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6 Defendants In Pro Se

FILED
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LAW OFFICE
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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 RICHARD W. LEWIS, PhD.,
10 Plaintiff,
11 v.
12 LINDA DUFF and TYRONE DUFF,
13 Defendants.

Case No. CV-N-99-386-ECR(RAM)
MOTION FOR THE DISQUALIFICATION AND
RECUSAL OF UNITED STATES DISTRICT
JUDGE EDWARD C. REED, JR. AND
UNITED STATES MAGISTRATE JUDGE
ROBERT A. MCQUAID, JR., PURSUANT TO
28 U.S.C. §455 (a)(b)(1)

14 COMES NOW, Defendants, TYONE DUFF and LINDA DUFF (hereinafter the "Duff
15 Defendants"), In Pro Se, file their Motion for the Disqualification and Recusal
16 of United States District Judge Edward C. Reed, Jr. and United States
17 Magistrate Judge Robert A. McQuaid, Jr., pursuant to 28 U.S.C. §455 (a)(b)(1)
18 for their bias and/or prejudice against the Duff Defendants. This motion is
19 based on the following Memorandum of Points and Authorities, exhibits and
20 affidavit attached hereto and all pleadings, exhibits and affidavits filed
21 herein.

22 DATED this 8th day of September, 2003.

23 By: 
TYRONE DUFF

24
25 By: 
26 LINDA DUFF

27 Defendants In Pro Se
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

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4 The Duff Defendants' Motion is filed pursuant to 28 U.S.C. §455(a)(b)(1)
5 for the disqualification and recusal of United States District Judge Edward C.
6 Reed, Jr. and United States Magistrate Judge Robert A. McQuaid, Jr. for their
7 "BIAS and/or PREJUDICE" against the Duff Defendants based on the facts set forth
8 herein and the exhibits attached hereto, making it impossible for them to obtain
9 a fair and impartial administration of justice.

10 United States District Judge Edward C. Reed, Jr. and United States
11 Magistrate Judge Robert A. McQuaid, Jr. knowingly and unlawfully violated the
12 doctrine of res judicata and deprived the Duff Defendants of their rights by
13 relitigating and readjudicating the "same cause of action" they dismissed with
14 prejudice in their Order (Doc.#139) filed July 12, 2001 for the "second time"
15 in their Order (Doc.#232) filed July 5, 2002 and again for the "third time" in
16 their Order (Doc.#299) filed July 10, 2003. Without a "cause of action, tort
17 action and any State Defendants" remaining in the Plaintiff's Second Amended
18 Complaint (Doc.#74) that was not dismissed with prejudice in the Orders- Doc.
19 #139 and Doc.#232, this court entered a default against the Duff Defendants on
20 behalf of the Plaintiff, Richard W. Lewis, PhD., in its' Order (Doc.#299). This
21 Court's Orders- Doc.#139, Doc.#232 and Doc.#299, are attached hereto as
22 Exhibits "1", "2" and "3", more than produces District Judge Reed's and
23 Magistrate Judge McQuaid's "bias and/or prejudice" against the Duff Defendants,
24 in which their predisposition to decide a cause or issue a certain way in favor
25 of the Plaintiff in violation of their sworn oath of office does not leave
26 their minds perfectly open to conviction, which sways judgment and renders
27 them unable to exercise their functions impartially in this case.

28 ////

1 Which refers to the mental attitude or disposition of District Judge Reed
2 and Magistrate Judge McQuaid towards the Duff Defendants, parties to the
3 litigation and not to any views that they may entertain regarding the subject
4 matter involved.

5 II.

6 LAW AND ARGUMENT

7 The United States Supreme Court held that "Disqualification is required
8 if an objective observer would entertain reasonable questions about the judge's
9 impartiality. If a judge's attitude or state of mind leads a detached observer
10 to conclude that a fair and impartial hearing is unlikely, the judge must be
11 disqualified." Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994). (Emphasis added).

12 District Judge Reed and Magistrate Judge McQuaid relitigated and
13 readjudicated the "same cause of action" in the Order (Doc.#139) filed July 12,
14 2001 in their Order (Doc.#232) for the "second time" and in their Order (Doc.
15 #299) for the "third time", which is barred by the doctrine of res judicata
16 that would more than cause an objective observer to entertain reasonable
17 questions about District Judge Reed's and Magistrate Judge McQuaid's
18 impartiality and their attitude and/or state of mind towards the Duff
19 Defendants would more than lead a detached observer to conclude it is
20 impossible for a fair and impartial hearing to take place. The court stated
21 that Section 455(a) "requires a judge to recuse himself in any proceeding in
22 which his impartiality might reasonably be questioned." Taylor v. O'Grady, 888
23 F.2d 1189 (7th Cir. 1989). The right to a tribunal free from bias or prejudice
24 is based not on Section 144, but on the Due Process Clause. United States v.
25 Sciuto, 521 F.2d 842, 845 (7th Cir. 1996). Courts have repeatedly held that
26 positive proof of the partiality of a judge is not a requirement, only the
27 appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486
28 U.S. 847, 108 S.Ct. 2194 (1988).

1 What matters is not the reality of bias or prejudice but its appearance.
2 Section 455(a) "is directed against the appearance of partiality, whether or
3 not the judge is actually bias." Section 455(a) of the Judicial Code, 28 U.S.C.
4 §455(a), is not intended to protect litigants from actual bias in their judge
5 but rather to promote public confidence in the impartiality of the judicial
6 process. United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985). The
7 Seventh Circuit Court of Appeals further stated that "We think that this
8 language [455(a)] imposes a duty on the judge to act sua sponte, even if no
9 motion or affidavit is filed." Balistrieri, at 1202.

10 The Order (Doc.#139) filed July 12, 2001 dismissed Defendant, State of
11 Nevada with prejudice, pursuant to N.R.S. 41.0337 and N.R.S. 41.031. The Order
12 (Doc.#139) dismissed all the State Defendants and the Plaintiff's "cause of
13 action under color of State law" with prejudice, which dismissed the
14 Plaintiff's Second Amended Complaint (Doc.#74) in its entirety under 42 U.S.C.
15 §1983, including against the Duff Defendants, with prejudice. The doctrine of
16 res judicata precludes a review of the Order (Doc.#139) by this court. Under
17 this doctrine, parties are precluded from relitigating a "cause of action"
18 which has been finally determined by a court of competent jurisdiction.
19 Horvath v. Gladstone, 97 Nev. 594, 596 (1981). Furthermore, the Plaintiff is
20 bound by the results of the Order. Paradise Palms Community Ass'n v. Paradise
21 Homes, 98 Nev. 27 (1981).

22 District Judge Reed's and Magistrate Judge McQuaid's Orders- Doc.#132,
23 Doc.#149, Doc.#216 and Doc.#221, unlawfully suppressed evidentiary facts and
24 exculpatory evidence which is not privileged but relevant to the subject
25 matter involved in the Plaintiff's complaint, that is essential to the Duff
26 Defendants defense. Pursuant to F.R.C.P. 26(b) Discovery Scope and limits
27 provide that parties may obtain discovery regarding any matter, not privileged,
28 which is relevant to the subject matter involved in the pending action.

1 All of which produces the fact, District Judge Reed and Magistrate Judge McQuaid
2 knowingly and willfully "obstructed justice" and deprived the Duff Defendants
3 of their Constitutional and Civil Rights under color of law, with willful and
4 malicious intent in their Orders- Doc.#132, Doc.#149, Doc.#216 and Doc.#221-
5 attached hereto as Exhibits "4", "5", "6" and "7".

6 A copy of District Judge Reed's Judgment entered on July 8, 2003 (Doc.#233)
7 attached hereto as Exhibit "8", states:

8 "Decision by Court. This action came to be considered before the
9 Court. The issues have been considered and a decision had been
10 rendered.

11 IT IS ORDERED AND ADJUDGED THAT THE MOTION FOR SUMMARY JUDGMENT
12 (#177) IS GRANTED."

13 A copy of District Judge Reed's Order (Doc.#267) filed September 23, 2003
14 titled "Willingness to Reconsider" with no motions filed requesting his
15 reconsideration on anything, is attached hereto as Exhibit "9", in which he
16 states:

17 "Upon review of the files in this case, it appears that our order
18 (#232) is incorrect insofar as it ordered that judgment be entered
19 in the action. Our order (#232) grants summary judgment as to all
20 remaining defendants except for the defendants, the Duffs. It
21 appears that the action has not been terminated as to the defendants,
22 the Duffs. Therefore, our order (#232) is otherwise correct. The
23 judgment should be vacated. A copy of this order shall be transmitted
24 by the Clerk of the Court of Appeals in connection with the pending
25 appeals."

26 District Judge Reed, at all times relevant hereto, had full knowledge he
27 dismissed the Plaintiff's cause of action, tort action and all State Defendants
28 in his Order (Doc.#139) filed July 12, 2001 and again one (1) year later in his
29 Order (Doc.#232) filed July 5, 2002 through his relitigation and readjudication
30 of the "same cause of action" in the Order (Doc.#139), that was barred by the
31 doctrine of res judicata. Producing the fact his Order (Doc.#267) filed
32 September 23, 2003 is "FRAUD ON THE COURT".

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1 A copy of Mr. Mirch's "registered letter" to the Duff Defendants, dated
2 May 10, 1999, "sixty (60) days" prior to filing the Plaintiff's complaint on
3 July 16, 1999 against the Duff Defendants, attached hereto as Exhibit "10", in
4 which Mr. Mirch states the following:

5 "Second, I have been retained to review your conduct for the last
6 several years and am concerning legal action against both of you.
7 In that regard, it is the opinion of this firm that your conduct
8 has abused the legal process specifically for an improper purpose
9 (i.e., to gain custody of Mr. Duff's children and to further a
civil action against Dr. Lewis). Your statements to third parties
concerning my client's veracity are actionable as libel per se
and therefore actionable. Please cease and desist from such conduct."

10 Mr. Mirch's registered letter produces absolutely no actionable conduct
11 against the Duff Defendants for a redress under 42 U.S.C. §1983 on behalf of
12 the Plaintiff, Richard W. Lewis, PhD.. Which states Mr. Mirch knowingly and
13 fraudulently filed a false and fabricated complaint against the Duff Defendants
14 on July 16, 1999, on behalf of the Plaintiff, Richard W. Lewis, PhD., with
15 willful and malicious intent. Mr. Mirch's registered letter has been before
16 this court since March 28, 2002, attached to Doc.#224, in which this court
17 entered a false default against the Duff Defendants in its' Order (Doc.#299)
18 with full knowledge the Plaintiff's complaint (Doc.#74) against the Duff
19 Defendants was dismissed in its entirety with prejudice in the Order (Doc.#139)
20 and again in the Order (Doc.#232).

21 Mr. Mirch's registered letter produces the fact the Plaintiff, Richard W.
22 Lewis, PhD., knowingly and willfully committed "perjury" in his affidavit
23 attached to his "Points and Authorities Regarding Damages" (Doc.#302) filed
24 August 4, 2003, attached hereto as Exhibit "11". It also states the Law Office
25 of Kevin J. Mirch, Esq. participated in the "subornation of perjury" of the
26 Plaintiff. Including but not limited to this Court's Orders Doc.#139, Doc.#232
27 and Doc.#299) and Mr. Mirch's registered letter produces the fact of this
28 Court's participation in "subornation of perjury" of the Plaintiff.

1 The United States Supreme Court has held "No judicial officer can war
2 against the Constitution without violating his undertaking to support it."
3 Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

4 The United States Supreme Court in Scheuer v. Rhodes, 416 U.S. 232, 94
5 S.Ct. 1683, 1687 (1974) held "when a state officer acts under a state law in a
6 manner violative of the Federal Constitution, he "comes into conflict with the
7 superior authority of that Constitution, and he is in that case stripped of his
8 official or representative character and is subjected in his person to the
9 consequences of his individual conduct. The State has no power to impart to
10 him any immunity from responsibility to the supreme authority of the United
11 States." (Emphasis added).

12 This does not only pertain to the Nevada Attorney General's Office and
13 State Defendants but also to Federal Judges.

14 III.

15 CONCLUSION

16 This Court's manifest of "BIAS and/or PREJUDICE" against the Duff
17 Defendants is evident to the senses, especially to the sight obvious to the
18 understanding, evident to the mind, not obscure or hidden, and is synonymous
19 with open, clear, visible, unmistakable, indubitable, indisputable, evident,
20 and self-evident. In evidence, that which is clear and requires no proof; that
21 which is notorious.

22 Mr. Mirch's "registered letter" dated May 10, 1999, more than produces
23 the fact of his and the Plaintiff's malicious abuse of the legal process in
24 which this Court knowingly and willfully participated , for the sole purpose
25 to frame the Duff Defendants with a false complaint, to procure personal gain
26 through "EXTORTION UNDER COLOR OF OFFICE" forbidden by law.

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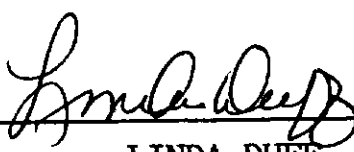
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The Constitution and Laws of the United States pursuant to 28 U.S.C. §455 (a)(b)(1) demands the disqualification and recusal of United States District Judge Edward C. Reed, Jr. and United States Magistrate Judge Robert A. McQuaid, Jr. in the above entitled matter before the United States District Court, District of Nevada on the bases of their "BIAS and/or PREJUDICE" as set forth herein against the Duff Defendants, making it impossible for them to obtain a fair and impartial administration of justice.

DATED this 8th day of September, 2003.

By: 
TYRONE DUFF

By: 
LINDA DUFF

P.O.Box 2512
Bellingham, WA. 98225
(360)752-1775


Defendants In Pro Se

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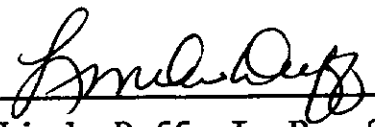
CERTIFICATE OF MAILING

The undersign hereby certifies that on the 9th day of September, 2003 they mailed a true copy of the forgoing MOTION FOR THE DISQUALIFICATION AND RECUSAL OF UNITED STATES DISTRICT JUDGE EDWARD C. REED, JR. AND UNITED STATES MAGISTRATE JUDGE ROBERT A. MCQUAID, JR., PURSUANT TO 28 U.S.C. §455(a)(b)(1) with affidavit and exhibits attached hereto in case no. CV-N-99-386-ECR(RAM) to the following party:

Kevin J. Mirch, Esq.
201 W. Liberty St., Suit 201
P.O.Box 5396
Reno, Nevada 89513



Tyrone Duff, In Pro Se



Linda Duff, In Pro Se

1 Tyrone Duff
Linda Duff
2 P.O.Box 2512
Bellingham, WA. 98225
3 Telephone: (360)752-1775

4 Defendants In Pro Se

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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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9 RICHARD W. LEWIS, PhD.,
Plaintiff,
10 v.
11 LINDA DUFF and TYRONE DUFF,
12 Defendants.

} Case No. CV-N-99-386-ECR(ARM)
} AFFIDAVIT OF TYRONE DUFF AND LINDA
} DUFF IN SUPPORT OF THEIR MOTION FOR
} THE DISQUALIFICATION AND RECUSAL OF
} UNITED STATES DISTRICT JUDGE EDWARD
} C. REED, JR. AND UNITED STATES
} MAGISTRATE JUDGE ROBERT A. MCQUAID,
} JR., PURSUANT TO 28 U.S.C. §455
} (a)(b)(1)

13

14 STATE OF WASHINGTON)
15 COUNTY OF WHATCOM) ss.

16 I, TYRONE DUFF and LINDA DUFF, being first duly sworn and under the
17 penalty of perjury, does make this statement to the Court as follows:

18 1. Affiants are over the age of eighteen and are otherwise competent to
19 testify as to the matters set forth herein.

20 2. Affiants are a party to this action and are familiar with the facts
21 within.

22 3. All statements made by these affiants in their Motion for the
23 disqualification and recusal of United States District Judge Edward C. Reed, Jr
24 and United States Magistrate Judge Robert A. McQuaid, Jr. are true and correct
25 to the best of our knowledge, belief and are supported by all the pleadings,
26 orders and affidavits filed herein.

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4. All Exhibits attached to Affiants' Motion are filed in the above entitled matter and are true copies.

5. Affiant swears under the penalty of perjury the foregoing is true and correct.

DATED this 8th day of September, 2003.




TYRONE BUFF



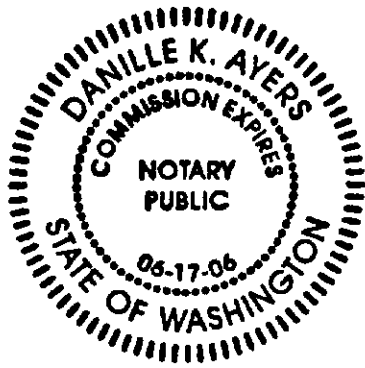
LINDA DUFF

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

SUBSCRIBED and SWORN to before me,
this 8th day of September, 2003.



NOTARY PUBLIC



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

FILED
01 JUL 19 PM 11:25
BY: [Signature]

RICHARD W. LEWIS, PhD.,
vs.
ELIZABETH RICHITT, PhD, ET AL.
CV-N-99-0386-ECR-RAM
MINUTES OF THE COURT
DATE: July 12, 2001

PRESENT: EDWARD C. REED, JR. U.S. DISTRICT JUDGE
DEPUTY CLERK: Uma L. Rose REPORTER: NONE APPEARING
COUNSEL FOR PLAINTIFF (S): NONE APPEARING
COUNSEL FOR DEFENDANT (S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

On May 1, 2001, defendant the State of Nevada filed a motion to dismiss (#111) on the basis that the State is not a person for purposes of 42 U.S.C. § 1983, Eleventh Amendment immunity bars the suit against the State, and the State did not waive its sovereign immunity as to Richard W. Lewis's ("plaintiff") claim.

On June 8, 2001, plaintiff filed a response, indicating his agreement that the State is not a person for purposes of section 1983. On June 13, 2001, the State of Nevada filed a reply, indicating that based on that agreement, it should be dismissed, with prejudice.

IT IS THEREFORE HEREBY ORDERED THAT, the motion to dismiss (#111) is GRANTED. The State of Nevada is dismissed, with prejudice, from this action.

LANCE S. WILSON, CLERK

By: Uma L. Rose
Deputy Clerk

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U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED

JUL - 8 2002

CLERK, U.S. DISTRICT COURT
BY DR DEPUTY

U.S. DISTRICT COURT
DISTRICT OF NEVADA
FILED

JUL - 5 2002

CLERK, U.S. DISTRICT COURT
BY DR DEPUTY

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

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RICHARD W. LEWIS, Ph.D.,

Plaintiff,

v.

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ELIZABETH RICHITT, RICHARD WEIHER,
DAVID ANTONUCCIO, LOUIS MORTILLARO,
DENNIS ORTWEIN, CHRISTA PETERSON,
STATE OF NEVADA BOARD OF
PSYCHOLOGICAL EXAMINERS, LINDA
DUFF, TYRONE DUFF,
Defendants.

CV-N-99-0386-ECR-RAM

ORDER

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I. Background

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This case is based upon the compliant filed against Dr. Lewis by Mr. Tyrone Duff arising out of Dr. Lewis's testimony at Mr. Duff's child custody hearings. Dr. Lewis claims that various members of the Nevada Board of Psychological Examiners and members of the Nevada Attorney General's office conspired together to induce Mr. Duff to file his complaint, which Dr. Lewis claims was false. This conspiracy is alleged to have violated Dr. Lewis's

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1 civil rights under 42 U.S.C. § 1983. The remaining defendants
2 filed a motion for summary judgment (#177) claiming that Dr. Lewis
3 could not demonstrate any constitutional deprivation, and,
4 therefore, could not state a claim under section 1983. Dr. Lewis
5 opposed (#205) and the defendants replied (#206).

6 II DISCUSSION

7 A. Summary Judgment Standard

8
9 Summary judgment allows courts to avoid unnecessary
10 trials where no material factual dispute exists. Northwest
11 Motorcycle Ass'n v. U.S. Department of Agriculture, 18 F.3d 1468,
12 1471 (9th Cir. 1994). The court must view the evidence and the
13 inferences arising therefrom in the light most favorable to the
14 nonmoving party, Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir.
15 1996), and should award summary judgment where no genuine issues
16 of material fact remain in dispute and the moving party is
17 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
18 Judgment as a matter of law is appropriate where there is no
19 legally sufficient evidentiary basis for a reasonable jury to find
20 for the nonmoving party. Fed. R. Civ. P. 50(a). Where reasonable
21 minds could differ on the material facts at issue, however,
22 summary judgment should not be granted. Warren v. City of
23 Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 116
24 S.Ct. 1261 (1996).

1 The moving party bears the burden of informing the court
2 of the basis for its motion, together with evidence demonstrating
3 the absence of any genuine issue of material fact. Celotex Corp.
4 v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has
5 met its burden, the party opposing the motion may not rest upon
6 mere allegations or denials in the pleadings, but must set forth
7 specific facts showing that there exists a genuine issue for
8 trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).
9 Although the parties may submit evidence in an inadmissible form--
10 namely, depositions, admissions, interrogatory answers, and
11 affidavits--only evidence which might be admissible at trial may
12 be considered by a trial court in ruling on a motion for summary
13 judgment. Fed. R. Civ. P. 56(c); Beyene v. Coleman Security
14 Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988).

16 In deciding whether to grant summary judgment, a court
17 must take three necessary steps: (1) it must determine whether a
18 fact is material; (2) it must determine whether there exists a
19 genuine issue for the trier of fact, as determined by the
20 documents submitted to the court; and (3) it must consider that
21 evidence in light of the appropriate standard of proof. Anderson,
22 477 U.S. at 248. Summary judgement is not proper if material
23 factual issues exist for trial. B.C. v. Plumas Unified Sch.
24 Dist., 192 F.3d 1260, 1264 (9th Cir. 1999). As to materiality,
25

1 only disputes over facts that might affect the outcome of the suit
2 under the governing law will properly preclude the entry of
3 summary judgment. Disputes over irrelevant or unnecessary facts
4 should not be considered. Id. Where there is a complete failure
5 of proof on an essential element of the nonmoving party's case,
6 all other facts become immaterial, and the moving party is
7 entitled to judgment as a matter of law. Celotex, 477 U.S. at
8 323. Summary judgment is not a disfavored procedural shortcut,
9 but rather an integral part of the federal rules as a whole. Id.

10
11 **B. Section 1983**

12 Section 1983 creates a cause of action against a person
13 who, acting under the color of state law, deprives another of
14 rights guaranteed under the Constitution. 42 U.S.C. § 1983.
15 Section 1983 does not create any substantive rights, rather it is
16 the vehicle whereby plaintiffs can challenge actions by
17 governmental officials. The primary inquiry in a section 1983
18 analysis is whether the plaintiff has articulated a Constitutional
19 right giving rise to a claim under this statute. Baker v.
20 McCollan, 443 U.S. 137, 140 (1979). Therefore, a conspiracy, even
21 if established by a plaintiff, will not give rise to section 1983
22 liability unless the plaintiff can show an actual deprivation of
23 constitutional rights. Woodrum v. Woodward County, Oklahoma, 866
24 F.2d 1121, 1126 (9th Cir. 1989).

1 **C. Due Process**

2 At the start we make a distinction not made by Dr. Lewis
3 between substantive due process and procedural due process.

4 Substantive due process involves a challenge to a law on the
5 basis that it is fundamentally unfair. Substantive due process is
6 not implicated in this case. Procedural due process is implicated
7 when a plaintiff has a property right or entitlement that the
8 government seeks to take away. In those cases the plaintiff is
9 entitled to notice and some type of hearing before being deprived
10 of his property right or entitlement. In this case, Dr. Lewis was
11 given notice of the board's actions. He was given a formal
12 hearing, and in the end the board did not deprive him of his
13 license, nor limit his practice in any way. Therefore, even if
14 we were to apply the Matthews v. Eldridge, 424 U.S. 319, 335
15 (1976) balancing test we would conclude that Dr. Lewis could not
16 state a violation of his procedural due process rights.
17

18 **D. Other Constitutional Violations**

19 Nonetheless, Dr. Lewis claims that his constitutional rights
20 were violated by a conspiracy to have Mr. Duff file a false claim
21 with the board. Dr. Lewis presents the following as the conduct
22 that violated his constitutional violations: (1) improper
23 deliberations among board members; (2) incorrect findings of fact
24 and conclusions of law; (3) a violation of the duty to disclose
25

1 conflicts of interest; (4) prior disclosures which violated due
2 process; (5) failure to follow the proper procedures for holding
3 the disciplinary hearing which violated due process; (6)
4 obstructing a witness; (7) discussions between board members and
5 members from the attorney general's office; (8) deprivation of
6 judicial review by trick which violates due process; and (9) the
7 change of the punishment from a private reprimand to a public
8 reprimand without a hearing in violation of due process. None of
9 these examples states a protected constitutional interest.
10

11 The defendants have absolute immunity for all actions taken
12 in their quasi-judicial function as board members. Mishler v.
13 Clift, 191 F.3d 998, 1004 (9th Cir. 1999). Therefore, because
14 actions (1)-(7) were actions taken by the defendants in their role
15 as board members involving the claims against Dr. Lewis, those
16 actions cannot be the basis of a constitutional deprivation. All
17 claims based on those actions are barred by absolute immunity.
18

19 Dr. Lewis's alleged deprivation of his rights to appeal by
20 trick does not state a constitutional deprivation. Dr. Lewis was
21 not prevented from filing an appeal. His reasons for choosing not
22 to pursue an appeal are irrelevant. The option for appealing was
23 open to Dr. Lewis and he chose not to pursue it.

24 Finally, Dr. Lewis cannot base his section 1983 on the
25 allegation that the Psychology Board changed his punishment from a
26

1 private reprimand to a public reprimand because there is no
2 evidence to support his claim. Pursuant to NRS 641.280 all
3 disciplinary hearings of psychologists are public record.
4 Therefore, Dr. Lewis cannot claim a right to keep private any of
5 the information disclosed at the hearing. Dr. Lewis did not
6 produce any evidence to demonstrate that his private letter of
7 reprimand was made public.
8

9 Dr. Lewis cannot state a deprivation of constitutional
10 rights, and, therefore, cannot maintain a section 1983 claim.

11 In addition to his failure to state a constitutional
12 violation, Dr. Lewis's claims of conspiracy suffer from two timing
13 problems, and a failure of proof.

14 First, Mr. Duff filed his complaint with the board in 1993.
15 Dr. Lewis alleges that the conspiracy began in 1995 after he asked
16 for payment from the Division of Child and Family services. There
17 is no way that a complaint filed in 1993 could be the basis for a
18 conspiracy that began in 1995.
19

20
21 ¹ Even if we were to consider the evidence attached to Dr.
22 Lewis's opposition we would find that the board did not change the
23 punishment. The evidence conclusively demonstrates that although
24 the board published the results of the disciplinary hearing in the
25 monthly journal the formal punishment of Dr. Lewis was still a
26 private letter of reprimand. Further, the testimony of Deputy
Attorney General Moore establishes that because the board hearings
are public meetings the results are often published, even if the
formal punishment issued by the board is a "private" letter.

1 The second timing problem is that the only evidence that Dr.
2 Lewis ever asked for payment indicates that payment was requested
3 several months after the disciplinary proceedings were initiated.²
4 It is impossible that a demand for payment made after the
5 initiation of an investigation could be the triggering point of an
6 investigation.

7
8 Dr. Lewis also claims that even though the complaint was
9 filed in 1993 he was cleared of any wrongdoing soon after that
10 complaint was filed. Therefore, Dr. Lewis claims that part of the
11 conspiracy was the revival of the complaint against him. To
12 begin, this is not the basis for Dr. Lewis's complaint. Dr.
13 Lewis's complaint specifically refers only to a filing of a
14 complaint in 1995, not a revival of a past complaint and Dr. Lewis
15 never moved to amend his complaint to add this new basis for
16 liability.

17 However, even if we were to consider the newly proposed
18 theory of liability, there is no evidence presented that indicates
19 that the board completed an investigation of Dr. Lewis and found
20 him to be cleared. Dr. Weiher's deposition is not properly
21 authenticated, see Orr v. Bank of America, 285 F.3d 764 (9th Cir.
22

23 ² Dr. Lewis's affidavit makes a statement that after he
24 requested payment they resurrected the complaint against him. This
25 statement is not admissible evidence because it does not state any
26 specific facts, only a conclusory allegation.

1 2002), and plaintiff presents no other properly authenticated
2 evidence of being cleared from the initial complaint. Therefore,
3 Dr. Lewis has not produced any admissible evidence that supports
4 his claim of conspiracy.

5
6 **IT IS, THEREFORE, HEREBY ORDERED THAT,** the motion for summary
7 judgment (#177) is **GRANTED.** The clerk shall enter judgment
8 accordingly.
9

10
11 DATED: July 3, 2002.

12
13 


14 UNITED STATES DISTRICT JUDGE
15
16
17
18
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26

:

U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED
JUL 11 2003
CLERK, U.S. DISTRICT COURT
DEPUTY

FILED

UNITED STATES DISTRICT COURT 03 JUL 10 PH 3:19
DISTRICT OF NEVADA
RENO, NEVADA

LANCE S. WILSON
CLERK
BY 
DEPUTY

RICHARD W. LEWIS, PhD.,)
vs.)
LINDA DUFF and TYRONE DUFF.)

CV-N-99-0386-ECR (RAM)
MINUTES OF THE COURT
DATE: JULY 9, 2003

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE

Deputy Clerk: JERRY RIES Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

A Report and Recommendation (#294) was filed by the Magistrate Judge on June 19, 2003. Defendants Duff have filed an objection (#298) to the Report and Recommendation.

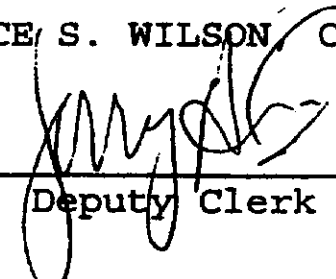
IT IS HEREBY ORDERED that the Report and Recommendation (#294) is ADOPTED and APPROVED by the Court.

IT IS, THEREFORE, HEREBY ORDERED that a default is hereby entered against Defendants Duff.

IT IS FURTHER ORDERED that Plaintiff shall have twenty (20) days within which to file points and authorities and evidence of damages by way of declaration, affidavit, or other admissible evidence. The Defendants thereafter will have twenty (20) days within which to file responsive points and authorities and evidence, and Plaintiff will have fifteen (15) days to file rebuttal points and authorities and evidence. All evidence must be in a form which would be admissible at trial.

After reviewing the evidence, the Court will determine whether damages may be decided on the basis of such evidence or whether a hearing on the issue of damages will be held.

LANCE S. WILSON, CLERK

By 
Deputy Clerk

FILED

2001 JUN 26 PM 1:39

LANCE S. WILSON
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

BY *DSR*
DEPUTY

RICHARD W. LEWIS, Ph.D.,) CV-N-99-386-ECR (RAM)
)
Plaintiff(s),)
) MINUTES OF THE COURT
)
vs.) DATED: JUNE 25, 2001
)
ELIZABETH RICHTT, et al.,)
)
Defendant(s).)
_____)

PRESENT: HONORABLE ROBERT A. McQUAID, JR., U.S. MAGISTRATE JUDGE

Deputy Clerk: Rosemary Damron Recorder: Tape 01-072

Counsel for Plaintiff(s): None Appearing

Counsel for State Defendant(s): Stephen Quinn

Defendant Tyrone Duff present telephonically on behalf of himself and his wife, Linda Duff

Counsel for Petitioner Daniel W. Dugan, Ph.D.: Brian McMahon

PROCEEDINGS: TELEPHONIC HEARING REGARDING STATE DEFENDANTS' EMERGENCY MOTION TO COMPEL (DOC. #121); MOTION FOR PROTECTIVE ORDER OR IN THE ALTERNATIVE, MOTION TO LIMIT EXAMINATION FILED ON BEHALF OF DANIEL W. DUGAN, Ph.D., (DOC. #124); MOTION FOR PROTECTIVE ORDER LIMITING DISCOVERY FILED ON BEHALF OF DEFENDANTS PETERSON, WEIHER, AND MOORE (DOC. #126)

9:05 a.m. Court convenes.

Mr. Mirch is not present and the Court proceeds without him.

The Court hears arguments on the motions.

IT IS ORDERED that the State Defendants' Emergency Motion to Compel (Doc. #121) is denied.

132

Page Two

CV-N-99-386-ECR (RAM)

Lewis vs Richitt, et al.

June 26, 2001

IT IS ORDERED that the Motion for Protective Order or in the Alternative, Motion to Limit Examination Filed on behalf of Daniel W. Dugan, Ph.D (Doc. #124) is denied with the admonishments given. The deposition of Dr. Dugan shall go forward with the admonishment that Mr. Duff is not to relitigate the child custody case in the instant case and he is not to elicit any expert opinions. The examination of Dr. Dugan shall be limited to the issues involved in this case. If Mr. Duff attempts to relitigate the other case in this deposition, Dr. Dugan and his counsel will be allowed to ask for sanctions for that conduct.

IT IS ORDERED that the Motion for Protective Order Limiting Discovery filed on behalf of Defendants Peterson, Weiher and Moore (Doc. #126) is granted to the extent that the depositions can go forward and questions may be asked concerning issues surrounding the conspiracy and issues raised surrounding the second amended complaint but the issues of what went on during the disciplinary hearing are off limits.

9:30 a.m. Court adjourns.

LANCE S. WILSON, CLERK

By:


Deputy Clerk

FILED

01 JUL 23 AM 10:52

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

LANCE S. WILSON

BY

CLERK

RICHARD W. LEWIS,) CV-N-99-0386-ECR (RAM)
)
)
vs.) MINUTES OF THE COURT
)
)
ELIZABETH RICHITT, et al.) DATE: JULY 23, 2001
)
)

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE
Deputy Clerk: Lisa Mann Reporter: NONE APPEARING
Counsel for Plaintiff(s) NONE APPEARING
Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

On June 26, 2001, the magistrate judge issued his order (#132) granting the motion by Daniel W. Dugan PhD. (#124) for a protective order, or in the alternative, motion to limit examination. The magistrate judge ruled that the Duffs could not attempt to relitigate the child custody case, nor could they attempt to elicit any expert opinions from Dr. Dugan. The magistrate judge also ruled on a protective order limiting discovery (#126) filed by state defendants Moore, Peterson and Weiher. The magistrate judge declared off limits questions about what occurred during the disciplinary hearings, but allowed questions surrounding the filing of the second amended complaint, and the conspiracy claim.

The Duffs filed a motion for reconsideration (#133) of the magistrate judge's order on July 6, 2001. We treat this as an appeal from a decision of the magistrate judge. Dr. Dugan filed an objection to the motion for reconsideration (#138) on July 11, 2001. We treat this objection as an opposition under the local rules. The time limit set forth in the local rules for objections by all parties has passed. We review the decision of the magistrate judge, keeping in mind that we may only reverse it, if we find it to be clearly erroneous or contrary to law.

The Duff's argue that manifest injustice will occur if they are not allowed to be able to inquire about what occurred with regard to the


149

previous case, and if they are not able to inquire about the disciplinary proceedings. However, we find that the magistrate judge's order is not clearly erroneous or contrary to law. The Duffs are not precluded from inquiring about the conspiracy, which is the basis of the claim in this case.

IT IS THEREFORE HEREBY ORDERED THAT, the ruling by the magistrate judge (#132) is AFFIRMED.

LANCE S. WILSON, CLERK

BY:


Deputy Clerk

FILED
2002 MAR 14 PM 3:42

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

LAI...
BY *DR*

RICHARD W. LEWIS, Ph.D.,)	CV-N-99-386-ECR (RAM)
)	
Plaintiff(s),)	MINUTES OF THE COURT
)	
vs.)	DATED: MARCH 4, 2002
)	
ELIZABETH RICHITT, Ph.D.,)	
et al.,)	
)	
Defendant(s).)	
)	

PRESENT: HONORABLE ROBERT A. McQUAID, JR., U.S. MAGISTRATE JUDGE

Deputy Clerk: Rosemary Damron Recorder: Tape 02-025

Counsel for Plaintiff(s): Kevin Mirch

Counsel for State Defendant(s): Stephen Quinn

Defendants Tyrone Duff and Linda Duff not present.

PROCEEDINGS: TELEPHONIC HEARING REGARDING MOTION TO QUASH SUBPOENA AND AFFIDAVIT OF COUNSEL ON BEHALF OF MOVANT FRANKIE SUE DEL PAPA (DOC. #147); STATE DEFENDANTS' MOTION TO EXTEND DEADLINES FOR DISPOSITIVE MOTIONS AND RELATED DATES (DOC. #155); DUFFS' MOTION FOR ORDER TO COMPEL PRODUCTION OF DOCUMENTS (DOC. #166); PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE PLAINTIFF'S OPPOSITION TO MOTION FOR ORDER TO COMPEL PRODUCTION OF DOCUMENTS (DOC. #170)

1:37 p.m. Court convenes.

Defendants Tyrone Duff and Linda Duff have been notified of this hearing. They advised the Court in a document they filed that they would not participate in the hearing. On February 26, 2002 (Doc. #214), this Court denied the Duffs' Objection to Hearing set for March 4, 2002 (Doc. #212) and Emergency Motion for Order to Stay Proceedings in the Above-Entitled Matter Including But Not Limited

Page Two
CV-N-99-386-ECR (RAM)
Lewis vs Richitt, et al.
March 4, 2002

to the Hearing Before Magistrate Judge McQuaid Set for March 4, 2002 (Doc. #213). In that same order of February 26, 2002 (Doc. #214), the Court indicated that it would give the Duffs an opportunity to participate in the hearing should they change their mind. The courtroom deputy attempted to contact the Duffs twice this date (1:28 p.m. and 1:32 p.m.) just prior to the hearing, and they are not answering their phone. The Court will proceed without them.

IT IS ORDERED that the Motion to Quash Subpoena (Doc. #147) is denied as moot.

IT IS ORDERED that State Defendants' Motion to Extend Deadlines (Doc. #155) is denied as moot.

IT IS ORDERED that Duffs' Motion for Order to Compel Production of Documents (Doc. #166) is denied because the Duffs failed to comply with the Federal Rules of Civil Procedure and with our local rules requiring a personal consultation with Plaintiff's counsel. Beyond that, the Court has reviewed the discovery requests and the Court finds Plaintiff's objections as to each request were well taken. Most of the requests have to do with an old state court action that is not in this court.

IT IS ORDERED that Plaintiff's Motion for Enlargement of Time in Which to File Plaintiff's Opposition to Motion for Order to Compel Production of Documents (Doc. #170) is denied as moot.

1:44 p.m. Court adjourns.

LANCE S. WILSON, CLERK

By: 

Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

RECEIVED
MAR 20 2002
U.S. DISTRICT COURT
RENO, NEVADA

RICHARD W. LEWIS, PhD.,)
)
vs.)
)
ELIZABETH RICHITT, PhD., et al.)
)

CV-N-99-0386-ECR (RAM)
MINUTES OF THE COURT
DATE: MARCH 18, 2002

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE

Deputy Clerk: Ona L. Rose Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

IT IS HEREBY ORDERED that the Objections (#219), filed by defendants Duff on March 14, 2002, to the order entered by Magistrate Judge McQuaid on March 4, 2002 (#216), are overruled. The Objections are treated as an appeal from the order of Judge McQuaid. Judge McQuaid's order is not clearly erroneous or contrary to law.

Notwithstanding said defendants inflammatory language and accusations, the order of Judge McQuaid is correct. Said defendants will be better served by addressing the merits of the actions rather than venting their frustrations with the proceedings.

LANCE S. WILSON, CLERK

By Ona L. Rose
Deputy Clerk

AO 450 (Rev. 5/85) Judgment in a Civil Case e

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RICHARD W. LEWIS

Plaintiff,

v.

JUDGMENT IN A CIVIL CASE

ELIZABETH RICHITT, et al,

Defendants.

U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED

JUL - 8 2002

CLERK, U.S. DISTRICT COURT

BY *[Signature]* DEPUTY

CASE NUMBER: CV-N-99-0386-ECR(RAM)

 Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

 X Decision by Court. This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT THE MOTION FOR SUMMARY JUDGMENT (#177) IS GRANTED.

July 8, 2002

LANCE S. WILSON

Clerk

Oma L. Rose

Oma L. Rose

Deputy Clerk

233

FILED

SEP 23 2002 4:33

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

[Handwritten signature]

RICHARD W. LEWIS, PhD.,
vs.
ELIZABETH RICHITT, PhD., et al.

CV-N-99-0386-ECR (RAM)
MINUTES OF THE COURT
DATE: SEPTEMBER 23, 2002

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE

Deputy Clerk: Oma L. Rose Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

WILLINGNESS TO RECONSIDER

Upon review of the files in this case, it appears that our order (#232) is incorrect insofar as it ordered that judgment be entered in the action. Our order (#232) grants summary judgment as to all remaining defendants except for the defendants, the Duffs. It appears that the action has not been terminated as to the defendants, the Duffs. Therefore, our order (#232) should be amended to delete the order to the Clerk to enter judgment. Our order (#232) is otherwise correct. The judgment should be vacated. A copy of this order shall be transmitted by the Clerk to the Court of Appeals in connection with the pending appeal.

LANCE S. WILSON, CLERK

By *Oma L. Rose*
Deputy Clerk

KEVIN J. MIRCH, LTD.
ATTORNEYS AND COUNSELORS AT LAW

131 Ryland Street
Post Office Box 5396
Reno, Nevada 89513
(775) 324-7444
FAX (775) 324-7748
Kevin J. Mirch **
Of Counsel:
Stephen J. Healy**

May 10, 1999

T. Duff, in pro per
P.O. Box 2512
Bellingham, Wa. 98225

Linda Duff
P.O. Box 2512
Bellingham, Wa. 98225

Re: Duff letter dated May 10, 1999

Dear Mr. and Mrs. Duff:

This firm represents Dr. Lewis with respect to certain of his legal affairs. In that regard, I have been retained to respond to Mr. Duff's letter to Mr. LeRude dated May 10, 1999. First, Mr. Duff's subpoena was not valid for a number of reasons including but not limited to the fact that it did not include the mandatory fee. I suggest both of you employ local counsel to advise you of the appropriate method of serving a subpoena. In the future, I will seek sanctions against both of you when things are done incorrectly.

Second, I have been retained to review your conduct for the last several years and am considering legal action against both of you. In that regard, it is the opinion of this firm that your conduct has abused the legal process specifically for an improper purpose (i.e., to gain custody of Mr. Duff's children and to further a civil action against Dr. Lewis). Your statements to third parties concerning my client's veracity are actionable as libel per se and therefore actionable. Please cease and desist from such conduct.

Finally, I note that your address is listed as P.O. Box 2512, Bellingham, Wa. 98225. Please provide your physical address to my legal assistant, Mercedes, so that service may be affected against yourself and your current wife. If you are represented by counsel, please forward this letter to her.

Please restrict any further communications to this office. I look forward to working with you

///

on this legal action .

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Mirch". The signature is written in a cursive style with a prominent loop at the end.

Kevin J. Mirch

cc: Dr. Lewis

Law Office of Kevin J. Mirch
131 Rylana Street
Reno, Nevada 85513



Law Office of Kevin J. Mirch
131 Rylana Street
Reno, Nevada 89513



T. Duff
P.O. Box 2512
Bellingham, WA. 98225

Linda Duff
P.O. Box 2512
Bellingham, WA. 98225



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1 MIRCH & MIRCH
2 KEVIN J. MIRCH, ESQ.
3 SBN: 000923
4 MARIE C. MIRCH, ESQ.
5 SBN: 6747
6 201 W. Liberty St., Ste. 201
7 Reno, NV 89501
8 Tele: (775) 324-7444
9 Attorney for Plaintiff

10
11
12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF DISTRICT OF NEVADA
15

16 RICHARD LEWIS, Ph.D.

17 Plaintiffs,

CASE NO: CV-N-99-0386- ECR (RAM)

18 v.

19 LINDA DUFF and TYRONE DUFF,

20 Defendants.
21 _____/

22 **POINTS AND AUTHORITIES REGARDING DAMAGES**

23 Plaintiff, Richard Lewis, by and through his attorney of record, Mirch and Mirch, Marie
24 Mirch, and pursuant to the Order of this Court dated July 20, 2003, hereby submits the following
25 points and authorities and affidavit regarding damages to be assessed against the Defendants Tyrone
26 and Linda Duff.

27 Federal Rules of Civil Procedure Rule 54(c) provides:

28 (c) Demand for Judgment. A judgment by default shall not be
different in kind from or exceed in amount that prayed for in the
demand for judgment.

The Second Amended Complaint against the Duffs alleges one claim for conspiracy and seeks
damages for lost income and punitive damages. Nevada law limits the amount of punitive damages
to no more than three time compensatory damages. The calculation of damages is presented through

1 the affidavit of Richard Lewis, attached hereto as Exhibit A, and totaling \$1,276,348.00.

2 Dated this 4th day of August, 2003.

3
4 Mirch & Mirch

5 BY 
6 Marie Mirch

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Mirch & Mirch, over the age of EIGHTEEN (18) and that on this date I deposited in the United States mail, with postage prepaid, a true and correct copy of the foregoing **POINTS AND AUTHORITIES REGARDING DAMAGES**, in envelope addressed to:

Brian Sandoval, Esq.
Attorney General
Tina M. Leiss, Esq.
Deputy Attorney General
100 No. Carson St.
Carson City, NV 89701-4717

Tyrone Duff
Linda Duff
P.O. Box 2512
Bellingham, WA 98225

DATED this 4 day of Aug, 2003.

Maurice

1 MIRCH & MIRCH
2 KEVIN J. MIRCH, ESQ.
3 SBN: 000923
4 MARIE C. MIRCH, ESQ.
5 SBN: 6747
6 201 W. Liberty St., Ste. 201
7 Reno, NV 89501
8 Tele: (775) 324-7444
9 Attorney for Plaintiff

10
11
12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF DISTRICT OF NEVADA
15

16 RICHARD LEWIS, Ph.D.

17 Plaintiffs,

CASE NO: CV-N-99-0386- ECR (RAM)

18 v.

19 LINDA DUFF and TYRONE DUFF,

20 Defendants.
21 _____/

22 STATE OF NEVADA)
23 COUNTY OF WASHOE) ss.

24 **AFFIDAVIT OF RICHARD LEWIS, Ph. D.**
25 **IN SUPPORT OF POINTS AND AUTHORITIES**
26 **REGARDING DAMAGES**

27 I, RICHARD LEWIS, Ph.D. , after being first duly sworn, do depose and say:

- 28 1. I am the Plaintiff in the above-referenced matter.
- 1. I make this Affidavit in support of the Points and Authorities in Regards to Damages incurred against the Duffs.

2. If called upon to testify, I have personal knowledge of the following facts,
am competent to testify and would testify as follows:

- 4. My damages in regards to the conduct of Linda and Tyrone Duff are calculated as

1 follows:

2 5. Prior to being accused of wrongdoing by Mr. Duff, I had a contract with the State of
 3 Nevada. The contract generated approximately \$900,000.00 of revenues per year. Prior to the Duffs
 4 attack on me, it was anticipated that this business would continue to grow and eventually generate
 5 an estimated annual income of \$2,000,000.00 per year. This was based upon representations made
 6 employees of the State of Nevada. My estimated share of the net proceeds, after expenses, are
 7 \$30,000.00 per year. Over the lifetime of this business, which was anticipated to be a minimum of
 8 20 years, my lost income would be \$600,000.00. I lost the contract shortly after being disciplined.

9 6. I am aware of the value of psychology/ mental health care companies, having been
 10 in this business for over thirty five years. I estimate that the business would have sold for
 11 \$200,000.00 based on its profits. I would have therefore received \$50,000.00 from the sale of the
 12 business (after my partners were paid their portion). Instead, I lost my State of Nevada contract and
 13 was forced give the business away for a couple of thousand dollars.

14 7. I also had a forensic business. When I was disciplined, I was unable to continue that
 15 business to any measurable degree. I lost at least \$20,000.00 per year of income over five years,
 16 which totals \$100,000.00.

17 8. My legal bills dealing with the Duff matter from 1997 through 2002 was \$27,148.00
 18 according to my accountant, Melvin Ray, CPA.

19 9. Mr. Duff also never paid his bill to me in the approximate amount of \$1,200.00.

20 10. Based on the foregoing, my estimated damages in this matter are calculated as follows:

21	Lost income from contract with State of Nevada	\$600,000.00
22	Lost income on sale of business (\$50,000 - \$2000)	\$ 48,000.00
23	Lost income for forensic practice	\$100,000.00
24	Legal fees incurred in State Court action with Duffs	\$ 27,148.00
25	Duff unpaid invoice	\$ 1,200.00
26	Total compensatory damages	\$776,348.00

1 Punitive damages \$500,000.00

2 Total \$1,276,348.00.

3 11. I hereby swear under penalty of perjury that the foregoing is true and correct to
4 the best of my knowledge and belief.

5 DATED this 4th day of August, 2003.

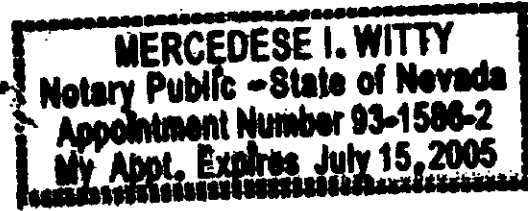
6 *Richard Lewis, Ph.D.*

7 RICHARD LEWIS, Ph.D.

8 SUBSCRIBED and SWORN to

9 before me this 4th day

10 of August, 2003



11 *[Signature]*
12 NOTARY PUBLIC