

STATE OF NEW MEXICO
COUNTY OF SAN MIGUEL
FOURTH JUDICIAL DISTRICT COURT

NO. CV-2004-445

ARTHUR E. VARGAS, as Personal Representative of
the Wrongful Death Estate of CODY UTLEY, TRESA KOSEC,
individually, BRIONA KOSEC, individually, THOMAS UTLEY,
individually, DAVID PLOTSKY, as Guardian Ad Litem for
CRAIG HOPKINS, and TINA LUCERO, individually,

Plaintiffs,

v.

BRIDGESTONE/FIRESTONE, INC., a foreign corporation,
f/k/a THE FIRESTONE TIRE AND RUBBER COMPANY, and
BUMPER TO BUMPER AUTO SALVAGE, a New Mexico corporation
and/or sole proprietorship,

Defendants.

**DENNIS MONTOYA, ESQ.'S MOTION TO RECUSE OR DISQUALIFY
THIS COURT FROM HEARING PETITION FOR FORFEITURE
OF FEES AND DISGORGEMENT OF FEES RECEIVED AND OTHER MOTIONS**

Introduction

On May 1, 2006, the Court has set a hearing on Kathleen Oakey's Petition for Forfeiture of Fees and Disgorgement of Fees Received ("Petition"), which was filed less than three weeks ago. The Court has asked the parties to submit proposed findings of fact and conclusions of law on the Petition, and intends to hold a one-day bench trial on the issues raised therein. The Petition asks the Court to find and conclude, among other things, that (1) Dennis Montoya, as counsel for Plaintiffs in the above-referenced case, acted in utter disregard for the interests of the minor child, Thomas Utley; (2) Dennis Montoya misrepresented facts to the Court and to

Ms. Oakey and (3) Thomas Utley lost monies due to him as a result of the alleged negligence and breaches of fiduciary duty by Mr. Montoya. See Petition, attached as Exhibit D.

This Court, however, is the complaining party in a January 31, 2008 disciplinary board complaint against Mr. Montoya with respect to the very same allegations that have been raised by Ms. Oakey. A copy of the disciplinary board complaint is attached as Exhibit C. The disciplinary board complaint makes clear that the Court already has judged the merits of the Petition and, therefore, should recuse from this case. For instance, the Court states in the disciplinary board complaint that "Mr. Montoya's actions throughout the various matters . . . have been with utter disregard for . . . Thomas Utley." The Court also refers to "the multiple fabrications conceived by Mr. Montoya and his complete failure to instruct . . . as to how the monies should have been paid. See Ex. C, at pages 11-13. The Court goes on to state that "this is a situation where a minor had no protection from his lawyers and lost virtually all the money due him as a result of the unfortunate death of his father." Id. Clearly, the Court has become embroiled in the controversy surrounding Mr. Montoya's representation of Plaintiffs in the above-captioned case.

The undersigned counsel attempted to seek the concurrence of the other parties prior to filing this motion, and also sought the cooperation of the other parties in bringing this matter to the attention of the Court informally and without the need to file a formal motion. Counsel for Bridgestone/Firestone, Mr. Arthur Beach, takes no position on the matter and waived appearance at an informal conference. Counsel for Ms. Oakey refused to allow this matter to be heard informally by the Court and indicated opposition to the motion. See William Riordan letter, attached as Exhibit E. In so doing, counsel for Ms. Oakey accused the undersigned of

skullduggery. To make the record very clear, the undersigned holds this Court in the highest regard, and files this motion solely for the reasons stated above.

Background

This lawsuit originates from the death of Cody Utley on November 5, 2002, when he was killed in a motor vehicle accident while travelling on Interstate 40 in the vicinity of Tucumcari, New Mexico. On October 28, 2004, Arthur Vargas, as Personal Representative of the Wrongful Death Estate of Cody Utley, filed an Amended Complaint against Bridgestone/Firestone, Inc. ("Bridgestone") and Bumper to Bumper Auto Salvage ("Bumper to Bumper") in the Fourth Judicial District of New Mexico, seeking damages for the wrongful death of Cody Utley. The Amended Complaint alleged causes of action for strict liability, negligence, misrepresentation, breach of the implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, unfair trade practices, and loss of consortium. In addition, Tresa Kosec, Brionna Kosec, Craig Hopkins, Tina Lucero, and Thomas Utley were named as Plaintiffs. Plaintiffs are collectively represented by, Montoya and Ronald Adamson, Esq. ("Adamson").

Prior to filing their Amended Complaint, Plaintiffs settled their claim with Prudential Financial ("Prudential"), the decedent's life insurance carrier. The life insurance proceeds totaled \$73,790.80, and were paid on June 20, 2003. In addition, a workman's compensation complaint was filed against Liberty Mutual Insurance Group/Key Energy ("Liberty") on November 3, 2003. Several months later, a settlement with Liberty was reached in the amount of \$55,000.00. This lawsuit was filed several months after receipt of the funds from Liberty.

After the filing of this lawsuit, at or around November 2005, Plaintiffs settled their claims against Bumper to Bumper in the amount of \$97,500.00. Court approval regarding this settlement was not sought. In addition, Plaintiffs settled their claims against Bridgestone in July,

2007, in the amount of \$550,000.00. The parties sought court approval of this settlement and agreed to the appointment of F. Michael Hart to act as the Guardian ad Litem for minor Thomas Kosec ("Thomas").

On September 14, 2007, due to a potential conflict with Mr. Hart, this Court terminated Mr. Hart as the Guardian ad Litem, and appointed Kathleen Oakey as the Guardian ad Litem for Thomas. Ms. Oakey, in her official capacity as an arm of the Court, then commenced an investigation regarding the distribution of funds previously obtained in the case, including the settlement with Prudential, Liberty, and Bumper to Bumper. Mr. Montoya believes that during this period of time Ms. Oakey met with Judge Vanzi and discussed the ongoing investigation a number of times.

A new hearing date was set for October 3, 2007, and was then later reset for December 3, 2007, in order to permit Ms. Oakey to complete her investigation regarding the settlement and distribution of the funds. During the hearing on December 3, 2007, Ms. Oakey represented that her investigation had revealed that the proceeds obtained from Prudential, Liberty, and Bumper to Bumper had been spent by Plaintiff Tresa Kosec and no portion had been allocated to the Estate of Cody Utley or Thomas. At the hearing, Judge Linda Vanzi entered a formal judicial finding that the amount of the settlement with Bridgestone/Firestone was reasonable for the wrongful death of Cody Utley, and was accepted, but stated to Montoya that, based on Ms. Oakey's investigation and statements, she had "very serious concerns about what has taken place in this lawsuit and with the proposed settlements." *See* Tr. (Dec. 3, 2007), relevant portions attached as Ex. A, at 36. Moreover, Judge Vanzi found that there was a "serious problem with the allocation, however, and the distribution [of the settlement funds]." *Id.* Judge

Vanzi also stated that it was her belief that Montoya and Adamson had, "completely dismiss[ed] a child's interest." *Id.* at 37.

Shortly thereafter, on January 22, 2008, Kathleen Oakey, as the Guardian ad Litem and Conservator of the Estate of Thomas Utley, a minor, filed a separate Complaint for Attorney Malpractice, Breach of Fiduciary Duty and Breach of Contract ("Oakey Complaint") against Montoya in a parallel action in the Second Judicial District, currently pending before Judge Theodore Baca, CV-08-00676. *See* Oakey Compl., attached as Ex. B. She did not name Adamson as a defendant, but later filed an identical lawsuit against Adamson in state court.

On January 31, 2008, Judge Linda Vanzi filed a disciplinary board complaint against Montoya and Adamson, alleging a multitude of ethical violations that Judge Linda Vanzi believed were committed by Montoya and Adamson in this case. Specifically, Judge Vanzi stated in her disciplinary board complaint that:

Mr. Montoya's actions throughout the various matters involving Cody Utley's Estate [had] been with utter disregard for Cody Utley's only heir and minor child, Thomas Utley.... The problems are so numerous that I am afraid this letter only touches the tip of the iceberg. In addition to the multiple fabrications conceived by Mr. Montoya, and his complete failure to instruct Ms. Kosec as to how the monies should have been distributed, there are serious problems with the attorneys' fees and costs....

See letter from Judge L. Vanzi to Disciplinary Board of Jan. 31, 2008, attached hereto as Ex. C, at 11. Moreover, Judge Vanzi stated in her disciplinary board complaint that she was:

...very concerned about Mr. Montoya's actions in the state district court case and in the Prudential Life, Probate and Workers Compensation proceedings. . . . Indeed, Mr. Montoya has shown a disregard for the legal system, including the courts, other attorneys, and the clients he supposedly represents. Further, Mr. Montoya's moral judgment and sense of ethics in protecting the interests of ten year old Thomas Utley is, at the very least, questionable.

See id. at 12-13.

Mr. Montoya, on February 12, 2008, filed a motion requesting that the Court accept the New Mexico Court of Appeals ruling that an attorney's fee of 33 1/3% is reasonable and direct the release of the attorney's fees in this case. This motion is set for hearing on May 1, 2008, together with a number of other motions.

On April 3, 2008 Kathleen Oakey, in her capacity as the Guardian ad Litem and Conservator for Thomas Utley, in the present case, by and through her attorney, William Riordan, filed a Petition for Forfeiture of Fees and Disgorgement of Fees Received ("Petition") against Montoya and Adamson. Ms. Oakey's Petition contained duplicative claims to those that she asserted in her complaint against Montoya for attorney malpractice filed on January 22, 2008. *See* Pet., attached as Ex. D hereto. Specifically, in the Petition filed by Ms. Oakey, paragraphs 16 and 17, including all subparts, were identical to paragraphs 11, 13, and 15, including subparts, found in the Oakey Complaint, currently pending in the Second Judicial District. Indisputably, there are now two separate, unrelated cases containing duplicative claims against Montoya for attorney malpractice arising from the same incident.

The information this Court has discovered, together with the Court having become a complaining party against Mr. Montoya, require that the Court recuse. This Court cannot hear the Petition and other pending motions and remain impartial. Indeed, as noted below, this Court has already recused in other unrelated cases in which Mr. Montoya is counsel of record.¹ A copy of this recusal order is attached as Exhibit F.

¹ Judge Vanzi herself may have acknowledged that she is unable to maintain her objectivity where Mr. Montoya is concerned, as she has, on April 4, 2008, recused herself from a case filed by a pro se litigant in 2007 after Mr. Montoya entered his appearance. *See Michael Angelo Padilla v. Ron Torres, et al.*, Second Judicial District Court Case No. D-202-CV-200707860.

As explained in more detail below, the fact that a judge whose impartiality might reasonably be questioned mandates disqualification of that judge. For all of these reasons, this Court cannot rule impartially on the Petition and other motions and should recuse from this case.

Argument and Authorities

- I. **This Court Should be Recused and/or Disqualified from Ruling on Mr. Montoya's and Ms. Oakey's Petitions Because it Cannot Act Impartially as Evidenced by Prior Findings Made Regarding Montoya in This Case and as Evidenced by the Disciplinary Board Complaint Filed by Judge Vanzi.**
 - a. **This Court's Impartiality Might Reasonably be Questioned, Mandating Recusal Pursuant to New Mexico's Code of Judicial Conduct, Rule 21-400.**

Pursuant to the New Mexico Code of Judicial Conduct, a "judge is disqualified and shall recuse himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Rule 21-400(A) NMRA.² This includes, but is not limited to, instances in which the judge "has a personal bias or prejudice concerning a party. . . or personal knowledge of disputed evidentiary facts concerning the proceeding." Rule 21-400(A)(1) NMRA. Insofar as recusal, "[a]t a minimum, a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case." *Purpura v. Purpura*, 115 N.M. 80, 83, 847 P.2d 314, 316 (Ct. App. 1993) (quoting *Reid v. N.M. Bd. of Examiners in Optometry*, 92 N.M. 414, 416, 589 P.2d 198, 200 (1979)).

In determining whether a fair and impartial tribunal exists, the test, as set out more fully in *Reid*, is not whether the tribunal was "actually" prejudiced, but whether, "in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him." *Id.* Finally, "if a judge becomes

² This Canon expands the instances in which a judge should disqualify himself or herself beyond those circumstances set out in Article IV, §18 of the New Mexico Constitution (discussed further below). *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 250, 629 P.2d 231, 236 (1980).

so embroiled in the controversy that he or she is unable to make a fair and objective decision, the judge must recuse himself or herself." *Purpura*, 115 N.M. at 84, 847 P.2d at 318.

In *Misquez v. Baca (in re Byrnes)*, 132 N.M. 718, 54 P.3d 996 (Ct. App. 2002), the court held that the judge's inability to preside impartially mandated recusal when the judge had issued an order to show cause one day after finding the plaintiff in contempt, and then proceeded in a manner which infringed on the plaintiff's due process rights. In that case, Byrnes, an attorney in Las Cruces, New Mexico, was hired to represent a claimant in a custody dispute. During a hearing, Byrnes repeatedly interrupted the judge, and was ultimately held in contempt and fined \$1,000.00. Byrnes paid the fine and filed a notice of appeal. The following day, the same judge issued Byrnes an order to show cause as to why he should not be suspended from practicing in her division. At the hearing, the judge presided and called four witnesses to testify against Byrnes.

Ultimately, Byrnes was suspended during the hearing. Byrnes argued on appeal that the same judge should not have presided over the suspension hearing because she could not act impartially. The New Mexico Court of Appeals agreed, holding that the court proceeded in a manner that infringed on Byrnes' due process rights. The court further held that the judge "began the show-cause hearing by making definite findings before hearing any testimony, indicating she was not neutral, but instead had a predisposition toward ruling against Byrnes." *Id.* at 728-29, 54 P.3d at 1006-07.

Here, like the judge's impartiality in the *Byrnes* case, Judge Linda Vanzi's prior statements and findings with respect to Montoya, including those made at the December 3, 2007 hearing, coupled with the very detailed and serious allegations of misconduct made against Mr. Montoya as set out in the disciplinary board complaint, cast reasonable doubt on her ability to

preside impartially over the instant case. Indeed, this Court already has a predisposition toward ruling against Montoya in this case. Certainly, it cannot be said that this Court remains neutral in this case. Permitting this Court to rule on the Petition against Montoya for attorney malpractice would be a violation of Montoya's due process rights, and would deprive him of a fair and impartial tribunal.

b. Judge Vanzi Should Recuse Based on her Interest in this Case.

New Mexico's Constitution, Article VI, §18, provides that no judge shall "sit in any cause. . . in which she has an interest." An interest necessary to disqualify a judge "must be a present pecuniary interest in the result, or actual bias or prejudice, not some indirect, remote, speculative, theoretical or possible interest." *State ex rel. Bardacke v. Welsh*, 102 N.M. 592, 603, 698 P.2d 462, 463 (Ct. App. 1985) (quoting *State ex rel. Anaya v. Scarborough*, 75 N.M. 702, 705, 410 P.2d 732, 734 (1966)). The purpose to this provision in the New Mexico Constitution is to "secure to litigants a fair and impartial trial by an impartial and unbiased tribunal." *Bardacke*, 102 N.M. at 603, 698 P.2d at 463 (quoting *Tharp v. Massengill*, 38 N.M. 58, 70, 28 P.2d 502, 509 (1933)). The evidence requiring recusal typically must arise from a personal, extrajudicial source, and not a judicial source. *Purpura*, 115 N.M. at 84, 847 P.2d at 318. *See also United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 250, 629 P.2d 231, 326 (1980)

In *State v. Stout*, 100 N.M. 472, 672 P.2d 645 (1983), the Court held that there is an appearance of impropriety when a judge "become[s] so embroiled in the controversy that he cannot fairly and objectively hear the case, or when he or one of his staff will necessarily be a witness in the proceeding." *Id.* at 475, 672 P.2d at 648. In that case, the Court went on further to state that "where it is unlikely that he can maintain the calm detachment necessary for fair

adjudication, then he should be prohibited from rendering the contempt judgment.” *Id. at 474-75, 672 P.2d at 647-48.*

This Court has obtained various information regarding Montoya from an extra-judicial source—Ms. Oakey’s investigation regarding various settlements and distribution of those proceeds that were procured *before* the filing of this lawsuit. Ms. Oakey, in her capacity as Guardian ad Litem for Thomas Utley, commenced an external investigation regarding the settlements procured with Prudential, Liberty, and Bumper to Bumper. Indeed, the settlements that occurred with Prudential and Liberty occurred *before* the filing of this lawsuit and before the settlements with Bridgestone and Bumper to Bumper.

While this case does not involve a contempt hearing, it does involve allegations of legal malpractice against Montoya. The allegations and concerns were raised *by this Court and by an arm of the Court* in the form of a 1) disciplinary board complaint, 2) a second complaint filed by Ms. Oakey pending in the Second Judicial District, and 3) in the subject Petition. Presently, this Court has become embroiled in the allegations against Montoya. Arguably, this Court could call Ms. Oakey as a witness during the hearing on the Petition since she is purported to have discovered the underlying issues that form the basis for the allegations made in the Petition, the Complaint for Attorney Malpractice pending in the Second Judicial District, and the allegations contained in the disciplinary board complaint.

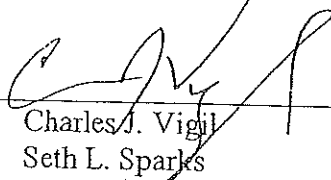
Conclusion

For the reasons set forth above, this Court cannot act impartially, or without the appearance of impropriety, and should not rule on Petition or any of the other pending motions. Accordingly, Montoya respectfully requests that this Court recuse from hearing the Petitions in this case or any other pending matters and that the hearing set for May 1, 2008, be vacated.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By


Charles J. Vigil

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CERTIFICATE OF SERVICE

I hereby certify that I have caused to be mailed a true and correct copy of the foregoing pleading to the following counsel of record on April 24, 2008:

Ronald R. Adamson
217 N. Schwartz Avenue
Farmington, NM 87504-5546

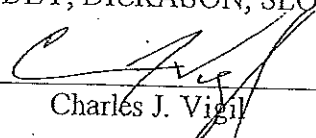
Arthur O. Beach
Keleher & McLeod, P.A.
P. O. Box AA
Albuquerque, NM 87104-3228

William F. Riordan
2740 Rio Grande Avenue, N.W.
Albuquerque, NM 87103

Joseph Wosick
4908 Alameda Blvd., N.E.
Albuquerque, NM 87113

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By


Charles J. Vigil

1 FOURTH JUDICIAL DISTRICT COURT
2 COUNTY OF SAN MIGUEL
3 STATE OF NEW MEXICO

4 CV-2004-445

5 ARTHUR E. VARGAS, et al.,

6 Plaintiff,

7 vs.

8 BRIDGESTONE FIRESTONE, INC., et al.,

9 Defendants.

10 TRANSCRIPT OF PROCEEDINGS

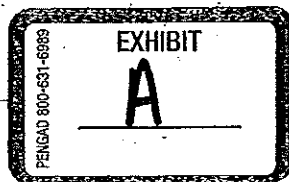
11 On the 3d day of December, 2007, at approximately 2:00
12 p.m., this matter came on for hearing before the HONORABLE
13 LINDA M. VANZI, Division IV, Judge of the Second Judicial
14 District, State of New Mexico.

15 The Plaintiff, ARTHUR E. VARGAS, et al., appeared by
16 Counsel of Record, DENNIS MONTOYA and RON ADAMSON, Attorneys
17 at Law, 1822 Lomas Blvd., NW, Albuquerque, NM 87104.

18 The Defendant, BRIDGESTONE FIRESTONE, INC., et al.,
19 appeared by Counsel of Record, ARTHUR BEACH, Attorney at
20 Law, P.O. Box AA, Albuquerque, NM 87103.

21 Also present, Guardian Ad Litem, KATHLEEN OAKEY,
22 Attorney at Law, P.O. Box 6695, Albuquerque, NM 87197.

23 At which time the following proceedings were had:
24
25



MELANIE D. LUCERO, CCR-RPR-CRR
Official Court Reporter

1 investigation into your role in this lawsuit as well, okay?

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: All right. Thank you. All right.

4 Counsel, I have very serious concerns about what has taken
5 place in this lawsuit and with the proposed settlements.

6 There has been no attention paid to the estate of Cody

7 Utley, and certainly the only heir of the estate, who is

8 Thomas Utley, this minor amount of \$100,000 out of a total

9 776 plus settlement and life insurance gain does not

10 represent the best interest of this child in any way, shape

11 or form. Let me start out by saying I do find that the

12 Bridgestone Firestone settlement in the amount of \$550,000 I

13 do find to be fair and reasonable, so I don't have a problem

14 with the amount itself. I do find there to be a serious

15 problem with the allocation, however, and the distribution.

16 At this time, this is what I'm going to do. I think I

17 need to get more information regarding Mr. Montoya and

18 Mr. Adamson's attorney's fees and costs, and I need to see

19 more documentation before I make any determination on how

20 much of that should be allocated. Thomas Utley is due a lot

21 more money than what's even in this Bridgestone Firestone

22 settlement, and, in fact, Ms. Kosec, I may tell you that you

23 may indeed owe your son some money, okay.

24 With that, I am going to order that the entire amount

25 of the \$550,000 at this time less Mr. Montoya's fees and

1 costs, since I am going to be looking into those further
2 will be distributed to Thomas Utley, okay. So for right
3 now, 246,089.46 will be distributed to Thomas Utley.

4 Ms. Oakey, I am going to appoint you as a conservator of
5 Thomas Utley's money, okay, and unless you say no to me
6 right now in which case I'll have to find another
7 conservator, and as the conservator, I expect that you will
8 exercise your full rights to do any further investigation on
9 this issue to see what other moneys may be due to Thomas,
10 all right.

11 MS. OAKLEY: Yes, Your Honor..

12 THE COURT: The remaining fees and costs, fees in
13 the amount of 285,000 -- hang on. Fees in the amount of
14 \$235,125 plus the \$68,785.54 should be put into the court
15 registry, which is an interest bearing account, and it will
16 be held there until I make a decision and determination as
17 to the proper allocation of the fees and costs, all right.
18 In the meantime, this is a little child's interests that
19 have not been watched by anybody. I'm not blaming defense
20 counsel. Defense counsel went and found a structured
21 settlement, which I have never seen in the years that I've
22 been looking over these minor settlements. But I have never
23 seen Plaintiff's counsel or a personal representative
24 completely dismiss a child's interests. I mean, this boy is
25 eight years old, and not one person watched out for him or

ENDORSED
FILED IN MY OFFICE THIS

JAN 22 2008

Quantita M. Swan
CLERK DISTRICT COURT

Marina Hernandez

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

Kathleen M.V. Oakey, as Guardian
ad Litem and Conservator of the Estate
of Thomas Utley, a Minor.

Plaintiff,

v.

Dennis W. Montoya, Attorney at law.

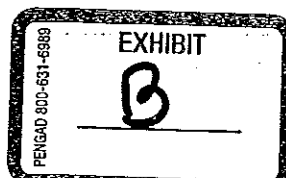
Defendant.

CV-2008-00676

Complaint for Attorney Malpractice,
Breach of Fiduciary Duty and Breach of Contract.

Comes now Plaintiff Kathleen M.V. Oakey, Guardian ad Litem and Conservator of the Estate of Thomas Utley by and through attorney William Riordan and for the cause of action on behalf of Thomas Utley Plaintiff states:

1. Plaintiff is a resident of Bernalillo County, New Mexico.
2. Dennis Montoya, (hereafter "Montoya" or "Defendant") is a resident of the State of New Mexico.
3. On or about March 14, 2003, Tresa Kosec, the mother of Thomas Utley entered into a contractual relationship in which Montoya undertook the legal representation as attorney for Kosec in "a personal injury case arising from the fact that the deceased, Cody Utley, was the victim of wrongful death/motor vehicle accident on 11-06-02". The "Representation Agreement" was drafted by Montoya and signed by Kosec and Montoya. It is unknown if the Agreement was signed by attorney Ronald Adamson, although the agreement represents in the body of the contract that the agreement is with Dennis Montoya, Attorney and Counselor at Law, and Ronald R. Adamson, Attorney and Counselor at Law.
4. A second "Representation Agreement" was prepared by Montoya and Adamson with attorney Arthur Vargas who acted as Personal Representative of the Wrongful Death Estate of Cody Utley. The contract was signed by Montoya and Vargas. It is not known if the contract was signed by Adamson.
5. Pursuant to the terms of the contract(s) referenced in Paragraph 3 and 4, above, Montoya obtained life insurance Proceeds from Prudential Financial on behalf of the Estate of Cody Utley and



paid them to Kosec.

6. Montoya filed a workers compensation claim on behalf of the Estate of Cody Utley and negotiated a settlement for death benefits, obtaining an order designating Tresa Kosec as the "Proper Recipient of Benefits" of the settlement for the death of Cody Utley in the Worker Compensation Proceeding.

7. Montoya obtained the appointment of Arthur Vargas, as Personal Representative of the Estate of Cody Utley to bring a wrongful death action in the Fourth Judicial District against Bumper to Bumper Auto Salvage, and against Bridgestone/Firestone Tire and Rubber Company

8. Montoya negotiated settlements of the claim against Bumper to Bumper Auto Salvage and against Bridgestone/Firestone Tire and Rubber Company in the lawsuit.

Claim for Breach of Fiduciary Duty

9. Plaintiff realleges the allegations contained in Paragraphs one through eight as if set out in full.

10. As an attorney, Montoya owed a fiduciary to Thomas Utley, in his representation of all matters involving Thomas Utley's interests.

11. Pursuant to New Mexico Law, Montoya owed a fiduciary duty to assure that all moneys properly belonging to Thomas Utley were safeguarded for the exclusive benefit of Thomas Utley.

12. Pursuant to New Mexico Law, Montoya owed a fiduciary duty to Thomas Utley to represent only his interests if they were in conflict with the interest of any other person.

13. Montoya breached the fiduciary duty owed to Thomas Utley by taking the following actions as an attorney practicing law in the State of New Mexico:

- A. Misrepresenting that Tresa Kosec was the wife of Cody Utley in the Application for Appointment of Personal Representative in the Eleventh Judicial District, and in the Order obtained from the Court in that matter.
- B. Misrepresenting that Tresa Kosec's daughter Brionna was Cody Utley's daughter in the Application for Appointment of Personal Representative in the Eleventh Judicial District.
- C. Obtaining the insurance proceeds from Prudential Financial on behalf of the Estate of Cody Utley and paying them to Tresa Kosec without informing Tresa Kosec that they were to be used for the sole heir of the estate, Thomas Utley.

- D. Obtaining the proceeds of the settlement from the WCA and not informing Tresa Kosec that the proceeds were solely for the benefit of Thomas Utley.
- E. Negotiating settlements on behalf of the Estate of Thomas Utley while he represented the competing interest of Tresa Kosec, and by making claims for Brionna, who was not an heir of Cody Utley.
- F. Settling the claim against Bumper to Bumper for an inadequate amount, and by failing to get Court approval of the settlement.
- G. Settling the claim of Tresa Kosec who had competing interests, and claiming Tresa Kosec's daughter was entitled to a portion of the proceeds of the Bumper to Bumper settlement.
- H. By providing funds to Tresa Kosec for the settlement of Thomas Utley's claims without telling her that portion of the settlement was to be used for the sole benefit of Thomas Utley.
- I. Representing the competing interests of Thomas Utley and Tresa Kosec in the settlement of the Bridgestone/Firestone claim and not negotiating them separately, and by requesting an excessive share of the settlement for Tresa Kosec.
- J. Making misrepresentations to the Guardian ad Litem appointed by the court in the proceeding for court approval of the settlement against Bridgestone/Firestone Tire and Rubber, for the purpose of obtaining an excessive portion of the settlement for Tresa Utley, at the expense of Thomas Utley.
- K. Obtaining an inadequate settlement in the workers compensation claim for the death of Cody Utley.

14. Montoya's Breach of Fiduciary Duty owed to Thomas Utley was the proximate cause of compensatory damages to Thomas Utley in an amount to be proven at trial.

15. Montoya acted with complete disregard of the interests of Thomas Utley and acted intentionally in the misrepresentations that he made during the time that he was representing the interests of Thomas Utley, thereby justifying the award of punitive damages against Montoya in an amount to be determined by the trier of fact in this case.

Breach of Contract

16. Plaintiff realleges the allegations contained in paragraphs one through eight as if set out in

full.

17. Pursuant to the Representation Agreement(s) signed between Montoya and Tresa Kosec, and the agreement between Montoya and Arthur Vargas, Montoya agreed to represent the interests of Thomas Utley.
18. Pursuant to the Representation Agreement(s), Montoya agreed that his actions would be held to the stand of care expected of attorneys practicing law in the State of New Mexico.
19. The Representation Agreement(s) contained an implied covenant of good faith and fair dealing.
20. Montoya breached the Representation Agreement(s) by at least the following actions:
 - A. Not properly representing the interests of the Estate of Cody Utley.
 - B. Not properly representing the interests of Thomas Utley, the sole statutory heir of Cody Utley.
 - C. Not acting in Good Faith during his representation of the interest (s) or Thomas Utley.
 - D. Not negotiating the settlements in the Bumper to Bumper claim and the Bridgestone/Firestone claims separately for Tresa Kosec's claim, and the claim for Thomas Utley.
 - E. Failing to cooperate with the Guardian ad Litem appointed to investigate whether or not the settlement was adequate and in the best interest of Thomas Utley in the Bridgestone/Firestone case, thereby increasing the cost of the Guardian ad Litem fee all to the detriment of Thomas Utley.
 - F. Not safeguarding the funds received for the benefit of Thomas Utley and the Estate of Cody Utley to assure that they were available for the exclusive benefit of Thomas Utley.
 - G. Charging an excessive fee.
21. As a result of the breach of contract by Montoya, Thomas Utley was damaged in an amount to be proven at trial.

Negligence

22. Plaintiff realleges the allegations contained in paragraphs one through nine and fifteen through twenty-one as if set out in full.
23. Pursuant to the Representation Agreement(s), Montoya agreed that his actions would be

held to the standard of care expected of attorneys practicing law in the State of New Mexico. Failure to adhere to this standard of care constitutes negligence.

24. Montoya was negligent in stating that Tresa Utley was the wife of Cody Utley and the her daughter Brionna was Cody Utley's daughter in the Application for the Appointment of Personal Representative, and other legal pleadings filed that affect the interest(s) on Thomas Utley.
25. Montoya was negligent in the manner in which he handled, and in the amount that he negotiated as a settlement for in the Worker Compensation death benefit claim on behalf of Thomas Utley.
26. Montoya was negligent in failing to advised Tresa that the proceeds of the claim for life insurance benefits with Prudential Securities and the WCA claim were for the sole benefit of Thomas Utley and should be safeguarded and set aside for Thomas Utley's benefit.
27. Montoya was negligent in the manner in which he handled the claim against Bumper to Bumper by:
 - A. Representing the interests of Thomas Utley while representing competing interests of Tresa Kosec.
 - B. Making a claim on behalf of Brionna Kosec while he representing the interest(s) of Thomas Utley.
 - C. Settling the claims of Thomas Utley for an inadequate amount.
 - D. Failing to inform Tresa Utley of the mediation when Thomas Utley's individual claims were settled.
 - E. Failure to seek court approval of the Bumper to Bumper settlement as it affected Thomas Utley.
 - F. Failing to assure that if money was obtained for Thomas Utley, that it was properly safeguarded for his exclusive benefit.
 - G. Not properly accounting for the costs expended.
 - H. Charging an excessive fee.
28. Montoya was negligent in failing to properly protect the interests of the Estate of Cody Utley in his legal representation and failed to properly protect the interests of Thomas Utley in the settlements that he negotiated, and the insurance benefits that he obtained.

29. Montoya was negligent in the advice that he gave Tresa Kosec when she was acting in the capacity of Personal Representative of the Estate of Cody Utley as to who the heirs of the Estate were, and what she was to do with the money that was obtained for the benefit of Thomas Utley.
30. Montoya was negligent in the statements he provided and the documents that he furnished to the Guardian ad Litem appointed to investigate the adequateness of the settlement of the Bridgestone/Firestone case, thereby increasing the cost of the Guardian ad Litem fee all to the detriment of Thomas Utley
31. Montoya was negligent in the manner in which he distributed the Prudential Financial Life Insurance Benefits.
32. Montoya was negligent in the manner in which he retained and charged for the services of Brandon Cummins, a "litigation para legal", and Robert Sandoval a "private investigator".
33. As a result of the proximate conduct of Montoya, Plaintiff had to retain the services of an attorney to recover funds for Thomas Utley that were lost or not recovered due to Montoya's negligence.
34. As a result for the proximate conduct of Montoya, Thomas Utley was damaged in an amount to be proved at trial.

Wherefore, Plaintiff Kathleen M. V. Oakey, on behalf of Thomas Utley requests the following relief:

- a. An award of compensatory damages to Thomas Utley, individually and as the sole heir of the estate of Cody Utley, in the amount proved at trial;
- b. An award of punitive damages against Dennis Montoya for his conduct in during the representation of the individual claims of Thomas Utley, and the estate of Cody Utley, whose sole heir was Thomas Utley;
- c. An award of pre-judgment and post judgment interest;
- d. An award of attorney fees and costs incurred in pursuing this action;
- e. Such other and further relief proved by the evidence that the Court may deem proper.

Respectfully,


William Riordan

Attorney for Plaintiff
2740 Rio Grande NW
Albuquerque, NM 87104

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

Kathleen M.V. Oakey, as Guardian
ad Litem and Conservator of the Estate
of Thomas Utley, a Minor.

Plaintiff,

v.

CV# 2008 00 67 6

Dennis W. Montoya, Attorney at law.

Defendant.

SUMMONS

To: Dennis W Montoya
1822 Lomas NW
Albuquerque, NM

You are required to serve upon William Riordan, an answer or motion in response to the complaint which is attached to this summons within 30 days after service of this summons upon you, exclusive of the day of service, and file a copy of your answer or motion with the court as provided in Rule 1-005 NMRA.

If you fail to file a timely answer or motion, default judgment may be entered against you for the relief demanded in the complaint.

Attorney(s) for plaintiffs:
William F. Riordan
2740 Rio Grande NW
Albuquerque, NM 87104
(505) 255-9300

WITNESS the Honorable WILLIAM F. LANG, District Judge of the Second
Judicial District Court of the State of New Mexico, and the seal of the District Court of Bernalillo
County, this JAN 22 2007 day of JAN 22 2007.

JUANITA M. DURAN
Clerk of the District Court

By Marina Hernandez

Dated: _____

Deputy

RETURN

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the summons in Bernalillo County on the _____ day of _____ 2007, by delivering a copy of this summons, with copy of complaint attached, in the following manner:
(Check one box and fill in appropriate blanks)

to the defendant Dennis W. Montoya (used when defendant receives a copy of summons and complaint or refuses to accept the summons and complaint).

to the defendant Dennis W. Montoya by [mail] [courier service] as [provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service)].

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of the summons, with a copy of complaint attached, in the following manner:

to _____, a person 15 years of age and residing at the usual place of abode of defendant, Dennis W. Montoya (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

to _____, the person apparently in charge at the actual place of business or employment of the defendant Dennis W. Montoya and by mailing by first class mail to the defendant at _____ (insert the defendant's business address) and by mailing the summons and complaint by first class mail to the defendant Dennis W. Montoya at _____ (insert the defendant's last known mailing address).

to _____, an agent authorized to receive service of process for the defendant Dennis W. Montoya.

to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant Dennis W. Montoya (used when defendant is a minor or an incompetent person).

Fees: _____

Signature of Person Making Service

Title (if any)

Subscribed and Sworn to before me this _____ day of _____, 2007, by _____

Judge, Notary or other officer
authorized to administer oaths

Official Title



COPY



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

LINDA M. VANZI
DISTRICT JUDGE

January 31, 2008

POST OFFICE BOX 488
ALBUQUERQUE, NEW MEXICO 87103
505-841-7456
FAX: 505-841-5458
EMAIL: albdmiv@nmcourts.com

Disciplinary Board
P.O. Box 1809
Albuquerque, NM 87103-1809

Re: Dennis W. Montoya, Esq.; Ronald Adamson, Esq.

Dear Sir or Madam:

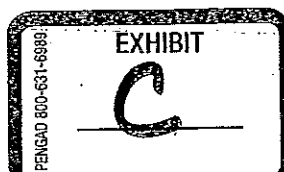
Pursuant to Rule 16-803A, I am notifying you of what I believe to be violations of the rules of professional conduct by Dennis W. Montoya, Esq. and Ronald Adamson, Esq. Specifically, the violations may fall under Rules 16-101, 16-102, 16-105, 16-107, 16-108, 16-114, 16-303, 16-401 and 16-804.

I BACKGROUND

The facts of the underlying case which are the basis for the issues raised in this letter are as follows. Cody Utley and Tresa Kosec met in Utah in the fall of 1996 and began living together in November 1996. They were never married. Ms. Kosec had a daughter, Brionna Kosec, from a previous relationship. On about March 1998, Mr. Utley moved from Utah to Farmington, New Mexico for work; Ms. Kosec and Brionna joined him there a few months later. Mr. Utley and Ms. Kosec had a son, Thomas, born in Farmington on August 29, 1999.

In the late evening of November 5, 2002, Mr. Utley traveled from his home in Farmington to a work site in Tucumcari and then to a motel where he was staying. While en route to the motel, the truck Mr. Utley was driving had a blowout; Mr. Utley lost control of the truck and it rolled several times ejecting both he and passenger Craig Hopkins. Mr. Utley was killed and Mr. Hopkins suffered serious injuries.

On October 28, 2004, Arthur Vargas, as the Personal Representative of the Wrongful Death Estate of Cody Utley, filed an "Amended Complaint", through his attorneys Dennis Montoya and Ronald Adamson, against Bridgestone/Firestone, Inc. and Bumper to Bumper Auto Salvage



Disciplinary Board

January 31, 2008

Page 2

("Bumper to Bumper) in the Fourth Judicial District Court.¹ Ms. Kosec, Brionna Kosec and Thomas Utley were likewise named as Plaintiffs.² The Amended Complaint alleged the following causes of action against both Defendants: strict liability, negligence, misrepresentation, breach of the implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, unfair trade practices and loss of consortium.

As set forth below, during the entire course of this litigation, as well as in various other legal matters involving Mr. Utley's death, Msrs. Montoya and Adamson did virtually nothing to protect the interest of the minor child Thomas Utley, the only legal beneficiary to Mr. Utley's estate. I became aware of problems regarding the distribution of monies recovered only when I was asked to approve the settlement with the last remaining Defendant Bridgestone/Firestone.³ Because I believe it is important to a full understanding of what has taken place, I am providing a chronology of events that have taken place since Mr. Utley's death. While I have not presided over many of these matters, the actions taken by Mr. Montoya and Mr. Adamson are well documented and are of considerable concern.

II. PRUDENTIAL FINANCIAL - LIFE INSURANCE PROCEEDS

Before a civil complaint was ever filed, Mr. Montoya was involved in helping Ms. Kosec gain access to the proceeds of Mr. Utley's life insurance policy. See Transcript at p. 18, lines 10-15, Exhibit 1. A month after Mr. Utley's death, Ms. Kosec contacted Mr. Utley's employer, Key Energy, inquiring as to the existence of any life insurance proceeds. Prudential informed Ms. Kosec that they had issued Mr. Utley a "Basic Life and Accidental Death" insurance policy and that the policy did not name a beneficiary. Letter from Prudential to Ms. Kosec dated December 12, 2002, Exhibit 26. Ms. Kosec then contacted Prudential informing them that she was Mr. Utley's wife and

¹ The case, *Vargas et al v. Bridgestone/Firestone, Inc. et al.*, No. CV 2004-00445, was reassigned to me by stipulation of the parties after all the judges in the Fourth Judicial District had been excused.

² Craig Hopkins was also a named Plaintiff in the same suit. However, he was represented by separate counsel and the representation of Mr. Hopkins is not at issue here.

³ On October 17, 2007, I appointed Kathleen Oakey as the Guardian ad Litem ("GaL") to review the settlement with Bridgestone/Firestone and to make recommendations to the Court regarding the reasonableness of the settlement and the proposed distribution. Much of the information here was discovered by Ms. Oakey during the course of her investigation.

that they had two children.⁴ On December 4, 2002, Ms. Kosec completed a Prudential Financial "Beneficiary Statement" contending that she was the "wife" of Mr. Utley.⁵ Beneficiary Statement dated 12/04/02, Exhibit 5. See also Preferential Beneficiary Affidavit, Exhibit 27.

On February 7, 2003, Prudential sent Ms. Kosec a letter informing her that Prudential had accepted the claim but that because Mr. Utley had not elected a beneficiary, the insurance policy benefits were payable to the "preferred beneficiary[ies]. . . [as follows]: the spouse, children, parents, siblings, or the estate of the insured." Letter from Prudential to Tresa Kosec-Utley dated February 7, 2003, Exhibit 6. The "preferred beneficiary" status clearly did not include Tresa Kosec.

Not satisfied with Prudential's refusal to release the funds to Ms. Kosec, on March 18, 2003, Mr. Montoya and Mr. Adamson filed an "Application for Informal Appointment of Personal Representative" (Application), in In the Matter of the Estate of Cody Utley, Deceased, No. PB 2003-18-6 (11th Jud. Dist. Ct.).⁶ The Application, prepared by Mr. Montoya, misrepresented the following critical facts to the Court and requested that Tresa Kosec be appointed as the Personal Representative of the Estate of Cody Utley:

⁴ Virtually all of the legal pleadings and correspondence allege that Mr. Utley had two children, Brionna and Thomas; at different times, Brionna was referred to as "Brionna Utley" rather than "Brionna Kosec." This issue is further discussed below.

⁵ Ms. Oakey asked Mr. Montoya to provide her with a copy of the "actual life insurance designation page signed by Cody Utley or any documentation prepared/signed by Tresa Kosec or [him] (i.e. statement, affidavit, application, etc.) which Prudential relied on in determining that Tresa Kosec was the proper beneficiary of the life insurance proceeds." Mr. Montoya informed the GaL that he had "been unable to get any documents from Prudential. They closed their file years ago. I will provide you an affidavit attesting that Ms. Kosec was the named beneficiary, but that is the best I can do." See Letter from Mr. Montoya to Ms. Oakey dated October 19, 2007, Exhibit 2. Mr. Montoya did not know that the GaL had already contacted Prudential upon my request and that they stated there was no problem in retrieving the file and would provide her a copy with a Court order.

Prior to that, in a letter dated October 15, 2007, Mr. Montoya told the GaL that the life insurance proceeds were paid directly to Ms. Kosec as the "listed beneficiary." Letter from Mr. Montoya to Ms. Oakey dated October 15, 2007, Exhibit 3. This was untrue. In mid November 2007, Mr. Montoya sent the GaL an "Affidavit of Tresa Kosec" in which Ms. Kosec swore that she "was listed as the beneficiary of Cody Utley's life insurance policy." Affidavit of Tresa Kosec dated November 16, 2007, Exhibit 4. This was also untrue.

⁶ Mr. Utley died intestate.

Petitioner [Tresa Kosec] is [the] wife of the decedent, Cody Utley, and the mother of decedent's children Brionna Kosec and Thomas Utley.

[T]he names and addresses of the heirs of the decedent . . . are as follows:

- A. TRESA KOSEC
- B. BRIONNA KOSEC
- C. THOMAS UTLEY

Application, Exhibit 7. (Emphasis added).

Based on the sworn statements that Ms. Kosec was the wife of Cody Utley and the parent and guardian of Cody Utley's minor children, Brionna Kosec and Thomas Utley, the Court entered an "Order for informal Administration, Appointment of Personal Representative, Order of intestacy and Determination of Heirship" appointing Ms. Kosec the Personal Representative of the Estate of Cody Utley. Exhibit 8. The Order was prepared and submitted by Mr. Montoya and Mr. Adamson.

At no time was Tresa Kosec married to Cody Utley and her declaration that she was Cody Utley's wife and therefore an heir was patently false. See Worker's Compensation Administration First Report of Accident (indicating that Mr. Utley was unmarried), Exhibit 9. See also Transcript, Page 18 Lines 16-20 (stating "I knew there was no marriage certificate, yes."), Exhibit 1. Further, Brionna Kosec was not Cody Utley's child and the sworn statement that she is an heir to his estate is also false.⁷ See Worker's Compensation Administration Notice of Benefit Payment (showing that on the date of his death Mr. Utley was unmarried and had only one child), Exhibit 10.

Mr. Montoya subsequently forwarded a copy of the Order Appointing Personal Representative to Prudential and on April 10, 2003, Prudential sent Mr. Montoya a letter stating that New Mexico does not recognize common law marriage and that:

During our conversation you stated that Tresa and Mr. Utley lived in Utah prior to his death, and that states recognizes common law marriage. We are asking for tax forms, household bills, medical bills or any other information you can provide as verification of this marriage.

⁷ At the hearing before this Court, I asked Mr. Montoya how Brionna Kosec came to be named as an heir in the probate. Remarkably, he stated that "at that time, we were under the belief that there was a de facto adoption of Brionna." Transcript at pages 22-23, lines 24 - 1, Exhibit 1. Mr. Montoya was unable to provide me with any facts or case law as to under what circumstances a "de facto adoption" is recognized in New Mexico.

If this cannot be established the proceeds would be payable to the two minor children. We would need to be provided with guardianship of the estate of the children.

Letter from Prudential to Montoya dated April 10, 2003, Exhibit 11. On May 5, 2003, Mr. Montoya sent Prudential a letter threatening to file suit unless Prudential paid the life insurance proceeds. Letter from Montoya to Prudential dated May 5, 2003, Exhibit 12.

In a letter dated June 10, 2003, Brandon Cummings, a "litigation paralegal" with Mr. Montoya's office sent Prudential an "Affidavit of Tresa Kosec" allegedly signed on April 10, 2003, which provides: "I was the common law wife of Cody Utley. I lived with Cody Utley in the State of Utah from November 1996 through July 1998." Letter from Brandon Cummings to Prudential dated June 10, 2003, Affidavit attached, Exhibit 13. Referring to the affidavit, Mr. Cummings falsely stated that "Pursuant to Utah law, this residency establishes the common-law marriage of Ms. Kosec-Utley and Mr. Utley."⁸ *Id.* On June 20, 2003, Prudential issued a check in the amount of \$73,790.80 to "The Estate of Cody Utley, care of his attorney, Dennis W. Montoya."

Apparently, Mr. Montoya did not keep any portion of the life insurance proceeds as an attorney fee. However, Mr. Montoya retained \$25,000.00 for "costs." Ms. Kosec received the money directly and none of the life insurance funds were disbursed through the Estate of Cody Utley.⁹ Further, Ms. Kosec contends that Mr. Montoya never instructed her as to how the monies should be disbursed through the probate matter or whether any portion of the monies belonged to Thomas. In fact, although all the money belonged to Thomas, none was set aside for his benefit including through purchase of an annuity, college fund, CD, savings account, etc. Ms. Kosec has spent all the money.

⁸ In fact, a common law marriage in Utah can only be recognized by a judicial determination. See Utah Code Ann. Section 30-1-4.5 (1998)(Validity of marriage not solemnized), Exhibit 2. Mr. Montoya never sought or obtained a judicial determination regarding the Utley/Kosec common law marriage. His allegation that he abandoned that course of action after reviewing Lozoya v. Sanchez, 133 N.M. 579, 66 P.3d 948 (2003), is simply not credible. See Letter from Montoya to Oakey dated September 28, 2007, Exhibit 14. Lozoya creates no recognition of a common law marriage in New Mexico for purposes of anything except a possible loss of consortium claim and would have no bearing in this case with regard to the distribution of estate assets.

⁹ In fact, there has been no activity whatsoever in In The Matter of the Estate of Cody Utley, Deceased, since the Order Appointing PR was entered on April 3, 2003. Transcript at p. 22, lines 1-10, Exhibit 1.

III. KEY ENERGY/MUTUAL INS. GROUP (WORKERS COMPENSATION BENEFITS)

On November 3, 2003, Mr. Montoya filed a "Workers Compensation Complaint" on behalf of "The Wrongful Death Estate of Cody Utley (deceased)" against Key Energy and Mutual Insurance Group (the workers compensation insurer). The parties attended a mediation on January 5, 2004 and an agreement was reached thereafter. On January 29, 2004, Tresa Kosec, who was represented by Mr. Montoya, signed a "Settlement Agreement and Release" (Agreement) in her capacity "as Personal Representative of the Estate of Cody Utley." The Agreement provided in part:

To [the best of] my knowledge, Cody Utley has only two children, being Tomas James Utley and Brionna L. Utley.¹⁰ I am not aware of any other children fathered by Cody Utley.¹¹

Agreement (emphasis added), Exhibit 15. Pursuant to the terms of the Agreement, Ms. Kosec agreed, as the "spouse and/or personal representative for the estate of Cody Utley" to accept \$55,000.00 (\$92.54 for 500 weeks) in full settlement of the workers compensation claim. *Id.*

After a hearing on February 5, 2004, Judge Joan O'Connell entered an Order Designating Proper Recipient of Benefits" finding that Tresa Kosec "is the proper recipient of settlement proceeds on behalf of herself and the two minor children Thomas James Utley and Brionna Utley." Order Designating Proper Recipient of Benefits, Exhibit 16.

The same day, Mr. Montoya filed a "Petition for Lump Sum Payment" (Petition) requesting the Court approve a lump sum payment of \$55,000 rather than weekly benefits. On March 11, 2004, WCA Judge Terry Kramer entered an "Order Approving Settlement and Lump Sum Payment and Awarding Attorney Fees", finding that the parties had agreed to settle the disputed claim for \$55,000 "payable to Tresa Kosec, on behalf of herself and the Worker's two minor children." (Emphasis added).

Thereafter, Liberty Mutual Ins. Group/Key Energy issued a check in the amount of \$55,000.00 which Mr. Montoya distributed as follows:

¹⁰ At some point during the WCA proceeding, Brionna began being referred to as "Brionna Utley" rather than "Brionna Kosec."

¹¹ Clearly, the implication was that Mr. Utley was the biological father of Brionna which he was not. See Exhibit 10 (one child). See also Transcript at p. 22 - 23, Lines 19 - 2 (re: de facto adoption), Exhibit 1.

<u>PAYOR</u>	<u>AMOUNT</u>
Montoya Law, Inc.	\$ 8,729.53 ¹²
Costs	\$ 20,000.00
Tresa Kosec	\$ 26,200.47

Attorney's Final Account of Litigation Proceeds, Exhibit 17. As is clear, there is absolutely no accounting for the costs expended which, added to the Prudential costs withheld by Mr. Montoya, now totaled \$45,000.00. Mr. Montoya gave the entire amount of \$26,200.47 to Ms. Kosec. Mr. Montoya did not advise Ms. Kosec to disburse the money through the Estate of Cody Utley (probate) and did not advise her to set aside money for Thomas. She has spent all the money.

IV. VARGAS ET AL. V. BRIDGESTONE/FIRESTONE, INC.

We now get to the case before me which was filed several months after the conclusion of the Prudential Life and Workers Compensation matters, and which as you can see, involved a series of false statements and misrepresentations by Mr. Montoya and his client.

As an initial matter, Ms. Kosec signed two Representation Agreements for the wrongful death action with Mr. Montoya and Mr. Adamson. The first, signed by Ms. Kosec on March 14, 2003, states that Mr. Montoya will be entitled to a contingency payment of 33 1/3%. Representation Agreement dated March 14, 2003 (First Agreement), Exhibit 18. This Representation Agreement was signed by Brandon Cummings, a non-lawyer, for Mr. Montoya on March 14, 2003. The First Agreement required a deposit of \$25,000.00 to be paid upon receipt of life insurance or other proceeds.

The second Representation Agreement was also signed by Tresa Kosec on March 14, 2003. Representation Agreement dated March 16, 2003 (Second Agreement), Exhibit 19. However, Mr. Montoya signed that Agreement two days later, on March 16, 2003. The Second Agreement entitles Mr. Montoya to a contingency payment of 40%. Ms. Kosec was not advised as to which agreement was in effect and, in fact, Mr. Montoya benefitted himself by using the portions of each agreement to reimburse himself costs and fees. For example, Ms. Kosec wrote Mr. Montoya a check for \$25,000.00 from the life insurance proceeds pursuant to the First Agreement. Mr. Montoya then withheld a 40% contingency fee from the Bumper to Bumper settlement and proposed a 40% fee recovery from the Bridgestone/Firestone settlement pursuant to the terms of the Second Agreement.

¹² Mr. Montoya actually received a total of \$16,500.00 plus tax in attorneys fee, split 50/50 between Worker and Employer/Insurer. See Exhibit 15 at ¶ 2.

With regard to this lawsuit, it appears that there were only three viable claims: 1) a wrongful death claim; 2) Thomas Utley's loss of guidance/counseling claim; and 3) Ms. Kosec's loss of consortium claim.¹³ There have been two settlements in this matter. As set forth fully below, the first settlement was with Bumper to Bumper and the second with Bridgestone/Firestone. None of the settlements have been distributed in a manner proportionate to the claims and nothing has gone to the Estate.

Notwithstanding the previous documentation in the Prudential Life, Probate, and Workers Compensation matter to the contrary, when the GaL first spoke to Mr. Montoya on September 4, 2007, he falsely informed her that Mr. Utley and Ms. Kosec had been married at the time of Mr. Utley's death. Only upon further questioning regarding the date/place of the marriage, did Mr. Montoya finally admit that Mr. Utley and Ms. Kosec had never actually married but rather, had a common law marriage because they had lived together in Utah before moving to New Mexico. When Ms. Oakey asked Mr. Montoya if he had obtained any type of judicial determination regarding the legitimacy of the common law marriage, he told her - untruthfully - that he had. She requested a copy of the determination and he promised to provide it.

Mr. Montoya subsequently sent Ms. Oakey a letter stating that he had been mistaken and had never obtained a judicial determination regarding the Utley/Kosec common law marriage. Letter from Montoya to Oakey dated September 28, 2007, Exhibit 14. Mr. Montoya reiterated this position in a letter dated October 19, 2007, Exhibit 2, and further stated that any monies paid to Ms. Kosec individually would have been paid to her in settlement of her loss of consortium claim only and not as the "spouse" of Mr. Utley.

Because Ms. Kosec was not "married" to Mr. Utley at the time of his death, she does not qualify as a statutory beneficiary under New Mexico's wrongful death statute and should have received no portion of any wrongful death proceeds. See NMSA 1978, Section 41-2-3 (Personal Representative to bring action; damages; distribution of proceeds) which provides that when the deceased is unmarried, his or her child is entitled to proceeds of any wrongful death action.

Accordingly, Ms. Kosec's only claim to the proceeds in this lawsuit was a loss of consortium claim which the GaL recommended (and I agreed) be valued at 20% - substantially less than Ms. Oakey's evaluation of Thomas Utley's own loss of guidance/counseling claim, and the wrongful death claim.

¹³ A possible fourth claim would be Brionna Kosec's loss of guidance/counseling claim but that issue has never been brought before the Court.

A. Bumper to Bumper

On or about November 2005, the Utley/Kosec Plaintiffs settled their claims against Bumper to Bumper for \$97,500.00. Neither the Utley/Kosec Plaintiffs nor Bumper-to-Bumper sought Court approval of the settlement nor did they seek to have Ms. Kosec appointed Conservator on behalf of Thomas Utley. Upon receipt of the check, Mr. Montoya distributed the monies as follows:

<u>PAYOR</u>	<u>AMOUNT</u>
Montoya Law, Inc. (40% + GRT)	\$ 41,632.50
Costs	\$ 17,806.25
Tresa Kosec	\$ 38,061.25 ¹⁴

Attorney's Final Account of Litigation Proceeds, Exhibit 20. As you can see, Mr. Montoya used the Second Agreement (40% contingency fee) and withheld \$17,806.25 as costs for which there is no accounting. According to Ms. Kosec, she received the entire \$38,061.25 and neither Mr. Montoya or Mr. Adamson ever instructed her as to how the monies should be disbursed or whether any portion belonged to Thomas. Thus, Ms. Kosec did not set aside any money and it has all been spent. Further, Mr. Vargas, as the Personal Representative in this matter did not insure that any money was put into the Estate.

B. Bridgestone/Firestone Settlement

In July 2007, the Utley/Kosec Plaintiffs settled their claim with Defendant Bridgestone/Firestone for \$550,000.00. On what was likely defense counsel's insistence, the parties sought court approval of the settlement and agreed to the appointment of F. Michael Hart as the Guardian ad Litem. Prior to my signing the Order of Appointment, but in preparation for the court hearing to consider the proposed settlement, Mr. Hart commenced an investigation into the facts of the case and the terms of the settlement. See Order Regarding Appointment of Guardian Ad Litem, Exhibit 21. The investigation included review of substantial information from the court file, confidential mediation papers submitted by the parties, document review, and an interview with Ms. Kosec. Id.

The hearing on the Motion to Approve Settlement was originally scheduled for July 23, 2007. That hearing was vacated and rescheduled for August 30, 2007. Neither Mr. Montoya or Mr. Hart were present. Instead, Marcos Gonzales attended the hearing for Mr. Montoya. Mr. Gonzales stated that Mr. Hart had a potential conflict in this matter because he and Mr. Montoya were representing

¹⁴ According to Ms. Kosec, the check was issued to her only and not in her name on behalf of Thomas as the sole wrongful death beneficiary.

another client together. Therefore, it would be best if Mr. Hart were excused as the GaL and if Ms. Oakey were appointed instead. Although Mr. Hart did not resist Mr. Montoya's objections to his appointment, I find Mr. Montoya's request to replace Mr. Hart as the GaL as extremely suspect, particularly since Mr. Hart had already completed quiet a bit of work in this matter.

Nevertheless, in September 2007, Ms. Oakey was appointed the GaL and a hearing for Approval of Settlement was scheduled for October 3, 2007. Because of many troubling issues that came to light during the GaL's review of the case, the hearing was re-scheduled for December 3, 2007 so that she could complete her investigation.

Mr. Montoya proposed to the GaL that the \$550,000.00 settlement be distributed as follows:

<u>PAYOR</u>	<u>AMOUNT</u>
Montoya Law, Inc. (40% + GRT)	\$ 235,125.00
Tresa Kosec	\$ 146,089.46
Thomas Utley	\$ 100,000.00
Costs	\$ 68,785.54

Attorney's Final Account of Litigation Proceeds, Exhibit 22. Remarkably, Mr. Montoya had originally provided Ms. Oakey with a "Distribution Statement," Exhibit 23, in which he proposed that Ms. Kosec receive \$450,000.00 (82%) of the settlement for her loss of consortium claim and that Thomas receive the remaining \$100,000.00 (18%) and, that Brionna Kosec¹⁵ and the Estate receive nothing.

With regard to the Bridgestone/Firestone settlement, at the December 3, 2007 hearing, I found the settlement to be fair and reasonable but ordered that Ms. Kosec receive no portion of the \$550,000.00 as she had already received (and spent) far in excess of what I believed her loss of consortium claim was worth. That amount, less attorneys fee and costs were to be set aside for Thomas Utley's sole benefit. Further, I appointed Ms. Oakey as Thomas Utley's conservator and she remains the GaL on the case pending further investigation of the adequacy of Mr. Montoya and Mr. Adamson's attorneys fees and costs which are being withheld in the Court Registry.

¹⁵ In fact, despite all of Mr. Montoya's representations that the minor Brionna Kosec is entitled to a share of the proceeds (at least one third according to his Application for Appointment of Personal Representative), she has not received any monies as a result of the death of Cody Utley.

CONCLUSION

A. Mr. Montoya

Mr. Montoya actions throughout the various matters involving Cody Utley's Estate have been with utter disregard for Cody Utley's only heir and minor child, Thomas Utley. It is particularly worrisome that none of this might have been discovered without Ms. Oakey's diligence in reviewing all the pleadings and materials in this matter in order to make a recommendation to the Court. Further, the problems are so numerous that I am afraid this letter only touches the tip of the iceberg.

In addition to the multiple fabrications conceived by Mr. Montoya, and his complete failure to instruct Ms. Kosec as to how the monies should have been distributed, there are serious problems with the attorneys fees and costs already procured and currently billed in handling these matters. To date, Mr. Montoya has given Ms. Kosec \$138,121.72 in settlement proceeds (life insurance, worker compensation and Bumper to Bumper).¹⁶ None of the money was put into the Estate of Cody Utley or set aside for Thomas Utley's benefit.¹⁷ It has all been spent.

Mr. Montoya received attorneys fees from the Bumper to Bumper settlement in the amount of \$ 41,632.50 or 40%. His first proposal for fees from the Bridgestone/Firestone settlement was likewise for 40% or \$235,125.00.

In addition to the fee issue, the costs that Mr. Montoya deducted are seriously questionable. Mr. Montoya's costs have totaled \$106,591.79 and there is little or no itemization for the costs claimed particularly with regard to the costs for the life insurance and workers compensation

¹⁶ This is out of a total of \$226,290.80 in settlement proceeds from those three entities.

¹⁷ Mr. Vargas was named as the Personal Representative of the Wrongful Death Estate of Cody Utley. Presumably, he was named the Personal Representative in this matter in order to obtain jurisdiction in San Miguel county since none of the acts complained of took place there, and none of the other parties reside there. As the Personal Representative, Mr. Vargas role was to "simply distribute any proceeds obtained in accordance with the statute[]." See Leyba v. Whitely, 120 N.M. 768, 178, 907 P.2d 172, 182 (1995). He did not do so. In fact, Mr. Vargas did nothing except to "defer[] to Mr. Montoya's firm on all matters." Exhibit 1 at page 32, lines 5-15. Yet, the Cost Log indicates that Mr. Vargas was paid \$795.46 as a "Personal Representative fee." Cost Log, Exhibit 24.

I believe there may be violations of the code of professional conduct by Mr. Vargas as well in his capacity as the Personal Representative of the Estate; however, I am focusing this letter on the multitude of issues involving Mr. Montoya and Mr. Adamson only.

Disciplinary Board

January 31, 2008

Page 12

settlements. In addition, there are two particularly troublesome items on Mr. Montoya's Cost Log in this matter. The first is a billing for \$14,977.77 to be paid to BBC Legal Services, Inc. (BBC). Cost Lob, Exhibit 24. Mr. Montoya told Ms. Oakey in a letter that:

I have been unable to reach BCC Legal Services (the entire staff is presently attending various law schools and it is no longer in business) and [I] don't anticipate that I will be able to do so in a timely fashion.

Letter from Montoya to Oakey dated October 19, 2007, Exhibit 2. Ms. Oakey has learned that BCC is Brandon Cummings, the "Litigation Paralegal" in Mr. Montoya's office who signed numerous correspondence in this case as well as the First Agreement on behalf of Mr. Montoya. It is my understanding that Mr. Cummings, who is not a lawyer, also attended several depositions on behalf of Mr. Montoya. Mr. Montoya's statement that he is unable to reach Mr. Cummings is a complete misrepresentation. Mr. Cummings is currently a first year law student at UNM and continues to work for Mr. Montoya. In fact, Mr. Cummings attended the hearing regarding approval of the settlement on December 3, 2007.

Second, the Cost Log indicates a bill for \$40,061.61 to be paid to Robert Sandoval, a private investigator. Cost Log, Exhibit 24. When the GaL asked Mr. Montoya for a copy of an itemized statement for Mr. Sandoval's bill, Mr. Montoya told her that he was unsure where Mr. Sandoval was, that he had no current phone number and that he was "nowhere to be found." Mr. Montoya then called Ms. Oakey several weeks later and told her that he had found a phone number for Mr. Sandoval and had called him a couple of times but that Mr. Sandoval was "dodging" his calls. It is somewhat incomprehensible that a person who is owed over \$40,000.00 is "dodging" phone calls. Interestingly, Ms. Oakey finally got hold of Mr. Sandoval and he stated that he was not able to locate the original itemized billing form because "the computer used during that time period had a virus and the information contained in it is lost."¹⁸ Letter from Robert Sandoval to Kathleen Oakey dated December 13, 2007, Exhibit 25.

I am very concerned about Mr. Montoya's actions in the state district court case and in the Prudential Life, Probate and Workers Compensation proceedings. This is a situation where a minor had no protection from his lawyers and lost virtually all the money due him as a result of the unfortunate death of his father. Minors are often the ones most in need of protection in our legal system and I am concerned about Mr. Montoya's lack of regard for this minor client's rights and welfare. Indeed, Mr. Montoya has shown a disregard for the legal system, including the courts, other

¹⁸ Mr. Sandoval was, however, apparently able to recreate an itemized statement and "re-adjusted" billing invoice for an amount significantly less than the \$40,061.61 previously billed. Exhibit 25 (setting the new bill for \$17,951.62). I have asked the GaL to get supporting documentation for Mr. Sandoval's newly-created bill as there are more questions than answers in the itemized statement.

Disciplinary Board

January 31, 2008

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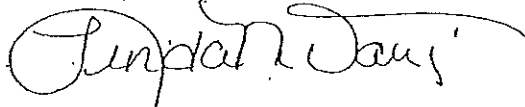
attorneys, and clients he supposedly represents. Further, Mr. Montoya's moral judgment and sense of ethics in protecting the interests of ten year old Thomas Utley is, at the very least, questionable.

B. Ron Adamson, Esq.

Mr. Adamson has acted in concert with Mr. Montoya with regard to all matters in the probate matter and in the Vargas et al. v. Bridgestone/Firestone case. He was listed as co-counsel on the case and is presumed to have agreed to all actions taken and pleadings filed by Mr. Montoya.

I am attaching copies of all the documents referenced in this letter as well as others that may be relevant to your inquiry. I appreciate your prompt attention to this matter. Please feel free to contact me if you have any questions or concerns. If the Board would like the names of the attorneys involved in these various proceedings or if it needs additional documentation, please let me know.

Sincerely,



LINDA M. VANZI
District Court Judge

Enclosures

FOURTH JUDICIAL DISTRICT
COUNTY OF SAN MIGUEL
STATE OF NEW MEXICO

Arthur E. Vargas, as Personal Representative of
the Wrongful Death Estate of Cody Utley, Tresa Kosec
Individually, Briona Kosec, Individually, Thomas Utley,
Individually, David Plotsky, as guardian Ad Litem for
Craig Hopkins, and Tina Lucero, Individually.

Plaintiffs,

v.

CV-2004-445

Bridgestone/Firestone, Inc., a foreign
corporation, f/k/a The Firestone Tire and
Rubber Company, and Bumper to Bumper Auto
Salvage, a New Mexico corporation and/or
sole proprietorship.

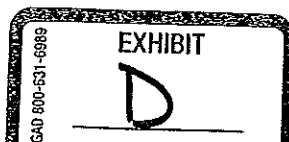
Defendants.

Petition for Forfeiture of Fees and Disgorgement of Fees Received

Kathleen Oakey, on behalf of Thomas Utley, the sole heir to the Estate of Cody Utley, by and
through attorney William Riordan, files this "Petition for Forfeiture of Fees and Disgorgement of
Fees Received" and states:

Petitioner's Appointment

1. Kathleen M.V. Oakey is an attorney licensed to practice law in the State of New Mexico.
2. Kathleen M.V. Oakey (hereafter "petitioner") was appointed as Guardian Ad Litem by the
Honorable Linda Vanzi, District Judge, on September 14, 2007 to investigate the settlement reached
in this case against defendant Bridgestone/Firestone Inc., on behalf of Thomas Utley, a minor, and
the sole heir of Cody Utley. Cody Utley died in an automobile accident on November 5th 2002, near
Tucumcari, N.M. Petitioner was appointed as Conservator of the Estate of Thomas Utley on
December 12, 2007.
3. After undertaking her investigation, petitioner became aware of certain actions taken by
plaintiffs' attorneys that were inappropriate and in violation of New Mexico law and New Mexico
and Supreme Court Rules.
4. Subsequently, at the direction of the court, petitioner began investigating other claims and
settlements handled by plaintiffs attorneys in an effort to determine the impact on Thomas Utley.



9. In addition, to the litigation listed in paragraph 8 above, Montoya, and perhaps Adamson, undertook the following representation of Kosec:

a. Claim for life insurance benefits from Prudential Financial (policy purchased by Cody Utley's employer, Key Energy Services, Inc.), on behalf of the estate of Cody Utley.

b. Worker's compensation claim "In the Estate of Cody Utley (deceased) v. Key Energy Services, Inc, and Liberty Mutual Ins. Co. WCA No. 03-06594", seeking benefits due to the death of Cody Utley.

10. It is not known to Petitioner at this point whether Adamson participated in, or accepted fees from the workers compensation case that was handled by Montoya, or whether he was involved in obtaining the life insurance proceeds.

11. Montoya and Adamson negotiated a settlement of the claim against Bumper to Bumper Auto Salvage in this case, and it is believed that Vargas, as Personal Representative, signed a release of all claims of the plaintiffs, including the Estate of Cody Utley, and the individual claim of Thomas Utley, apparently without obtaining compensation for Thomas Utley's claim.

12. Montoya transferred settlement funds to Tresa Kosec from the Bumper to Bumper settlement without obtaining court approval of the settlement, and without any instructions as to what Tresa Kosec was to do with the funds, if there were funds for Thomas Utley's, or the claims of the Estate.

13. Montoya and Adamson should have obtained court approval as to Thomas Utley's share of the recovery since he was a minor.

14. Montoya and Adamson also negotiated a settlement of the claims against Bridgestone/Firestone Tire and Rubber Company in this case.

Investigation of Bridgestone/Firestone Settlement

15. During petitioner's investigation of the Brigestone/Firestone settlement as Guardian Ad Litem, attorney Dennis Montoya misrepresented pertinent facts to the petitioner, including but not limited to:

- a. Cody Utley and Tresa Kosec's marital status;
- b. The number and identity of Cody Utley's heirs;
- c. The validity and value of certain individual claims;
- d. The availability of documents;
- e. The designation of the Prudential Financial life insurance policy beneficiary.

Mr. Montoya was, likewise, uncooperative and unresponsive and has refused to provide documents

that petitioner needs to complete her work directed by the court. As of the date of filing this Petition, Dennis Montoya has not made an accounting of the costs of this representation even though New Mexico law and Supreme Court Rules require that he do so.

Breach of Fiduciary Duty by Attorney Dennis Montoya

16. Petitioner believes that Dennis Montoya breached his fiduciary duty to Thomas Utley, and to the Estate of Cody Utley, in at least the following respects:

a. Misrepresenting that Tresa Kosec was the "wife", and Briona Kosec was the "daughter", of Cody Utley in the "Application for Informal Appointment of Personal Representative" filed on March 18, 2003 in the cause of action entitled "In The Matter of the Estate of Cody Utley, Deceased", No PB 2003-18-6 (Eleventh Judicial District), and in the order obtained from the Court in that matter.

b. Obtaining insurance proceeds from Prudential Financial on behalf of the Estate of Cody Utley payable to Tresa Kosec as Personal Representative of the Estate without informing Tresa Kosec that they were to be used for the sole heir of the estate, Thomas Utley.

c. Failed to inform Tresa Kosec that she and her daughter Briona were not statutory heirs of the Estate of Cody Utley.

d. Representing to the Workers Compensation Administration that Briona was Cody Utley's "daughter".

e. Obtaining, and conveying, the proceeds of the workers compensation settlement to Tresa Kosec without informing Tresa Kosec that the proceeds were solely for the benefit of Thomas Utley, the statutory heir to the estate of Cody Utley.

f. Misrepresenting to the Court, when obtaining the appointment of Arthur Vargas as the Personal Representative of the Wrongful Death Estate of Cody Utley, that Tresa Kosec was the "wife" of Cody Utley, and Briona was Cody Utley's "daughter".

g. Negotiating settlements with Bumper to Bumper and Bridgestone/Firestone on behalf of the wrongful death estate of Cody Utley and Thomas Utley's claim for loss of consortium, (or "loss of guidance and counseling"), while at the same time negotiating a loss of consortium claim of Tresa Kosec, and attempting to obtain a settlement for Briona, Tresa Kosec's daughter.

h. Not obtaining court approval of the Bumper to Bumper settlement.

i. Not informing Tresa Kosec that Thomas Utley's portion of the Bumper to Bumper settlement was to be used for the sole benefit of Thomas Utley.

that petitioner needs to complete her work directed by the court. As of the date of filing this Petition, Dennis Montoya has not made an accounting of the costs of this representation even though New Mexico law and Supreme Court Rules require that he do so.

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f. Misrepresenting to the Court, when obtaining the appointment of Arthur Vargas as the Personal Representative of the Wrongful Death Estate of Cody Utley, that Tresa Kosec was the "wife" of Cody Utley, and Briona was Cody Utley's "daughter".

g. Negotiating settlements with Bumper to Bumper and Bridgestone/Firestone on behalf of the wrongful death estate of Cody Utley and Thomas Utley's claim for loss of consortium, (or "loss of guidance and counseling"), while at the same time negotiating a loss of consortium claim of Tresa Kosec, and attempting to obtain a settlement for Briona, Tresa Kosec's daughter.

h. Not obtaining court approval of the Bumper to Bumper settlement.

i. Not informing Tresa Kosec that Thomas Utley's portion of the Bumper to Bumper settlement was to be used for the sole benefit of Thomas Utley.

j. Failing to insure that all benefits received for Thomas Utley were properly set aside for Thomas' interests.

k. Trying to obtain an excessive portion of the Bridgestone/Firestone settlement for Tresa Utley at the expense of Thomas Utley.

l. Negotiating a settlement that included a claim by Briona Kosec while representing the interests of the Wrongful Death Estate of Cody Utley and Thomas Utley's individual claim for loss of consortium (guidance and counseling).

m. Making a false claim that Tresa Kosec's daughter, Briona was entitled to a settlement from Bridgestone/Firestone.

n. Falsely representing the following to the petitioner, including but not limited to:

1. Tresa Kosec was Cody Utley's common law spouse, through a judicial determination;
2. That Tresa Kosec was the named Beneficiary on Cody Utley's insurance policy;
3. That he did not know how to contact Brandon Cummings, who served as a paralegal in this case.

17. Montoya violated the fiduciary duty that he owed to Thomas Utley, and the fiduciary duty that he owed to the Estate of Cody Utley, of which Thomas Utley was the only heir. Montoya acted with completed disregard of the interests of the Estate of Cody Utley, and of Thomas Utley in making the many misrepresentations that he made during the time that he was representing the interests of Thomas Utley, to the detriment of Thomas Utley.

18. Montoya's breach of fiduciary duty to the estate of Cody Utley and to Thomas Utley, justifies forfeiture of unpaid attorney fees from the Bridgestone/Firestone settlement, as well as disgorgement of fees already received from the Bumper to Bumper settlement, and the workers compensation settlement.

19. Montoya's conduct caused the Guardian Ad Litem to have to spend an inordinate amount of time in her work investigating the settlement because of his actions, and he should be ordered to pay that amount.

Breach of Fiduciary Duties by Attorney Ronald Adamson

20. Based upon information and belief, and by a review of the documents obtained to date, the Petitioner Attorney Ron Adamson breached his fiduciary duty to Thomas Utley, and to the estate of

Cody Utley, in at least the following manner:

a. Misrepresenting that Tresa Kosec was the “wife”, and Briona Kosec was the “daughter” of Cody Utley, in the “Application for Informal Appointment of Personal Representative” filed on March 18, 2003 In The Matter of the Estate of Cody Utley, Deceased, No. PB 2003-18-6 (Eleventh Judicial District), and in the order obtained from the court in that matter.

b. Misrepresenting to the court in the petition for the appointment of Arthur Vargas as the Personal Representative of the Estate of Cody Utley, in this cause that Tresa Kosec was the “wife” of Cody Utley, and Briona was Cody Utley’s “daughter”.

c. Failed to inform Tresa Kosec that she and her daughter Briona were not statutory heirs of the Estate of Cody Utley.

d. Negotiating settlements with Bumper to Bumper and Bridgestone/Firestone on behalf of the wrongful death estate of Cody Utley and Thomas Utley’s claim for loss of consortium, (or “loss of guidance and counseling”), while at the same time negotiating a loss of consortium claim of Tresa Kosec, and attempting to obtain a settlement for Briona, Tresa Kosec’s daughter.

e. Not obtaining court approval of the Bumper to Bumper settlement.

f. Not informing Tresa Kosec that Thomas Utley’s portion of the Bumper to Bumper settlement was to be used for the sole benefit of Thomas Utley.

g. Failing to insure that all benefits received for Thomas Utley were properly set aside for Thomas’ interests.

h. Trying to obtain an excessive portion of the Bridgestone/Firestone settlement for Tresa Utley at the expense of Thomas Utley.

i. Negotiating a settlement that included a claim by Briona Kosec while representing the interests of the Wrongful Death Estate of Cody Utley and Thomas Utley’s individual claim for loss of loss of consortium (guidance and counseling).

j. Making a false claim that Tresa Kosec’s daughter, Briona was entitled to a settlement from Bridgestone/Firestone.

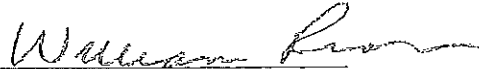
21. Adamson violated the fiduciary duty that he owed to Thomas Utley, and the fiduciary duty that he owed to the Estate of Cody Utley, of which Thomas Utley was the only heir. Adamson acted with completed disregard of the interests of the Estate of Cody Utley, and of Thomas Utley in making the misrepresentations that he made during the time that he was representing the interests of Thomas Utley, to the detriment of Thomas Utley.

22. Adamson's breach of fiduciary duty to the estate of Cody Utley and to Thomas Utley, justifies forfeiture of unpaid attorney fees from the Bridgestone/Firestone settlement, as well as disgorgement of fees already received from the Bumper to Bumper settlement, and any fees that he may have received from the workers compensation settlement.

Wherefore, Petitioner requests that the court:

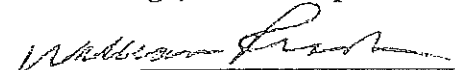
1. Determine the proper percentage fee that would ordinarily be paid under the Representation Agreement(s) signed in this matter.
2. Determine the appropriate gross receipts tax that would be due.
3. Determine whether any further litigation costs should be paid and the amount(s) due.
4. Determine what amount of the fee of the Guardian Ad Litem should be paid due to the failure, or refusal, of Montoya, and Adamson, to turn over documents necessary to make that determination.
5. Determine whether attorney's fees should be forfeited and the amount to be forfeited.
6. Determine whether fees already paid should be disgorged, by which attorney, and in what amount(s).

Respectfully,



William Riordan
Attorney for Kathleen M.V. Oakey
Guardian Ad Litem for Thomas Utley, and
Conservator for the Estate of Thomas Utley
2740 Rio Grande NW
Albuquerque, NM 87104
(505) 255-9300

I certify that a copy of this petition was mailed this 3rd day of April, 2008, to attorneys Dennis Montoya, Ronald Adamson, Arthur Beach, Arthur Vargas, Joe Wosick, Charles Vigil, and Seth Sparks.



William Riordan

LAW OFFICE OF
WILLIAM F. RIORDAN
 2740 Rio Grande NW
 ALBUQUERQUE, NEW MEXICO 87104

WILLIAM F. RIORDAN
 ATTORNEY AT LAW
 FORMER CHIEF JUSTICE
 NEW MEXICO SUPREME COURT

TELEPHONE (505) 255-9300
 FAX (505) 243-7947
 Website: wriordan.com
 Email: wriordan@wriordan.com

April 22, 2008

Mr. Charles Vigil, Esq.
 Rodey Law Firm
 P.O. Box 1888
 Albuquerque, NM 87103

Via fax 768-7395

Re: Vargas v. Bumper to Bumper and Bridgestone/Firestone

Dear Mr. Vigil;

Yesterday you called me to tell me that you were thinking about asking Judge Vanzi to recuse herself from this case because she allegedly made a referral to the New Mexico Disciplinary Board concerning Mr. Montoya's conduct in this case. You also said that you were thinking about filing a motion to disqualify, which of course is a very serious matter. You stated that if you decided to proceed you would give me "what I have".

I received your telephone message when I returned from my mediation this afternoon. As I told you yesterday, I am not available at 9:00 a.m. or 4:00 p.m. tomorrow (April 23rd) for a meeting with Judge Vanzi, as I have a previously scheduled full day mediation.

Last night I researched the Supreme Court Rules concerning referral to the disciplinary board. I do not think that her referral to the disciplinary board, assuming there was a referral, creates a duty to recuse, or establishes grounds for disqualification, but reasonable persons may disagree. Rule 21-300 D(2) of The Code of Judicial Conduct states that she should refer the matter, if she has certain information.

Also, today I received your responses to the discovery in Oakey v. Montoya. I have come to believe that for whatever reason, your client is only interested in delay.

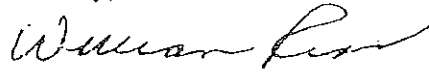
Since I have not seen "what you have", nor have I seen the letter that Judge Vanzi sent to the disciplinary board, I am assuming that there is nothing in the letter that requires her recusal. You



informed me yesterday that if you were going to approach the Judge, you would furnish me with what you have first. I am not interested in being involved in a discussion with you and the Judge where you and she know what you are talking about and I am in the dark. If there is information that require her recusal, I am sure you would have shared it.

I am not interested in any meeting with the Judge in which you try to intimidate, or cajole her into recusing, and think such a meeting would be improper. If you believe that you have grounds for disqualification, you should file your motion.

Sincerely,



William Riordan

ENDORSED
FILED IN MY OFFICE THIS
APR 04 2008
Quantita M. Duran
CLERK DISTRICT COURT
LOURDES PEREZ

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

MICHAEL ANGELO PADILLA,

Plaintiff,

vs.

No. CV 2007-07860

RON TORRES, MATT ALLEN, and
BERNALILLO COUNTY METROPOLITAN
DETENTION CENTER,

Defendant.

RECUSAL

COMES NOW Linda M. Vanzi, District Judge for Division IV, Second Judicial District,
County of Bernalillo and State of New Mexico, and hereby recuses herself from presiding over the
above-captioned cause.

DATED: April 4, 2008

LINDA M. VANZI

LINDA M. VANZI
DISTRICT JUDGE - DIVISION IV

I HEREBY CERTIFY that a copy of the foregoing was mailed to parties listed on attached
sheet on the date of filing.

BRANDY FISHEL

BRANDY FISHEL
Trial Court Administrative Assistant

Michael Angelo Padilla
100 John Dantis Rd. SW
Albuquerque, NM 87151

Dennis W. Montoya
P.O. Box 15235
Rio Rancho, NM 87174-0235

RECEIVED
APR 07 2008
LAW OFFICES OF
DENNIS W. MONTOYA

EXHIBIT
F
FENGAD 800-831-6888