this Court has no Constitutional authority to define, generally, what constitutes the practice of law, except within the context of a case or controversy properly before this Court. Moreover, it follows that this Court has no Constitutional authority to define the "unauthorized practice of law," again, except within the context of a case or controversy properly before this Court. And, finally, it follows that we have no Constitutional authority, except within the context of a case or controversy properly before this Court, to sanction or remedy the "unauthorized practice of law."

¶8 Fourth, we conclude that our proper role in matters involving the practice of law or the unauthorized practice of law is to exercise the authority granted to us under Montana's Constitution. We will hear and determine cases and controversies properly before the Court and we will continue to exercise our exclusive, original jurisdiction to supervise all other courts of Montana and the admission to, and conduct of members of, the bar, pursuant to Article VII, Section 2(1), (2), and (3) of Montana's Constitution. In this regard, we conclude also that it is appropriate that we adopt rules for the regulation of the practice of law in Montana by Montana attorneys in addition to those already adopted, and we will do so by subsequent order.

¶9 Fifth and finally, based upon the foregoing, we conclude that the CUPL's instant Motion is well taken and should be granted. In so doing, we acknowledge the excellent, and often frustrating, work of the CUPL over the years, and we thank CUPL co-chairs Carol Bronson and John Connor and all others who have served on the CUPL for their service to this Court and to the people of Montana. We also commend the State Bar of Montana and the Attorney General for their work toward establishing a better way of handling complaints of unauthorized practice of law.

¶10 Therefore, good cause having been shown,

¶11 IT IS ORDERED that the CUPL's Motion is GRANTED. The CUPL is dissolved effective April 20, 2010, and its Petition is dismissed as moot. This Court's February 15, 2000 order adopting rules for the CUPL is vacated and all rules for the CUPL are repealed.

¶12 IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Opinion and Order to the co-chairs of the CUPL, to the Attorney General, and to the Executive Director of the State Bar of Montana with the request that notice of this Opinion and Order be published in the next available issue of the *Montana Lawyer*.

¶13 IT IS FURTHER ORDERED that this Opinion and Order be published on this Court's website.

Dated this 20th day of April, 2010.

/S/ MIKE McGRATH
/S/ JAMES C. NELSON
/S/ PATRICIA O. COTTER
/S/ MICHAEL E WHEAT
/S/ W. WILLIAM LEAPHART
/S/ BRIAN MORRIS
/S/ JIM RICE

STATE BAR OF MONTANA

46 NORTH LAST CHANCE GULCH • P.O. BOX 577 • HELENA, MONTANA 59624
(406) 442-7660 Fax (406) 442-7763 Web Site: www.montanabar.org

OFFICERS
President
* Molly R. Shepherd
P.O. Box 4747
Missoula, Montana 59806
President-Elect
* Donald R. Murray
P.O. Box 758
Kalispell, Montana 59903
Secretary-Treasurer
* Andrew P. Suneson
P.O. Box 1364
Dillon, Montana 59725
Immediate Past President
* Edward F. Bartell
45 East Broadway
Butte, Montana 59701
Chair of the Board
* Robert J. Sullivan
P.O. Box 9199
Missoula, Montana 59807

TRUSTEES
Pamela J. Bailey
100 North 27th St., #444
Billings, Montana 59101
Stephen C. Berg
P.O. Box 3038
Kalispell, Montana 59903
J. Stan Bishop
1405 Third Ave. North
Great Falls, Montana 59401
Vicki W. Dunaway
1750 19th St. West, #202
Billings, Montana 59102
Thomas M. Keegan
1513 Eleventh Avenue
Helena, Montana 59601
Keith A. Kelleher
P.O. Box 7152
Havre, Montana 59501
Craig D. Mariucci
303 North Broadway, Suite 830
Billings, Montana 59101
Daniel F. McLean
P.O. Box 797
Helena, Montana 59624
Peggy Probasco
17 West Galena Street
Butte, Montana 59701
Jo Ridgeway
HC 32, Box 4201
Ulm City, Montana 59301
John C. "Jack" Schultz
111 N. Higgins Ave., #302
Missoula, Montana 59802
Michael V. Sinclair
P.O. Box 837
Bozeman, Montana 59771
Cynthia K. Smith
P.O. Box 8234
Missoula, Montana 59807
Joseph M. Sullivan
410 Central Ave., #608
Great Falls, Montana 59401
Robert J. Sullivan
P.O. Box 9199
Missoula, Montana 59807
Chris Tweeten
P.O. Box 201401
Helena, Montana 59620-1401

ABA DELEGATE
Robert M. Carlson
P.O. Box 509
Butte, Montana 59701
* Executive Committee

EXECUTIVE DIRECTOR
George L. Bousliman

November 15, 2000

US WestDex
Attn: Julia Thomason
P.O. Box 7208
Billings, MT 59103

Dear Ms. Thomason:

I have noticed that Jerry O'Neil's "Independent Paralegal" advertisement is included under the attorney listing in the yellow pages. Jerry O'Neil is not an attorney. In spite of his representation to the contrary, Jerry O'Neil is not a member of the State Bar of Montana. I request that you remove Jerry O'Neil's listing from the attorney section of the yellow pages.

Thank you for your consideration of this request.

Sincerely,

Betsy Brandborg
Bar Counsel

cc: Jerry O'Neil
202 Helena Flats Road
Kalispell, MT 59901

IN THE BLACKFEET TRIBAL COURT OF APPEALS
FOR THE BLACKFEET INDIAN RESERVATION

IN THE MATTER OF THE ADMISSION TO PRACTICE OF:

JERRY O'NEIL,

Respondent and Appellant.

CASE NO. 2006 ____
2006 AP 15

OPINION AND ORDER

INTRODUCTION

This matter comes before us on respondent/appellant, Jerry O'Neil's, appeal from an order of the Blackfeet Tribal Court [tribal court] barring him from practicing in the tribal court.

THE FACTS

On February 23, 2006, Blackfeet Tribal Judge Thane Johnson issued an order, *sua sponte*, requiring respondent, Jerry O'Neil, [O'Neil] to show cause why he should not be disbarred from practicing as an attorney/advocate in the Blackfeet Tribal Court. On March 20, 2006, O'Neill moved to quash the order to show cause. To his supporting memorandum dated O'Neil attached a copy of his certificate of admission to practice before the Blackfeet Tribal Court dated September 24, 1984. His memorandum cites Rule 10, Chapter 9 of the Blackfeet Law and Order Code the relevant part of which reads as follows:

> A. [Relates to attorneys seeking admission to practice before the Blackfeet Tribal Court].

> B. The Court may admit to practice on such tends and conditions as appear appropriate, *a lay advocate who shall be a member of the Blackfeet Tribe* and who shall agree to represent persons appearing in the Blackfeet Tribal Court.
> C. The Court in its discretion may admit *any other person* to appear before it as an advocate, upon successful completion of an application and questionnaire on Tribal Law prepared by the Chief Judge and upon payment of a required admission fee, except that such fee may be waived or reduced in the discretion of the Chief Judge [emphasis supplied].

O'Neil's memorandum further suggests that Judge Johnson issued that order because O'Neil had defended Stephanie Augare against a complaint filed in the tribal court by chief prosecutor, Michael Connelly, Sr.'s son, Michael Connelly, Jr. In his motion dated January 26, 2006, seeking to dismiss the complaint against Augare, O'Neil had suggested that the charges had been brought against her because the chief prosecutor was Michael Connelly, Jr.'s father and that doing so gave Michael Connelly, Jr. "a strategic advantage" in his custody dispute with Augare. O'Neil's memorandum also suggested that but for the fact that the chief prosecutor was Michael Connelly, Jr.'s father those charges would have been levied against Michael Connelly, Jr. rather than Augare. Shortly thereafter chief prosecutor Connelly moved to have O'Neil disbarred. Although tribal judge Carl Pepion declined to act on Connelly's oral motion tribal judge Johnson *sua sponte* ordered O'Neil to show cause why he should not be disbarred.

There is no response in the file in opposition to O'Neil's motion to quash. Thereafter O'Neil by petition dated March 27, 2006, sought a Writ of Mandamus from this Court seeking to stop all proceedings looking toward his disbarment. There is no response in the file to that petition either. On March 27, 2006, O'Neil filed a motion in the tribal court seeking to stay of all proceedings in that court pending the outcome of his petition for a Writ of Mandamus. Nothing in the file indicates the tribal court ever acted on O'Neil's motion for a stay.

On April 27, 2006, Judge Johnson issued his findings of fact, conclusions of law and rationale for disbarring O'Neil. He reasoned that because O'Neil is not a graduate of any law school and is not admitted to practice before the highest court of any state or before the U.S. Supreme Court he is not eligible for admission to practice before the Blackfeet Tribal Court. Judge Johnson held that O'Neil cannot look to either

subparagraph A or B of Rule 10 but, instead, must stand or fall on the language of subparagraph C of Rule 10. Judge Johnson's rationale for so holding is that since the adjective "lay" does not appear before the noun "advocate" in subparagraph C whereas it does in subparagraph B that omission means that in enacting subparagraph C the Tribal Council intended for it to apply to persons who have graduated from law school but who are not admitted to practice before the highest court of any state or the United States Supreme Court; or, as he said in his order, "[i]n other words, persons who have graduated from law school but who have not passed the Bar Exam."

Judge Johnson defends his rationale as follows:

> The foregoing interpretation makes sense and promotes the objectives of the Council. The Council limited lay advocates to Tribal members because first, the Council wished to promote employment for its members. Secondly, Tribal member lay advocates bring their unique cultural knowledge to the Court. This is important. The Council, however, also understood that it is essential to have lawyers involved in the Court as well. Lawyers bring professionalism to the Court. Mr. O'Neil, however, offers neither Blackfeet cultural knowledge or professional legal training.
>
> * * * * *
>
> ... this Court concludes that Mr. O'Neil is a lay advocate. Mr. O'Neil is a non-professional who assists clients in the legal arena. Because Mr. O'Neil is not a Tribal Member he cannot sit for the bar exam and cannot practice in the Blackfeet Tribal Court.

Judge Johnson's order is that O'Neil "be disbarred from practicing before the Blackfeet Tribal Court.

On May 2, 2006, O'Neil moved in the tribal court to quash Judge Johnson's order disbarring him setting out as grounds (1) that the tribal court lost jurisdiction when he filed his petition for a writ of mandamus in the Blackfeet Court of Appeals; (2) failure by the tribal court to grant his motion to stay all proceedings there pending the outcome of his petition for mandamus; (3) that the order was not grounded in fact; (4) that the order was not grounded in law; (5) discrimination on the basis of race; (6) "impermissible motives" alluding to the father and son relationship between the chief prosecutor and the complaining witness against Stephanie Augare and (7) due process.

On May 11, 2006, O'Neil filed his notice of appeal from Judge Johnson's April 27, 2006, order disbarring him setting out essentially the same grounds as he did in his

motion to quash in the tribal court. There is no response on file in opposition to O"Neil's motion to quash or to his notice of appeal.

DISCUSSION

We consider it necessary to address only the issue of whether Judge Johnson's interpretation of Rule 10 of Chapter 9 is correct. *Carbon County v. Union Reserve Coal Co.* (1995), 271 Mont. 459, 469, 898 P.2d 680, 686 ["We review a trial court's conclusions of law to determine whether its interpretation is correct"]. In his April 27, 2006, order Judge Johnson says this: "When interpreting a piece of legislation, it is the duty of the Court to apply the plain meaning to the construction of the code."

Because we find no decisions of this Court on the issue this case present we look to state law precedents to guide us. See chapter 2, Section 2, Blackfeet Law and Order Code.

In *Lovell v. State Compensation Mut. Ins. Fund*, (1993) 260 Mont. 279, 860 P.2d 95 the Montana Supreme Court said, "[t]he rules of statutory construction require the language of a statute to be construed according to its plain meaning. *If the language is clear and unambiguous, no further interpretation is required* [emphasis supplied]." So if we determine that we can determine the plain meaning of Rule 10(b) and (c) without resorting to extrinsic evidence we are obligated to do so.

There is another canon of statutory interpretation that applies here. It is found at §1-2-101, MCA, and reads as follows:

> In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, *not to insert what has been omitted or to omit what has been inserted.* Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all [emphasis supplied].

We hold that subparagraph C of Rule 10 is clear and unambiguous and that a plain reading of it permits the Chief Tribal Judge to admit *any other person*, to practice in the tribal court as an advocate, *i.e.* any person who does not qualify for admission to practice before the tribal court under subsections A [attorneys] or B [tribal member lay advocates]. Judge Johnson's cited definition of an advocate as "[a] person learned in the law, and duly admitted to practice, who assists his clients with advice and pleads for him in open court" applies to O'Neil who has long since taken and passed the tribal bar exam

thereby confirming his knowledge of Blackfeet law and who upon passing the tribal bar examination was admitted to practice in the Blackfeet tribal court by the then Chief Tribal Judge Jackie Parsons. Nothing in subparagraph C of Rule 10 says that the term "advocate" means only a law school graduate waiting to sit for a state bar exam. In so holding Judge Johnson has inserted language into subparagraph C not found in it. As O'Neil's May 2, 2006, Motion to Quash points out he was duly licensed to practice in the tribal court in 1984 and "has paid dues to maintain his license yearly since 1984."

The language of subparagraph C of Rule 10 gives the Chief Judge of the Blackfeet Tribal Court the authority to admit *any other person* not referred to in subparagraphs (a) and (b) to practice in the tribal court. That explains why subparagraph (c) of Rule 10 omits the adjective "lay" before the noun "advocate". In the context of Rule 10 the term "lay" is intended to refer only to a Blackfeet tribal member. The term "lay is defined as "without expertise or professional training in a particular field." So while the term "lay" would, therefore, be applicable to a Blackfeet tribal member seeking admission to practice before the tribal court as a "lay" advocate it would not apply to a lawyer who is by definition an advocate but not a lay one.

So read subparagraph (c) of Rule 10 could well be a lawyer who is not admitted to practice in Montana but who in the judgment of the Chief Judge is sufficiently qualified to practice in the tribal court; or, one who is not a lawyer and not a member of the Blackfeet tribe but who in the judgment of the Chief Tribal Judge is sufficiently knowledgeable in tribal law as to be allowed to practice in the tribal court. Absent any accusation of misconduct on O'Neil's part that might warrant his disbarment O'Neil meets the criteria of subparagraph (c) of Rule 10 and it was within the authority of the chief judge to admit him to practice as she did in 1984. O'Neil's 1984 certificate of admission to the Blackfeet tribal court constitutes sufficient authority absent any intervening disciplinary proceedings against him for him to continue to practice in the Blackfeet Tribal Court.

ORDER

The order of the tribal court dated April 27, 2006, disbarring O'Neil is reversed and his right to practice in the Blackfeet Tribal Court is hereby restored to him.

Dated this 27 day of ~~January~~ Aug. 2007

Chief Justice

FILED

AUG 28 2007

Blackfeet Tribal Court

By

CERTIFICATE OF SERVICE

I, the undersigned Clerk of The Blackfeet Court of Appeals, hereby certify that on the 30th day of August, 2007, I mailed a true and conformed copy of the foregoing OPINION AND ORDER by depositing same with the U.S. Postal Service at Browning, Montana postage, addressed to the following:

JERRY O'NEIL
985 WALSH ROAD
COLUMBIA FALLS, MT. 59912

Marie Talks About
Clerk of Court

By: _____
Clerk, Court of Appeals