

CLERK OF THE COURT

COMP

Anthony D. Guenther, Esq.

Nevada Bar No. 5651

LAW OFFICES OF ANTHONY D. GUENTHER, ESQ.

3273 E. Warm Springs Rd.

Las Vegas, Nevada 89120

Telephone: (702) 589-5179

Facsimile: (702) 944-7100

Email: adg@adguentherlaw.com

Attorneys for plaintiff Kyleen E. Cane

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

KYLEEN E. CANE,

Plaintiff(s),

vs.

HARMEET K. DHILLON; DHILLON &
SMITH, LLP; MARK PHILLIPS; DENNIS
MANDEL; CHARLES O'KELLEY; and
DOES 1-25, inclusive,

Defendant(s).

CASE NO.: A - 1 1 - 6 4 8 4 8 5 - C
DEPT NO.: XXVIII

COMPLAINT

KYLEEN E. CANE ("Plaintiff" or "Cane"), as and for her Complaint, alleges as follows:

PARTIES, JURISDICTION, & VENUE

1. Plaintiff is now, and was at all times relevant hereto, a resident of Clark County, Nevada.

2. Upon information and belief, defendant HARMEET K. DHILLON ("Dhillon") is now, and was at all times relevant hereto, a resident of San Francisco, California, and a partner in the law firm of DHILLON & SMITH, LLP.

3. Upon information and belief, defendant DHILLON & SMITH, LLP ("Dhillon & Smith") is now, and was at all times relevant hereto, a limited liability partnership, with a business address in San Francisco, California.

1 4. Upon information and belief, defendant MARK PHILLIPS is an inmate in federal
2 custody serving a four (4) year prison sentence following his conviction on four (4) counts of
3 wire fraud and mail fraud and two (2) counts of money laundering, and was, prior to such
4 incarceration, was a resident of the State of Washington.

5 5. Upon information and belief, defendant DENNIS MANDELL ("Mandell") is
6 now, and was at all times relevant hereto, a resident of California, with a business address in
7 Carmel, California.

8 6. Upon information and belief, defendant CHARLES O'KELLEY ("O'Kelley") is
9 now, and was at all times relevant hereto, a resident of California, with a business address in
10 Seattle, Washington.

11 7. Pursuant to Rule 10(a) of the Nevada Rules of Civil Procedure, Nuremberger
12 Hercules-Werke GMBH v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1991), and other applicable
13 law, Plaintiff sues the defendants designated herein as DOE, whether individuals, partnerships,
14 corporations or other entities or associations, the true names and capacities of whom are
15 unknown to Plaintiff at this time. Plaintiff is informed and believes, and thereon alleges, that
16 defendants designated as DOE herein were in some manner involved in and/or are responsible
17 for the acts, omissions, events, happenings, and/or offenses alleged in this Complaint, directly
18 and proximately caused or are responsible for the damages and/or relief sought herein. Plaintiff
19 will seek leave of Court to amend this Complaint to name the defendants designated as DOE
20 herein when their true names and capacities are ascertained.

21 8. Plaintiff alleges that Defendants are joint and severally liable for all their tortious
22 conduct as identified and described herein and have conspired together to effect such tortuous
23 conduct.

24 9. Jurisdiction and venue are appropriate and proper in the Eighth Judicial District
25 Court, Clark County, Nevada, because the facts, circumstances, and affects of the acts and
26
27
28

1 omissions of defendants alleged herein that give rise to the subject lawsuit occurred in Clark
2 County, Nevada, and Plaintiff's damages exceed \$10,000.

3 **FACTUAL BACKGROUND TO ALL CLAIMS FOR RELIEF**

4 10. Plaintiff is a corporate securities attorney, licensed in four states, including
5 California, Washington, Hawaii and Nevada, with her main office in Clark County, Nevada.

6 11. In late June of 2008, Plaintiff was introduced to Phillips by Phillips's then-
7 girlfriend, Ms. Jan Wallace ("Wallace"). Plaintiff had been previously introduced to Wallace
8 approximately ten years earlier in 1998 when Plaintiff's former law partner, Stephen F.X.
9 O'Neill, brought two public companies, Dynamic Associates, Inc. and MW Medical, Inc., into
10 the firm as clients. Wallace was an officer and director of each of these public companies at that
11 time and between 1998 and through March of 2008, Plaintiff's law firm had served as special
12 corporate securities counsel at different times to these two companies and one other public
13 company for which Ms. Wallace was affiliated as an officer and director.

14 12. In Plaintiff's initial meeting with Phillips, Phillips sought to engage Plaintiff's law
15 firm as special counsel to MOD Systems Incorporated ("MOD") as well as to enlist Plaintiff as
16 an independent outside director to MOD.

17 13. Plaintiff agreed to accept the role as counsel to MOD, initially refusing to accept
18 an appointment to the MOD board. An engagement letter was prepared and signed, specifically
19 stating that Plaintiff and Plaintiff's firm would only be representing MOD and not Phillips
20 personally, or any other individual officers of the company.

21 14. Shortly after engaging Plaintiff's firm, Phillips, without Plaintiff's prior
22 agreement, had the board appoint Plaintiff as a director of MOD, notifying Plaintiff by email of
23 the appointment. At first, Plaintiff refused the position, but Phillips was very insistent, and
24 eventually, after visiting the company in Seattle, Plaintiff reluctantly agreed to serve on the
25 MOD board.
26
27
28

1 15. In late 2008, MOD received a letter from the attorney for one of its shareholders,
2 a Mr. Robert Arnold, indicating that he was investigating Phillips, MOD, and several others in
3 connection with potential fraud claims in connection with Mr. Arnold's purchase of MOD stock
4 and another company controlled by Phillips. Plaintiff was notified of this action by Phillips who
5 requested that Plaintiff act as an independent board member to assist MOD in reviewing the
6 matter.
7

8 16. Shortly after receiving a draft complaint from Mr. Arnold's counsel, a meeting of
9 the board of MOD was called, including Phillips, Plaintiff, and two other members. At this
10 meeting a special committee of the board of MOD was created, known as the Demand Review
11 Committee ("DRC"), with the assignment and authority to independently investigate and review
12 the claims being made in the Arnold complaint and provide a report and recommendations
13 regarding these claims back to the full board. Plaintiff was appointed chair of the DRC.

14 17. The DRC engaged several experts who coordinated the investigation, provided
15 analysis, and conducted meetings and interviews during a two month period. The investigation
16 primarily involved a review of the books and records as provided by Phillips and fellow board
17 member and defendant in the Arnold complaint, Ken Gordon. It also included interviews with
18 Mr. Gordon and Phillips in which they admitted to most of the actions later described in the
19 DRC's report. The draft report developed from this investigation detailed several incidents of
20 corporate theft and misuse of funds and personnel by Phillips, effectively confirming the claims
21 made in the Arnold lawsuit.

22 18. From March 2009 through April 2009, counsel for MOD, Larry Ganges of the
23 law firm Lane Powell PC, and the DRC negotiated with personal counsel for Phillips to resolve
24 the MOD claims against Phillips. This three week negotiation ended with the signing of a
25 Transition Agreement between MOD and Phillips in which he agreed to resign from MOD as its
26
27
28

1 CEO and from the board and place his stock in a restricted trust in which the trustee was required
2 to vote the shares in direct proportion with the votes of the other MOD shareholders.

3
4 19. On or about the end of March 2009, Mr. Larry Ganges and Mr. Michael Morgan,
5 also of the law firm Lane Powell PC, contacted Plaintiff as a director and member of the DRC to
6 discuss the Transition Agreement and the voting trust and ask if she would act as the trustee of
7 the voting trust. The position was unpaid and allowed the trustee no discretion on voting or other
8 use of the shares. Plaintiff reluctantly agreed to accept the position when it became obvious
9 from the discussion that no one else was willing to take the position and it was necessary to
10 complete the Transition Agreement.

11 20. From April through August of 2009, following execution of the Transition
12 Agreement, the board at MOD sought to work a settlement with Mr. Arnold based on its findings
13 and actions with the Transition Agreement. At first a global settlement was sought with all the
14 parties, including Phillips and Gordon. This led to a mediation which ended without a global
15 agreement. Subsequently, however, MOD was able to forge a settlement with Mr. Arnold that
16 did not include Phillips or Gordon.

17 21. As a result of the failed mediation, Phillips, having no real defense to his
18 corporate thefts and other wrongful actions taken against MOD, and having been left out of the
19 settlement, enlisted several new attorneys, financial consultants, experts and others to assist him
20 in creating a defense to his wrongdoing. These professionals included Mandell, O'Kelley,
21 Dhillon, and their related firms and supporting organizations, among others (collectively, the
22 "Phillips' Conspirators").

23 22. The Phillips' Conspirators, led by a plan designed by Mandell designed to divert
24 attention and impede the actions against Phillips, set up and began implementing a series of
25 vicious, irresponsible and defamatory attacks on the credibility of all persons involved with
26 MOD, and in particular, Plaintiff.

1 23. The Phillips' Conspirators' plan involved, among other things, the publication and
2 dissemination of a false theory that Phillips was the victim of a fraud ring, led by Plaintiff, set on
3 taking over MOD and looting the company. In the process of developing and implementing this
4 plan and then disseminating its defamatory statements, defendants, and all of them, have
5 participated in a scheme of publishing false and fraudulent information to third parties, which
6 slandered, defamed, and libeled Plaintiff in her past and present activities as a securities attorney.
7 Thus far the defamation scheme has involved a dissemination of false written and oral statements
8 regarding Plaintiff through the development of internet sites (some posing as having been
9 developed and maintained by others), blogging on existing internet sites, posting comments to
10 on-line media reports, letters sent to MOD shareholders and reproduced for others, false opinion
11 reports and affidavits from claimed experts placed first in ongoing litigation and then
12 disseminated to outside third parties, incomplete investigation reports, power point presentations
13 and false reports to banks and government agencies, all distributed and published to third parties
14 to effect their defamatory plan.
15

16 24. In the process of implementing the defamatory scheme against Plaintiff, the
17 Defendants, and all of them, published or assisted in the publication, often repeatedly, of the
18 following specific false and defamatory statements, that:

19 (1) Plaintiff has been repeatedly sued in various jurisdictions or has been
20 involved in lawsuits concerning securities fraud, fraud, breach of contract, breach of fiduciary
21 duty, accounting violations, and other serious financial misconduct.

22 (2) Plaintiff is part of a "control group" of MOD, which includes Wallace and
23 others.

24 (3) Plaintiff had been explicitly ruled unfit to manage MOD's litigation affairs
25 by a Washington Court.
26
27
28

1 (4) Plaintiff is part of a closely-knit group of operators whose modus operandi
2 in over a decade of working together is to loot companies and move assets into offshore accounts
3 through various means, including using false pretenses, causing securities to be issued by the
4 company in favor of the group or their associates for alleged fundraising or legal services,
5 making false claims of financial and personal misconduct against the targeted executives, and
6 taking over the company management after displacing founders through false whistleblower
7 claims.
8

9 (5) Plaintiff has partnered with Wallace in numerous schemes to loot
10 companies and oust their management.

11 (6) Plaintiff is part of a scheme involving the issuance of millions of shares of
12 unregistered securities which are traded on a manipulated market as if they were registered.

13 (7) Plaintiff, with others, has taken over several companies resulting in an
14 accumulation of looted securities and laundered funds in offshore accounts.

15 (8) Plaintiff is involved in a racketeering scheme or fraud ring.

16 (9) Plaintiff has previously operated under the name "Michael Eiselman".

17 (10) Plaintiff is the kingpin of a securities manipulation scheme.

18 (11) Plaintiff has worked in direct concert with Wallace as an accomplice to
19 take over numerous companies, including MOD, in order to reap substantial profits in cash and
20 securities later funneled into offshore nominee accounts often used in market manipulation
21 schemes.

22 (12) Plaintiff uses shell companies, nominee bank accounts at suspect offshore
23 depositories, false or misleading statements to securities regulators, electronic and wire stalking
24 conduct, and other sophisticated means to loot companies and avoid the law.

25 (13) Plaintiff's law firm is involved in an SEC civil injunction action against
26 Sedona Software Solutions, Inc.
27
28

1 (14) Plaintiff or Plaintiff's law firm holds or trades securities with Lines
2 Overseas Management securities, or through other offshore accounts, or uses such accounts in
3 securities manipulation and corporate governance schemes.

4 (15) Plaintiff was involved in the control or operation of Secured Diversified
5 Lending LLC.

6 (16) Plaintiff was involved in a fraud scheme and racketeering against the
7 public company, Secured Diversified Investments Ltd.

8 (17) Plaintiff was involved in a whistleblower scheme or investigation
9 involving Secured Diversified Investment Ltd. in which Plaintiff served on an accounting
10 committee for that company.

11 (18) Plaintiff was involved in a transfer or shifting of funds in Secured
12 Diversified Investment Ltd. to other entities.

13 (19) Plaintiff was involved in false SEC filings, false credit applications, and
14 false mortgage and other lending applications.

15 (20) Plaintiff, along with others, committed corporate waste, breach of
16 contract, intellectual property infringement, and issued fraudulent shares, conducted a hostile
17 takeover and exploited MOD for asset laundering purposes.

18 (21) Plaintiff, along with others, diverted cash from MOD's accounts and made
19 "ultra vires" fund transfers.

20 (22) Plaintiff, along with others, converted MOD to her own ends.

21 (23) Plaintiff, along with others, is or was involved in looting MOD's treasury.

22 (24) Plaintiff is or was involved in feathering her exit nest at MOD with an
23 indemnification trust created to cushion her landing when Plaintiff parachutes out of MOD with
24 its remaining assets.
25
26
27
28

1 (25) Plaintiff is or was involved in a scheme concerning MOD involving false
2 accusations of inaccurate record keeping, sexual improprieties, mismanagement and misconduct
3 against the company's CEO and affiliated officers.

4 (26) Plaintiff is or was involved in a scheme regarding MOD to take over and
5 loot the company through a series of debt and/or equity transactions.

6 (27) Plaintiff is or was involved in transactions involving the issuance of
7 securities to third parties suspected to have been involved in money laundering.

8 (28) Plaintiff forced Phillips to step down from his Chairmanship and Chief
9 Executive Officer positions at MOD.

10 (29) Plaintiff worked with Ms. Julia De Haan and Ms. Wallace to engineer or
11 instigate the Arnold lawsuit against MOD and Phillips.

12 (30) Plaintiff coerced Phillips into placing his majority shareholdings of MOD
13 into a voting trust with Plaintiff in control as trustee.

14 (31) Plaintiff, by virtue of the voting trust, gained full control over MOD or
15 control over the voting of Phillips's MOD shares.

16 (32) Plaintiff orchestrated the firing or resignation of several officers and key
17 employees of MOD.

18 (33) Plaintiff embarked on a campaign to purge Phillips and his associates from
19 MOD.

20 (34) Plaintiff caused MOD to wrongfully indemnify Ms. Wallace to cover up
21 her false statements and instigation of the Arnold lawsuit against Phillips.

22 (35) Plaintiff, in violation of her fiduciary duty and position as trustee of the
23 voting trust, attempted to pressure Phillips into transferring the entirety of his MOD
24 shareholdings to Arnold in order to settle the lawsuit, or used pressure tactics against Phillips in
25 direct conflict with her status as trustee of the voting trust.
26
27
28

1 (36) Plaintiff was removed from the DRC after a finding of gross conflicts of
2 interest and unsuitability.

3 (37) The DRC investigation involving Plaintiff as chairman was a sham.

4 (38) Plaintiff, following her resignation from the MOD board, continued to
5 control events at MOD through designees.

6 (39) Plaintiff through MOD caused lawyers to file frivolous and costly motions
7 to force Defendant Phillips to give up information in his possession that he was entitled to retain.

8 (40) Plaintiff committed several violations of contractual securities obligations
9 as well as statutory violations that give rise to potential company liability for MOD.

10 25. As a direct and proximate result of the acts and omissions of Defendants as set
11 forth herein, it has become necessary for Plaintiff to incur costs including attorneys' fees, to
12 prosecute this action. Plaintiff is entitled to an award of her attorneys' fees and costs.

13 26. All conditions precedent to this action have occurred.

14 **FIRST CLAIM FOR RELIEF**
15 **(Defamation)**

16 27. Plaintiff incorporates the allegations contained in all prior paragraphs of this
17 Complaint as though fully set forth herein.

18 28. Defendants published the above oral and written false statements of fact about
19 Plaintiff to various third parties without privilege.

20 29. Defendants' statements constitute defamation *per se*, in that they defame Plaintiff
21 in her trade, business or profession, or impute that she was involved in a crime.

22 30. Plaintiff is informed and believes and thereupon alleges that, at the time of
23 publication, Defendants negligently made the above defamatory statements.

24 31. Plaintiff is further informed and believes and thereupon alleges that, at the time of
25 publication, Defendants made the above defamatory statements with reckless disregard for the
26 truth and with no reliable or unbiased evidence or information that supports said statements.

1 32. Plaintiff is further informed and believes and thereupon alleges that, at the time of
2 publication, Defendants made the above defamatory statements knowing they were false and
3 knowing they had no reasonable basis in fact to make such statements.
4

5 33. Plaintiff is further informed and believes and thereupon alleges that, at the time of
6 publication, Defendants acted with ill will toward Plaintiff in that they knew that the defamatory
7 statements would injure Plaintiff's business and/or reputation.
8

9 34. The defamatory statements that are subject to this action were published in the
10 County of Clark, State of Nevada, and throughout the United States and the world. The
11 foregoing defamatory statements were seen and read by persons who reside in the County of
12 Clark, State of Nevada. Defendants knew and/or had reason to know that the defamatory
13 statements described herein would be seen and read by people who reside in the County of Clark,
14 State of Nevada.

15 35. As a direct and proximate result of Defendants' publication of defamatory
16 statements, Plaintiff has suffered damage to her business reputation in excess of Ten Thousand
17 Dollars (\$10,000), the exact amount to be determined at trial.

18 36. As a direct and proximate result of Defendants' publication of defamatory
19 statements, Plaintiff has suffered special damages in excess of Ten Thousand Dollars (\$10,000),
20 the exact amount to be determined at trial.

21 37. Plaintiff is informed and believes, and on that basis alleges, that the conduct of
22 Defendants was intentional, and done willfully and maliciously toward Plaintiff, and with
23 conscious disregard for the rights of Plaintiff. Plaintiff's injuries were intensified by the
24 malicious conduct of Defendants and thereby justify an award of exemplary and punitive
25 damages.

26 38. As a direct and proximate result of the acts and omissions of Defendants as set
27 forth herein, it has become necessary for Plaintiff to incur costs of collections, including
28

1 attorneys' fees, to prosecute this action. Plaintiff is entitled to an award of her attorneys' fees
2 and costs.

3
4 **SECOND CLAIM FOR RELIEF**
(Interference with Prospective Economic Advantage)

5 39. Plaintiff incorporates the allegations contained in all prior paragraphs of this
6 Complaint as though fully set forth herein.

7 40. Prospective contractual relationships existed between Plaintiff and numerous
8 clients regarding Plaintiff's legal services.

9 41. Defendants knew that the above defamatory statements would deter these
10 prospective clients from acquiring Plaintiff's legal services.

11 42. Defendants intended or were substantially certain that their actions would harm
12 Plaintiff by preventing the relationship from forming by making false statements about Plaintiff.

13 43. No privilege or justification existed for Defendants' false statements.

14 44. As a direct and proximate result of Defendants' tortious interference, Plaintiff was
15 damaged in an amount in excess of Ten Thousand Dollars (\$10,000), the exact amount to be
16 determined at trial.

17 45. Plaintiff is informed and believes, and on that basis alleges, that the conduct of
18 Defendants was intentional, and done willfully and maliciously toward Plaintiff, and with
19 conscious disregard for the rights of Plaintiff. Plaintiff's injuries were intensified by the
20 malicious conduct of Defendants and thereby justify an award of exemplary and punitive
21 damages.

22
23 46. As a direct and proximate result of the acts and omissions of Defendants as set
24 forth herein, it has become necessary for Plaintiff to incur costs of collections, including
25 attorneys' fees, to prosecute this action. Plaintiff is entitled to an award of her attorneys' fees
26 and costs.

27 **THIRD CLAIM FOR RELIEF**

(Invasion of Privacy - False Light)

47. Plaintiff incorporates the allegations contained in all prior paragraphs of this Complaint as though fully set forth herein.

48. Defendants' above defamatory and disparaging statements about Plaintiff has placed Plaintiff in a false light before the public.

49. Defendants knew or should have known of the falsity of their statements and acted in reckless disregard to the truth or falsity of the statements and the false light which Plaintiff would be placed in by publication of said statements. Said statements have damaged Plaintiff's reputation.

50. No privilege or justification existed for Defendants' false statements.

51. As a direct and proximate result of Defendants' actions, Plaintiff was damaged in an amount in excess of Ten Thousand Dollars (\$10,000), the exact amount to be determined at trial.

52. Plaintiff is informed and believes, and on that basis alleges, that the conduct of Defendants was intentional, and done willfully and maliciously toward Plaintiff, and with conscious disregard for the rights of Plaintiff. Plaintiff's injuries were intensified by the malicious conduct of Defendants and thereby justify an award of exemplary and punitive damages.

53. As a direct and proximate result of the acts and omissions of Defendants as set forth herein, it has become necessary for Plaintiff to incur costs of collections, including attorneys' fees, to prosecute this action. Plaintiff is entitled to an award of her attorneys' fees and costs.

WHEREFORE, Plaintiff prays for judgment against Defendant(s) as follows:

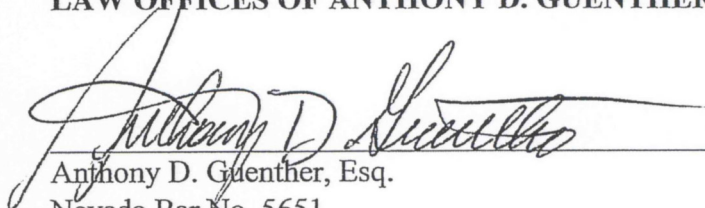
A. Plaintiff's general and specific compensatory damages and punitive damages for Defendants' willful, wanton and extreme defamation and false light of Plaintiff and Defendants'

1 willful, wanton and extreme interference with Plaintiffs' prospective economic advantages under
2 Nevada law;

- 3 B. For interest at the legal rate;
- 4 C. For costs of suit, including reasonable attorneys' fees; and
- 5 D. For such other and further relief as the court deems just and proper.

6 DATED this 16th day of September, 2011.

7
8 **LAW OFFICES OF ANTHONY D. GUENTHER, ESQ.**

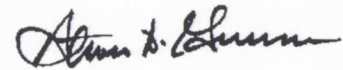
9
10 

11 Anthony D. Guenther, Esq.
12 Nevada Bar No. 5651
13 3273 E. Warm Springs Rd.
14 Las Vegas, Nevada 89120
15 Telephone: (702) 589-5179
16 Facsimile: (702) 944-7100
17 Email: adg@adguentherlaw.com
18 Attorneys for plaintiff Kyleen E. Cane

ORIGINAL

Electronically Filed
10/22/2012 03:10:36 PM

OSCC



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KYLEEN CANE, PLAINTIFF(S),

CASE NO.: A-11-648485-C

VS.

HARMEET DHILLON, ET AL,

DEPARTMENT 28

DEFENDANT(S).

CIVIL ORDER TO STATISTICALLY CLOSE CASE

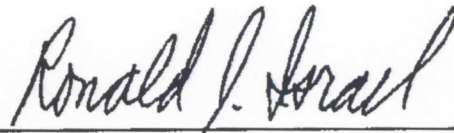
Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- | | |
|-------------------------------------|---|
| ☐ | Other Manner of Disposition (Notice of Bankruptcy only) |
| ☐ | Voluntary Dismissal |
| ☐ | Transferred (before/during trial) |
| ☒ | Involuntary (statutory) Dismissal |
| ☐ | Judgment on Arbitration Award |
| ☐ | Stipulated Dismissal |
| ☐ | Stipulated Judgment |
| ☐ | Default Judgment |
| ☐ | Motion to Dismiss (by Defendant) |
| ☐ | Summary Judgment |
| ☐ | Non-Jury (bench) Trial |
| ☐ | Jury Trial |

DATED this 18th day of October, 2012.



RONALD J. ISRAEL
DISTRICT COURT JUDGE

RECEIVED

OCT 22 2012

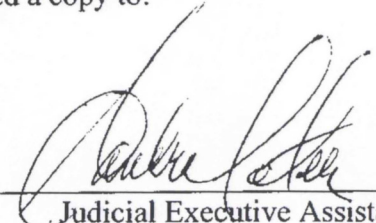
CLERK OF THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office, mailed or faxed a copy to:

Anthony D. Guenther, Esq.


Judicial Executive Assistant