

## Affidavit of Dale Kim Thorup

**COMES NOW** Dale Thorup, as an individual resident of the County of Fremont, State of Colorado, who is over the age of eighteen and who, first having been duly sworn upon oath, now deposes and says:

Your Affiant states that he has reason to believe that the Colorado Supreme Court Attorney Regulation Counsel (hereinafter "ARC") adheres to a policy of systematically and axiomatically suppressing complaints filed against attorneys by opposing parties in domestic relations cases in violation of the Due Process Clause of the Fourteenth Amendment.

The following is an account of information made available to your affiant or averred upon personal knowledge as probable cause for the advancement of the foregoing allegation:

- 1) On April 4, 2002; your affiant filed a verbal complaint alleging ethical misconduct against Colorado attorney Herman A. Lohse with Louise Culberson-Smith, Assistant Regulation Counsel.<sup>1</sup>
- 2) Ms. Culberson-Smith summarily dismissed the complaint, concluding that the alleged conduct by attorney Lohse did not constitute a violation of any ethical rules governing his profession.
- 3) On January 16, 2003, your affiant supplemented his original grievance against Mr. Lohse to the ARC in a telephone conversation with Rosemary Gosda of their Intake Department.
- 4) On January 22, 2003, Louise Culberson-Smith replied to your affiant's amended grievance, stating, in pertinent part:

[the] complaint did not demonstrate any ethical rule violations by Mr. Lohse...Therefore, my decision remains the same as when I last talked with you about this matter on April 4, 2002. The purpose of this letter is to provide a tangible record for your future reference clarifying the final position of this office on your complaint against Mr. Lohse. We consider the case closed and will not reconsider it. Moreover, we will no longer accept any future requests by you to re-open or file this same complaint. Consequently, we ask that you kindly stop contacting us about this particular matter. Please be advised that if you persist in pursuing these same allegations about Mr. Lohse, we will not speak with you by telephone or write to you further about it.

- 5) In response to a related formal ethics complaint that your affiant filed with the Attorney Regulation Counsel on October 17, 2002 against magistrate Robert Erler of El Paso

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<sup>1</sup> The information that your affiant provided to the Attorney Regulation Counsel regarding Attorney Lohse is detailed in the subsection entitled, Abstract of complaints against Attorney Lohse and Magistrate Erler, appearing herein below.

County District Court, John Gleason, Chief Regulation Counsel, wrote the following in his October 22, 2002 reply:

Based on our previous review of your allegations in this case, this office will not conduct any further investigation. I respectfully urge you to direct your concerns to the appropriate appellate court.

- 6) Finally, on or about June 29, 2004, your affiant received the following response from court clerk Mac Danford regarding a formal complaint that your affiant filed with the Supreme Court of Colorado in June of 2004 regarding the ARC's refusal to investigate the aforementioned grievances:

Please be advised that the court has investigated your concerns about the Office of Attorney Regulation Counsel. The court has concluded that the Office of Attorney Regulation Counsel acted appropriately.

#### **Abstract of complaints against attorney Lohse and magistrate Erler.**

- I. Upon information and belief, your affiant's then-wife and her attorney, Herman A. Lohse, were engaged in an intimate, physical relationship during the pendency of the marital dissolution proceedings.
- II. Upon information and belief, attorney Lohse conspired with others—in advance—to have your affiant falsely arrested, so that his incarceration would prevent him from personally appearing to defend against his wife's fraudulent claims at a permanent restraining order hearing, and so that the resulting permanent restraining order would be relied upon to divest your affiant of custody of his daughter in the ongoing custody proceedings.
- III. If proved true, the foregoing ultimate facts would constitute a violation of several of the Rules of Professional Conduct. See generally Colo.R.Civ.P. § 251.9(b)(2).
- IV. The Colorado Supreme Court has established high standards of ethics for attorneys. The standards are contained in the Court rules and the Colorado Rules of Professional conduct (Volume 12 Colorado Revised Statutes Chapter 20 and the Appendix to Chapters 18-20).

#### **Rule 8.4 Misconduct**

##### Committee Comment (amended January 1997)

Sexual relationships between a lawyer and a client raise many issues regarding a lawyer's professional conduct. For example, in *People v. Good*, 893 P.2d 101 (Colo.1995), the Colorado Supreme Court held that because of

the risks inherent in a sexual relationship between a lawyer and a client, such a relationship will almost always violate Rule 8.4 (h).

V.

- On July 12, 2001 your affiant is served with divorce papers that were prepared by Colorado Springs attorney Herman A. Lohse, which were filed in El Paso County District Court on behalf of your affiant's estranged wife, Deborah Thorup.
- On July 13, 2001 Mrs. Thorup informs her brother and sister-in-law, Robert and Sherry Kaess of Canon City, Colorado, that **she is intimately involved with her attorney, Herman A. Lohse**. Mrs. Thorup also declares that, accordingly, she will not have to pay any legal fees for her divorce because she and attorney (Lohse) have "an understanding." During Mrs. Thorup's brief stay at her brother's home, Mrs. Thorup travels to Colorado Springs to visit attorney Lohse and does not return to her brother's home until 2am in the morning prompting an argument with Mr. And Mrs. Kaess. Mr. And Mrs. Kaess then inform Mrs. Thorup that she is no longer welcome in their home. Mr. And Mrs. Kaess will testify, if subpoenaed, about their conversations with Mrs. Thorup and her behavior during this time.

VI.

- On October 10, 2001, Mrs. Thorup and your affiant execute a shared-parenting plan prepared by attorney Lohse, which provides for 41% parenting time by the father (your affiant).
- On November 1, 2001, Mrs. Thorup and your affiant execute a Separation Agreement, also prepared by attorney Lohse. Appearing *pro se*, your affiant is unaware that Attorney Lohse has knowingly and deceptively calculated the child support using "Worksheet A" (Sole Custody) instead of the correct Worksheet B (Shared Parenting). Consequently, your affiant's child support obligation is calculated at more than three-times the statutory guideline and in conflict with the shared-parenting plan authored by attorney Lohse on October 10, 2001 (three weeks prior). Later, your affiant is informed by the court's *pro se* help center that Worksheet A is almost never used in Colorado any more and that this **would obviously be known to attorney Lohse**, especially in consideration of his more-than-twenty-years of experience in family law in Colorado.

VII.

- On November 21, 2001 Mrs. Thorup removes their minor child to the home of attorney Lohse for five days and nights without informing your affiant. Mrs. Thorup's failure to notify your affiant of their daughter's location when away from her primary residence is **in direct violation of the terms of the shared-parenting plan drafted by attorney Lohse** and executed by the parties on October 10, 2001.

- On December 10, 2001, Mrs. Thorup applies for and obtains a temporary restraining order in Denver County Court from Judge Brian Campbell by falsely alleging that your affiant had made threatening telephone calls to her. A hearing is scheduled for December 20, 2001 before Judge Campbell to address the allegations.

### VIII.

- On December 14, 2001, your affiant appears in Denver County Court and requests relief from the temporary restraining order to attend the Final Orders divorce hearing in El Paso County District Court (scheduled for December 19, 2001). The relief sought by your affiant was granted by Judge Campbell.
- On December 18, 2001 or **one day prior to the scheduled Final Orders divorce hearing**, attorney Lohse files an *ex parte* Motion in the El Paso County District Court requesting that the court suspend your affiant's parental rights under C.R.S. § 14-10-129(4). Lohse makes causal reference to a "restraining order" and "**criminal charges**" that he alleges are pending against your affiant in Denver County as justification, although **no warrant was extant** as of that date and time. Your affiant would not be copied on said *ex parte* Motion until approximately January 10, 2002 (three weeks later) and no hearing, as required within seven days under the statute, was held.

### IX.

- December 19, 2001 Prior to the commencement of the Final Orders divorce hearing, attorney Lohse was overheard by several persons informing several [other] persons in El Paso County District Court (Division V) that he is planning on spending the week of Christmas in Breckinridge. Mrs. Thorup and your affiant's daughter would accompany attorney Lohse to Breckinridge for this Christmas holiday despite the fact that your affiant was scheduled to spend this week with the daughter according to the terms of the shared parenting authored by attorney Lohse and executed by both parties.
- **Mrs. Thorup, both by and through her attorney, and in sworn testimony, state that the shared-parenting plan is in the best interest of your affiant's daughter. No mention is made of the contradictory *ex parte* C.R.S. § 14-10-29 (4) Motion that attorney Lohse filed the previous day. Accordingly, magistrate Erler approves the shared-parenting plan and enters a decree of dissolution of marriage.**
- **As the court goes into recess, a sheriff's deputy, acting on a verbal mittimus from magistrate Erler, places your affiant under arrest. The Deputy informs your affiant's family that he has no explanation and that he was just instructed to arrest your affiant.**

## X.

- On December 19<sup>th</sup> through 26<sup>th</sup> 2001, your affiant is incarcerated in El Paso County Detention Center over Christmas without bond on what the El Paso County Sheriff's Department claims is an "outstanding Denver Warrant." Judge Campbell of the Denver County Court, however, intercedes at the request of your affiant's family to determine why your affiant has been arrested. **Judge Campbell informs your affiant's family that he can find no record of any arrest warrant being issued by the City or County of Denver (or any other jurisdiction).** Judge Campbell later informs your affiant that he would be willing to testify regarding his knowledge of your affiant's wrongful arrest and incarceration if subpoenaed.
- Meanwhile, attorney Lohse spends the week of Christmas with the former Mrs. Thorup, your affiant's daughter, and his two sons at a condo in Breckinridge and despite the fact that your affiant is scheduled the Christmas holiday with his daughter.

## XI.

- On December 20, 2001, as a direct and proximate result of the **inexplicable incarceration**, your affiant is unable to attend the scheduled permanent restraining order hearing in Denver County Court regarding the unsubstantiated allegations made by the former Mrs. Thorup. **Consequently, the restraining order is made permanent in derogation of the Confrontation Clause of the Constitution.**
- On December 20, 2001, though your affiant has been disallowed from having an opportunity to be heard and from presenting evidence in his defense, **Magistrate Erler grants the *ex parte* Motion prepared by attorney Lohse and issues an *ex parte* Order suspending your affiant's parenting rights without the requisite hearing under C.R.S. § 14-10-129(4).** The magistrate does not take notice of the contradictory testimony of Mrs. Thorup and attorney Lohse at the Final Orders hearing from the previous day. **Your affiant's parenting rights would not be enforced by magistrate Erler or the court for even one day.**
- On December 26, 2001, your affiant is transferred to the Denver City Jail, where he is placed in a one-bunk cell that is already occupied by a thirty-day inmate. Your affiant's requests to be transferred to any of the several empty cells on that floor, so that he may have a bunk upon which to sit and sleep, are refused. Your affiant is again not provided with **any** personal hygiene items, which now amounted to eight-days without being able to brush his teeth or apply deodorant. Your affiant is made to sit and sleep on a filthy, cold cell floor.

## XII.

- On December 27, 2001, your affiant is **arraigned on charges unspecified.** Patrick Zakis, a private attorney who contracts with the Denver City Attorney's Office to handle arraignments, is in attendance along with a magistrate. Zakis and the magistrate

explain to your affiant's family that they "can't find any paperwork" on him. Indeed, **no warrant had ever been issued for the arrest of your affiant by the City and County of Denver or any other jurisdiction.** No warrant had ever been entered into the NCI records of the Colorado Bureau of Investigation or recorded on the day of your affiant's arrest by the Denver County Court Clerk's Office (which is their required procedure). **At the conclusion of nine days of incarceration, your affiant is issued a "setting slip" directing him to appear in Denver County Court on February 19, 2002 on charges and warrant unspecified and is then released on a personal recognizance bond.**

- On or after December 27, 2001, Denver county judge Robert Crew, records a **post-dated warrant** with the Denver County Court Clerk's Office.<sup>2</sup> Said warrant incorporates by reference the unsubstantiated allegations made by Mrs. Thorup when she obtained a TRO on December 10, 2001.
- The Colorado Bureau of Investigation maintains the NCI or National Crime Information system in Colorado. When a warrant is issued in Colorado (or anywhere), it is recorded in their NCI data base. Similarly, when said warrant is executed, it is removed from their data base to prevent multiple arrests on the same warrant. Each day the CBI records a backup tape of their records for prevention in the event of a power failure, etc. **A review of the CBI's backup tapes would confirm that no warrant was ever issued or recorded for your affiant's arrest.** Simultaneously, on the day of the arrest, a Denver warrant is stamped and recorded in the Denver County Court Clerk records. **The date stamp of 12/27/01 by the Denver County Court Clerk's Office, on the post-dated warrant of Judge Crew, similarly proves that no warrant had been issued prior to or during your affiant's arrest, incarceration of nine days in two counties, or arraignment. If a warrant had been issued by Denver County, said warrant would have been produced at your affiant's arraignment as it would have been in the Denver County Court Clerk's records or NCI system as both are accessible by the Denver City Attorney's Office and Denver County Court. Finally, Judge Brian Campbell of Denver County Court has agreed to testify regarding his knowledge of your affiant's wrongful arrest and incarceration.)**

**XIII.** April 20, 2002, approximately 4 months after the dissolution decree had been issued, your affiant's ex-wife, **Deborah Thorup and her divorce attorney, Herman A. Lohse, are married** at a private ceremony in his Black Forest, Colorado home.

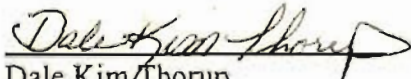
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<sup>2</sup> Your affiant was not ever served with a warrant by El Paso or Denver Counties at any time during his arrest, incarceration of nine days, arraignment, or post arraignment periods. The Denver County Court Clerk's Office would inform your affiant over a month later that said "warrant", and their date stamp of December 27, 2001 on said document, show that date to be the date of your affiant's arrest. When your affiant explained to the Clerk's Office that December 27, 2001 was in-fact his ninth day of incarceration and date of his arraignment, and that no warrant could be produced at said arraignment, they suggested that your affiant consult with a good civil rights attorney.

XIV.

- Appearing *pro se*, your affiant is **subsequently extorted** into accepting a plea-agreement **under duress** and against his will by Christopher Lujan of the Denver City Attorney's Office who threatens to incarcerate your affiant for an additional ninety-days on a fictitious contempt of court charge if he attempts to contest the fraudulent warrant.
- Additionally, Mr. Lujan **misrepresents** to your affiant about the nature of the post-alleged offense "Telephone Harassment" stating that it is only a city ordinance "like burning leaves" and that said charge "would not show up" on your affiant's background report. Your affiant subsequently learns that said charge is a misdemeanor and does appear on his background report.
- The aforesaid plea/conviction has prevented your affiant from obtaining at least five corporate positions over the past three years. The Denver County Court has subsequently refused to seal your affiant's record so that he might overcome this employment impediment.

Your Affiant Further Sayeth Naught

  
 Dale Kim/Thorup

Subscribed and sworn to before me this 21<sup>st</sup> day of February, 2006.





Kim Mowers, Notary Public  
 3080 E. Main St.  
 Cañon City, CO 81212

My commission expires: 02/17/2008