October 23, 2006

Louise Culberson-Smith
Assistant Regulation Counsel
Colorado Supreme Court Attorney Regulation Counsel
1560 Broadway, Suite 1800
Denver, Colorado 80202

Re: Request for Investigation of David R. Gloss, 06-03809

Dear Ms. Culberson-Smith:

I write this in response to your letter to me dated October 17, 2006. As is par for your office's course, you misstate significant aspects of my conversation with Ms. Gosda. I continue to question the legitimacy of your office's policy of barring the submission of complaints via any means other than phone conversation—a policy almost certainly grounded in your office's desire for plausible deniability regarding the actual nature and specifics of complaints. Conversely, your office's policy of responding to complaints by phone rather than in writing provides you and your colleagues with plausible deniability regarding your stated grounds for your office's apparently virtually-universal dismissal of complaints.

This time around, you misstate that one of my complaints was that Gloss is filing motion son behalf of my father's estate and that he lacks the legal authority to do so. Actually, I stated that Gloss is filing motions on behalf not of my father or his estate but instead on behalf of *the State of Colorado*—and that he lacks the legal authority to do so because *he is not an attorney of record for the State* in that case. His motions seek reimbursement to *the State* –not to my father or his estate—for its payment to Gloss of Gloss's attorney's fees. The State was ordered upon Gloss appointment as my father's ostensible court-appointed counsel in February 2005 to pay Gloss's attorney's fees—a questionable order, given that my father is not indigent, but an order nonetheless.

I'll spell out the claim here as explicitly and precisely as I can: my claim is that because Gloss is NOT an attorney of record for THE STATE OF COLORAO in the case, he has no legal authority to file motions ON BEHALF OF THE STATE OF COLORADO seeking ANYTHING. Further, it would constitute an impermissible conflict of interest for Gloss to serve as counsel for my father AND the State of Colorado in the case.

You also misstate my statements about whether or not I notified the probate court that Gloss had not sent me notice of his September 25, 2006 motion. I said in response to Ms. Gosda's question whether I had notified the probate court—although I fail to see the import of it, any event—that in could not recall whether or not I had done so. I explained that I had filed so many documents recently in the probate case and the related federal lawsuit that at that moment I could not recall whether or not I had notified the probate court; I said I had notified the 10th Circuit Court of Appeals but couldn't recall whether I had notified the probate court. Then I said I thought I think I had done so, but wasn't sure. I did do so, and I'm attaching to his letter a copy of my respective filings with the probate court and with the 10th Circuit Court of Appeals concerning the matter.

Your office claims that it lacks the jurisdiction to investigate allegations of attorney fraud or conflict of interest, however brazen the conduct, absent a prerequisite finding by a court. It claims that, in any event, nothing constitutes fraud, conflict of interest or other type of misconduct on the part of an attorney unless, regarding allegations of fraud, the attorney or someone else who participated in or observed the fraud admits not simply to the conduct alleged but that it did constitute fraud and, regarding allegations of conflict of interest, unless the attorney admits not only to the conduct but that I constituted impermissible conflict of interest. Your office claims that it lacks jurisdiction to investigate *any* complaints on its own and must instead receive from the complainant—as you phrase it in your October 17 letter—corroborating documents, even when the nature of allegation (in this instance, that Gloss did not send me a copy of his September 25, 2006 court filing and of the judge's order issued the next day (the judge says Gloss filed certificates of eservice of each of these). It claims that it lacks sufficient funds to spend $1.50 to obtain six ages of court documents to verify that Gloss actually filed the false certificates of service last March and April that I told your office he filed, and it refused to accept as sufficient grounds to initiate an investigation the copies I sent to you of Gloss's email message in which he confirmed that he had done so.

As for your office's by-now-overt approval of Gloss's unabashed refusal to serve the normal, statutorily-mandated role of counsel to my father—his open refusal to consult with my father, to apprise accurately and fully of the nature, result and effects of the legal proceedings and to apprise him of his legal options, to take direction from him and only from him, and to present to the court my father's wishes, and instead to aggressively assist an opposing party in obtaining court orders that no one has ever claimed my father wished and that no one disputes that my father would aggressively oppose—I note an opinion issued last Thursday by the 10th Circuit Court of Appeals, based in Chicago, that contains a relevant comment. On Friday, I submitted a letter to the 10th Circuit Court of Appeals pursuant to Fed. R. App. P. 28(j) citing that that opinion as supplemental authority in the federal appeal to which you and your office are parties. The body of the letter reads in full:

> Dear Ms. Shumaker:
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> Please note an opinion issued yesterday by the United States Court of Appeals for the Seventh Circuit, in *United States v. Bullion*, 2006 U.S. App. LEXIS 25860, that potently reiterates a rule of law relevant to this lawsuit and to the pending motion pursuant to Fed. R. App. P. 8(2) for emergency injunctive relief concerning my father, plaintiff-appellant Joseph Mann. The opinion states that the appellant's counsel should have filed an *Anders* brief rather than an appellate brief because the asserted grounds for appeal were frivolous. The opinion then states:
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> > When we put this to the defendant's lawyer at argument, she said that the defendant wanted her to appeal. No doubt; had he not wanted her to appeal, it would have been serious misconduct for her to appeal.

The pending motion seeks (among other things) enjoinment of attorney David R. Gloss, my father's court-appointed attorney in the related state-court guardianship matter, from further participation in that matter and enjoinment of the court's bar to private-counsel representation for my father. Gloss served and serves as *de facto* co-counsel for the person who successfully petitioned for guardianship and conservatorship, assisting her in arranging my father's absence from court hearings, his loss of legal autonomy, his forced sequestration from me and everyone else from whom the guardian wishes him estranged, his forced separation from his lifelong hometown of Chicago (Gloss concedes that Joseph wishes to return to Chicago), and his denial of access to any information—including the nature, purpose and effect of the court proceeding and court orders—that the guardian wishes him not to have.

Gloss makes no pretense that my father wishes any of this—nor is it plausible that *anyone* would *want* to delegate such complete control to another person. Gloss also has sought reimbursement by me to the State of Colorado (which is paying his legal fees) for his attorney's fees in responding to my motions requesting leave to retain private counsel for my father. My father neither approved nor would approve of Gloss' motion. Gloss's actions are untethered from and in direct conflict with my father's wishes.

Sincerely,

Beverly Mann

Nothing in Colorado statute or Supreme Court authority supports your office's odd interpretation of the Colorado rules of attorney conduct as permitting the conduct that you have countenanced regarding David Gloss and, earlier, Stephenie Lorimer. with regard to Gloss's position as court-appointed counsel, and his use of that position to deprive my father of genuine legal counsel, also violate the Fourteenth Amendment—every bit as much as would similar conduct by a public defender in a criminal case.

And nothing in Colorado statute or Supreme Court authority supports your office's claims of impotence, and the relevant statute and recent (as well as earlier Supreme Court authority) specifically contradicts it. And regarding your claim of lack of funds to pay $1.50 for photocopying costs, I question the veracity of that—given that each year your office budgets many thousands of dollars to send the entire 14-member staff of attorneys on four full weeks of out-of-state junkets. You also refused to phone the probate court clerk and ask that she fax you copies of the documents, or alternatively to contact *Gloss* and ask *him* to do so. And your incessant claims that I have been insufficiently precise about the date or whatever of the documents at issue, that is simply false.

I plan to submit a formal request pursuant to the Colorado Open Records Act for documentation disclosing the full amount of expenditures by your office for those junkets in each of the last five years. Or maybe instead I'll suggest to the Denver Post or another Colorado news outlet that it do so.

Your October 17 letter highlights your office's peculiar position that it is doing me a favor by agreeing to investigate my claim regarding Gloss's September 25 *ex parte* filing and the two false certificates of service he filed respectively in September 25 and 26: it will do so, but only if I climb this or that high hurdle and navigate some specific maze. And, you emphasize, it absolutely will NOT investigate my earlier claims—even the one concerning Gloss's admitted *ex parte* filings last spring and his filings back then of two false certificates of service regarding this filings; those cases are CLOSED, you make clear.

Your office is *charged by law* with encoding the attorney code of professional responsibly. Your office doesn't do that because its attorneys aren't *interested* in doing so. If, as I claim, Gloss is filing false certificates of service and therefore filing *ex parte* documents with the court, your agency should be concerned enough to actually lift a proverbial finger to investigate the claim.

As for corroborating evidence you demand that Gloss did not send me notice of the September 25 motion or a copy of the judge's September 26 order granting the motion—as the judge claims he instructed Gloss to do—yet filed certificates of service claiming he had done so: what corroborating evidence, exactly, do you wish? Other than my own statement that I did not receive those documents, and perhaps a statement from the probate clerk, Judy, who told me of them and who could attest that I expressed surprise and anger, I haven't a clue to what evidence my corroborate my claim—other than, of course, the obvious evidence: an admission from Gloss.

But I—unlike you—have no way to acquire such an admission and, anyway, when I supplied your office with Gloss's email admission regarding his March and Arpil 2006 filings of false certificates of service, that did boot suffice as sufficient evidence for you to investigate the matter. Instead, you dismissed the complaint because you lacked the funds to obtain photocopies of the six pages of documents you said you needed to begin an inquiry, and were unwilling to request faxed copies from the probate clerk or from Gloss.

Your office's letterhead reads, directly below the name "Colorado Supreme Court Attorney Regulation Counsel" and your office's official seal: "Attorneys' Fund for Client Protection" and immediately below that "Unauthorized Practice of Law". There is nothing else on the letterhead except the names and titles of the attorney staff members. This suggests to me that your office views itself as charged solely with policing the unauthorized practice of law, under the guise of "client protection". The unauthorized practice of law can, of course, harm clients, but, defined very broadly, its main purpose is to protect the financial interests of lawyers, epically because people who cannot afford a lawyer or who wish not to pay the going rate for one, may rely instead upon books or forms or assistance from a paralegal other persons knowledgeable in some aspect of law (including legal research) to help them meet their legal needs. Your office certainly does not care about client protection in any other regard.

But the Colorado General Assembly might. Your office seems to be parodying those comically infamous bureaucracies of the old Soviet Union—bureaucracies whose sole purpose was to serve the interests of its bureaucrats. Your offer serves only its own interests and the interests of those it is charged by law to oversee. It is, in other words, a fraud.

Once the upcoming election is over, I will submit to the Colorado General Assembly a copy of this letter and my other correspondence with and concerning your office.

At a minimum, the General Assembly might want to require that your office budget a few bucks to obtain photocopies of court filings relevant to complaints field with your office. And who knows? It might even go further and gut the entire structure of your office and restructure it so that is actually serves its legislative purpose.

Yours,

Beverly Mann
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