

**COMPLAINT OF MISCONDUCT
AGAINST KANSAS DISTRICT COURT
MAGISTRATE JUDGE JAMES P. O'HARA**

The Hon. Magistrate Judge James P. O'Hara engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The complainant believes that Judge James P. O'Hara used his magistrate's office to obtain special treatment for his former law firm Shughart, Thomson & Kilroy and improperly engaged in discussions with lawyers or parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office.

TENTH CIRCUIT CASES EFFECTED

Medical Supply Chain v US Bancorp, NA.; Case No. 02-3443, 03-3342

Medical Supply Chain v General Electric Co.; Case No. 04-3075, 04-3102

Bolden v City of Topeka; Case No. 04-3306

STATEMENT OF FACTS

1. The Hon. Judge James P. O'Hara is a magistrate in the District of Kansas with an office in Kansas City, Kansas federal courthouse.
2. Before becoming a magistrate, Judge O'Hara was the managing partner and shareholder in the law firm Shughart, Thomson & Kilroy where he worked for 18 years and managed the firm's Overland Park, Kansas office. The firm's website continues to list him in a biographical press release giving the impression they have significant influence in the Kansas District Court. **Atch. 1**
3. The Kansas District Court biography of Judge O'Hara states that he started in the legal profession as a law clerk for the Kansas Attorney Disciplinary Administrator's office and

states that he has served on several Kansas attorney disciplinary committees while working for Shughart, Thomson & Kilroy.

4. The complainant, Bret D. Landrith, Esq. undertook the representation of Medical Supply Chain, Inc. in an action against U.S. Bancorp NA, several of its subsidiaries and officers, an independent legal identity named as Unknown Healthcare Supplier and several identified coconspirators which were not to be named as defendants until discovery. The complaint sought injunctive and declaratory relief for Sherman §§ 1 and 2 antitrust violations and pendant state claims related to the theft of intellectual property and contract.

5. The firm Shughart, Thomson & Kilroy (STK) represented all the defendants except the Unknown Healthcare Supplier and the defense was argued by STK's Overland Park office attorney Andrew M. DeMarea at two preliminary injunctive relief hearings.

6. DeMarea did not appear familiar with the subject matter of the case, believing it to be about health insurance instead of hospital supplies and did not refute that he had not read the motions from the case in the second hearing:

“The transcripts added to the record confirm that US Bancorp’s counsel was unfamiliar with the motions and pleadings that were the subject of the two hearings. US Bancorp’s counsel stated repeatedly and erroneously the issues were health insurance and pricing and appeared at all times to be very far a field from the subject matter of the case.”

Medical Supply Reply Brief, pg. 2, Case No. 02-3443.

7. The case is of great importance to the 1.8 trillion dollar hospital supply industry where Medical Supply was the last remaining independent electronic marketplace for hospital supplies in a national market controlled by a hospital supply group purchasing monopoly that has been the subject of three US Senate Judiciary Antitrust Sub Committee hearings.

The second of which discussed the conduct committed against Medical Supply by US

Bancorp and its investment bank subsidiary and also described the later conduct committed against Medical Supply by General Electric. **Atch. 2**

8. The denial of preliminary injunctive relief resulted in Medical Supply seeking an interlocutory appeal, which surprised both the presiding judge, Hon. Carlos Murguia and visibly angered Andrew M. DeMarea even though this outcome was extensively briefed in the motion being heard.

9. The denial of temporary relief caused Medical Supply to lose the \$350,000.00 it had raised from its representative candidates to enter the market for hospital supplies.

Medical Supply also lost its intellectual property including its proprietary trade secrets, business models and algorithms. Some of the intellectual property was later incorporated into the US Bancorp's hospital supplier co-conspirator's business practices.

10. A series of state disciplinary actions started to be taken against Medical Supply's counsel, who had attempted to earn a living as a solo civil rights practitioner while awaiting the Tenth Circuit's ruling on the Medical Supply case.

11. Hon. Judge James P. O'Hara had knowledge of the first two disciplinary complaints made against Bret Landrith for representing an African American James Bolden and his chief witness, David Price in separate Kansas Court of Appeals case. The complaints were not made by the clients but instead by a motions attorney for the state court and in later testimony it was discovered that it was the conduct accurately describing denial of equal protection and due process rights suffered by the clients in bringing the appeal that prompted the complaint. **Atch. 3.**

12. With knowledge of the discriminatory treatment depriving James Bolden of access to Shawnee District Court records and an opportunity to litigate his appeal, Hon. Judge

James P. O'Hara at a pre trial order conference in the concurrent federal civil rights action attacked Bret Landrith as incompetent, inviting James Bolden to sue his counsel for malpractice and suggesting that Bolden could better represent himself pro se. **Atch. 4.**

13. Judge O'Hara reiterated these same statements in his report and recommendation to the presiding judge, which he directed to be mailed in certified delivery to James Bolden. **Atch. 5.**

14. The basis for these attacks on Bret Landrith turned out to be pretextual. Controlling law clearly makes the City responsible for the conduct of its officers in their official capacity. A fact Judge O'Hara well knew and in an unrelated pretrial order conference the following day accepted the voluntary stipulation of parties that all officials be voluntarily dismissed. Judge O'Hara also stated as much in a footnote to his report. **Atch. 5.**

15. The reason for Judge O'Hara's targeting of Bret Landrith appears to be in retaliation for his representation of Medical Supply where SKT's failure to appreciate the extreme risk to their clients resulted in a litigation record that clearly made SKT the guarantor of any damages that might be awarded against US Bancorp. This is consistent with his sua sponte pretrial order statements about malpractice insurance when it was clear that even if Bolden was deprived of individual defendants, the City was the party financially liable. Piper Jaffray conducted a study showing a web based electronic marketplace like Medical Supply would save over \$20 billion dollars in hospital supply costs.

16. Sherri Price the counsel for the City of Topeka who relied entirely on Magistrate O'Hara to represent her clients during the pretrial order conference filed an ethics "complaint" against Bret Landrith. The "complaint" stated that Mr. Landrith had included

the earlier ethics complaint as an attachment to Bolden's pleadings which is not a violation of the Kansas Rules of Professional Conduct and Sherri Price incorporated by reference Magistrate O'Hara's Report and Recommendation, making no observations of assertions of Mr. Landrith's misconduct of her own. **Atch. 6.**

16. Andrew DeMarea failed to file a reply brief in the interlocutory appeal for the US Bancorp appellees. The Tenth Circuit court clerk called him two days later to remind him and urged him to file for an extension one day beyond the date the brief was due and seven days beyond the deadline for a motion for extension of time under 10th Cir. R. 27.4(F). **Atch. 7.**

17. Andrew DeMarea refused to turn in a parties case management conference report on the form required by local rule in the Kansas District Court. He repeatedly assured Magistrate Waxe during the first case management conference that the Medical Supply case would be dismissed.

18. Mark Olthoff, an attorney for SKT in their Kansas City, MO office appeared to write all pleadings and briefs for the defendants until the second appeal where he appears to have been replaced by Susan C. Hascall of the Kansas City, MO office who was a Tenth Circuit Court of Appeals law clerk through 2000.

19. Mark Olthoff's trial pleadings repeatedly misstated and misrepresented Medical Supply's Amended Complaint and pleadings to the court, even after it had been repeatedly drawn to the court's attention that Mr. Olthoff was exploiting the court's reliance on the experience of SKT and was neglecting to read or consider Medical Supply's pleadings. In its order, the court even admonished Bret Landrith for failing to research law and facts that the record evidences had been researched. The negligence was

entirely that of Mr. Olthoff and the court's or a result of the court's misplaced reliance on Mr. Olthoff.

20. The Medical Supply action against US Bancorp was dismissed but not on arguments or authorities presented by SKT's dismissal memorandum. The first findings of law and fact made by the court in the case were sua sponte and both were clearly erroneous.

21. The court did not respond to Medical Supply's arguments for reconsideration or correct its factual errors. It is believed that Judge O'Hara obtained the magistrate assignment to Medical Supply's case against General Electric because of his relationship to SKT and it provided an opportunity to address the same fact pattern as the earlier case because GE breached its contract with Medical Supply once the electronic marketplace GHX, LLC created by GE and its hospital supplier competitors discovered Medical Supply was attempting again to enter the market for hospital supplies.

22. On January 14th, 2005, Andrew DeMarea was directed to file an ethics complaint against Bret Landrith. Like the "complaint" filed by Sherri Price, no allegations of misconduct appear in DeMarea's complaint, it merely incorporates by reference attached Medical Supply filings in the District Court and the Tenth Circuit and the appellate panel's sanction of Bret Landrith for a "frivolous appeal." The "complaint" also contained Medical Supply's motion for en banc review of the sanctions. See **Atch. 8** The sanction order itself admitted the trial court and the hearing panel were mistaken in stating there was no private right of action contained in the USA PATRIOT Act. However, it is unfortunately clear that Judge O'Hara, Olthoff and DeMarea have no interest in the law, only in perpetuating a smear of Medical Supply's counsel, despite clear Tenth Circuit and Supreme Court authority that the sole check on judicial

misconduct that can remedy its effect is appeal. *Ramirez v. Oklahoma Dept. of Mental Health*, 41 F.3d 584 at 589-90 (C.A.10 (Okl.), 1994).

23. Judge O'Hara used his position as magistrate assigned to the Medical Supply action against General Electric to deny Medical Supply discovery. A decision he also made in the Bolden case. On January 20, 2005 Judge O'Hara testified under oath that he had only denied discovery in a few cases. He stated he was unaware of any other case he was assigned where Bret Landrith was an attorney. He visibly winced when he was then questioned if he was a magistrate in *Medical Supply v. General Electric et. al.* where Bret Landrith was the sole counsel for the plaintiff. See **Atch. 9. (transcript to be supplemented)**

24. The disciplinary tribunal heard arguments that Judge O'Hara was the complaining witness in fact for the complaint made by the assistant city attorney against Bret Landrith. Sherri Price made no independent allegations or observations of misconduct against Bret Landrith and merely incorporated by reference Magistrate O'Hara's report and recommendation from Bolden's pretrial conference. The disciplinary tribunal ordered Judge O'Hara to drive to Topeka and testify under oath. See **Atch. 9.**

25. Judge O'Hara added to his attacks against Bret Landrith with further statements impugning Bret Landrith's competence. . Judge O'Hara testified that James Bolden's counsel was the worst attorney he had seen in 20 years. Magistrate O'Hara alleged that Mr. Landrith did not have the skill or knowledge of the law a first year law student would possess. See **Atch. 9.**

26. Judge O'Hara made a point of addressing facts that weakened the Kansas Disciplinary Administrator's case from the previous two days and made these assertions

unsolicited from the questioning of the Disciplinary Administrator and demonstrated a pre appearance coaching or consultation with Stanton Hazlett, especially on the point about Bret Landrith's competence being less than that of a first year law student. Judge O'Hara could not have known that Landrith had testified the previous day that many states permit law students to represent clients in civil rights actions because of the shortage of counsel willing to undertake this difficult and unlucrative work. See **Atch. 9. 27.** Judge Vratil, the presiding Judge on Bolden's case upheld Magistrate O'Hara's recommendations which cut out many claims based on City of Topeka policies that had a negative impact on members of a protected class. Judge Vratil relied on Magistrate O'Hara's judgment that the affidavits of misconduct against process servers and Bolden's witnesses provided no basis for relying on the City's unqualified appearance as effective service under the alternative use of Kansas service of process rules and provided no basis for extending discovery. Judge Vratil also demonstrated an impression that Bret Landrith was mentally incapable of arguing motions before the court in the final case management conference before trial which appeared to be the result of Magistrate O'Hara's influence. Later Judge Vratil was able to make an independent judgment of Bret Landrith's competence demonstrated by Bolden prevailing on some motions disputed before trial.

28. When Judge O'Hara returned to Kansas City, events still seemed to be set against Mr. Bolden's cause. The notice that the record on appeal was complete was erroneously given to the Tenth Circuit, though the mistake was clear from the appearance docket that two transcripts that had been ordered still were not part of the record. The appeals clerk for

Kansas District court would not correct the record, Bolden made a motion to correct the record, which was not addressed by Magistrate O'Hara. See **Atch. 10**

29. Bolden's motion for an extension of time was sent to both the Tenth Circuit and the Kansas District Court. However it did not appear on the Tenth Circuit Court of Appeals appearance docket. Bolden's counsel called the Tenth Circuit and a deputy clerk identified as Kathy stated that it had been received two days before but it was still not docketed. After the call Kathy reentered on the docket that Bolden's brief was due January 26th. See **Atch. 11**

30. On the same day, counsel called the Kansas District Court appeals clerk who stated she was working on the letter correcting the date the record was complete. However, this letter did not appear on the docket the 25th or even the 26th. Bolden's counsel was forced to work without sleep to file an incomplete appellate brief on the 26th emailing the brief to the court and counsel for the City and turning in the briefs and appendixes to US Postal Delivery service for the Tenth Circuit and the City of Topeka. See **Atch. 12**

31. Both the Kansas District Court correction of the record on appeal and the Tenth Circuit docketing of the motion for extension occurred after the brief and appendix was received, giving the appearance to an impartial observer that the events were coordinated to manufacture an ethics violation for Bolden's counsel after the failure of previous attempts.

32. James Bolden is unable to find counsel to represent him in defending against the final steps of the City of Topeka's effort to take his two properties for a public use without compensating him.

33. Bret Landrith is unable to take civil rights clients because his speech has been chilled by the action of Judge O'Hara through the Kansas Office of the Disciplinary Administrator and he is likely to be disbarred for conduct required by the Kansas Rules of Professional Conduct.

34. In an order where Bret Landrith was neither a party or attorney, Magistrate James P. O'Hara stated Bret Landrith was incompetent. During testimony under oath, Magistrate O'Hara stated he could not recall ever stating in an order where Mr. Landrith was not an attorney that Mr. Landrith was incompetent. See **Atch 13**.

STATEMENT OF VIOLATIONS

Allegations of Conduct Violating Judicial Cannons:

I. Judge James P. O'Hara's name is being used in the Shughart, Thomson & Kilroy corporate web site, falling within the proscription of Kansas Judicial Canon 2B wherein it is stated . . . "a judge . . . should not lend the prestige of his office to advance the private interests of others."

II. Judge James P. O'Hara has violated Kansas Judicial Canon 2, which in substance, provides that the judge not only must avoid impropriety, but also the appearance of impropriety.

III. Judge James P. O'Hara has violated Kansas Judicial Canon 3C(1)(b), which in substance, provides that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where

he served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter.

IV. Judge James P. O'Hara has violated Kansas Judicial Canon 3C(1)(c) which provides, in substance, that a judge should disqualify himself when he knows that he has a financial interest in the subject matter in controversy, or any other interest that could be substantially affected by the outcome of the proceeding. "Financial interest" is defined in Canon 3C(3)(c) as ownership of a legal or equitable interest, however small. Judge James P. O'Hara

V. Judge James P. O'Hara has violated Kansas Judicial Canon 2, which in substance, provides that the judge not only must avoid impropriety, but also the appearance of impropriety.

Allegations of criminal conduct:

VI. Judge James P. O'Hara has violated James Bolden's civil rights in causing the intimidation and harassment of James Bolden's counsel Bret Landrith and by encouraging the intimidation and harassment of James Bolden and his witnesses under the color of Kansas law to deprive them of the right to representation, redress, freedom of speech and to give testimony by City of Topeka officials. Judge O'Hara's conduct violates 18 U.S.C. § 241, 18 U.S.C. § 1513(b).

VII. Judge James P. O'Hara has participated in a conspiracy between Shughart, Thomson & Kilroy, US Bancorp NA, The Piper Jaffray Companies, Novation LLC and Neoforma, Inc. to obstruct Medical Supply's entry into the national market for hospital supplies by

attempting to intimidate and harass Medical Supply's counsel and deprive the company of the means to assert its legal rights. The Hobbs Act 18 U.S.C. §1951, The Sherman Antitrust Act 15 U.S.C. §1 and Retaliating Against a Victim Witness or Informant 18 U.S.C. §1513(b).

Respectfully submitted,

S/ Samuel K. Lipari
Samuel K. Lipari,