

# EXHIBIT 1

**From:** <shawn@manganolaw.com>  
**Subject:** RE: Hoehn Appeal  
**Date:** July 21, 2011 10:44:39 AM PDT  
**To:** "J. Malcolm DeVoy" <jmd@randazza.com>  
**Cc:** "Marc John Randazza" <mjr@randazza.com>

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Let me take a look at the transcript, guys.

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----- Original Message -----  
Subject: Re: Hoehn Appeal  
From: "J. Malcolm DeVoy" <[jmd@randazza.com](mailto:jmd@randazza.com)>  
Date: Thu, July 21, 2011 10:41 am  
To: <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)>  
Cc: "Marc John Randazza" <[mjr@randazza.com](mailto:mjr@randazza.com)>

The transcript (attached) specifically contemplates appeals. Check 18:20-19:2 --

HUNT: "[the requirement to file Doc # 116 and a transcript] will not apply to those cases that have been dismissed unless there's going to be an appeal in those cases." (emphasis added)

I know that the minutes say "pending cases" (Doc. # 138). But, Hunt's language in the transcript seems to obviously embrace a more sweeping view of "pending," which entails appeal.

On Jul 21, 2011, at 10:30 AM, <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> wrote:

> Continue reading the transcript where Judge Hunt clarified this obligation as is reflected in the minutes.  
>  
> S  
>  
> Shawn A. Mangano, Esq.  
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> 9960 West Cheyenne Avenue, Suite 170  
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>  
> ----- Original Message -----  
> Subject: Re: Hoehn Appeal  
> From: Marc John Randazza <[mjr@randazza.com](mailto:mjr@randazza.com)>  
> Date: Thu, July 21, 2011 6:42 am  
> To: <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)>  
> Cc: "J. Malcolm DeVoy" <[jmd@randazza.com](mailto:jmd@randazza.com)>  
>

> Shawn,

>

> If I may chime in here, I am reading the transcript of the proceedings, and here is the operative part of the order.

>

> "The Court is going to order that every case Righthaven has in any jurisdiction in this country must be provided with a copy of this Court's decision about the agreement, the one on standing, and that the agreement be disclosed to parties that Righthaven has sued."

>

- > 1. Every case
- > 2. In any jurisdiction
- > 3. In this country

>

> I'm not finding any wiggle room there. I think that what you need to do, in order to comply with the court's order, is relatively simple. You just provide a notice to the 9th, and to Judge Pro, stating that Judge Hunt ordered you to provide the attached documents to the court, and then you attach them.

>

> I hope this helps to clarify the foundation of our position.

>

>

>

>

> On Jul 20, 2011, at 11:17 PM, <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> wrote:

>

>> Jay:

>>

>> I can give you a response tomorrow. With cases pending on appeal, there are procedural requirements that need to be followed to augment the record. It just is not as simple as filing the stuff or providing it to counsel.

>>

>> Procedurally, judgment has been entered in Hoehn and an appeal has been taken from that judgment. The pending fee motion is a form of post-judgment relief the Court continues to exercise limited jurisdiction over. Once an appeal is taken, the Court is divested of jurisdiction over all other matter aside from post-judgment awards and enforcement issues when the judgment is not automatically stayed through the posting of a bond or other collateral that qualifies as adequate security.

>>

>> Furthermore, what is the Ninth Circuit going to do with this information? I know why you want to use it. But it is collateral information from another case.

[REDACTED]

>> So maybe my evaluation of these issues is missing something that seems readily apparent on your end. I have prosecuted several appeals in the Ninth Circuit and also before the Nevada Supreme Court. I'm not raising issues blindly or expressing concerns without some experience-based reasons for doing so. If you want an answer by 10:00 a.m. tomorrow, it is not going to happen. Do whatever you need to do to seek relief or augment the record and, if I think it has merit, I will let you know so and not oppose or join in whatever it is you intend to file.

[REDACTED]

>> FYI - [REDACTED]

>>

>> Regards,

>>

>> S

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>> ----- Original Message -----

>> Subject: Re: Hoehn Appeal

>> From: "J. Malcolm DeVoy" <[jmd@randazza.com](mailto:jmd@randazza.com)>

>> Date: Wed, July 20, 2011 6:55 pm

>> To: <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)>

>> Cc: "Marc J. Randazza" <[mjr@randazza.com](mailto:mjr@randazza.com)>

>>

>> Shawn,

>>

>> I'm admittedly skeptical as to how Righthaven could take the position that Hunt's order does not require the same disclosure in Hoehn, and the other two cases that are on appeal.

>>

>> One alternative Marc and I have considered is writing a letter to Judge Hunt, requesting clarification of his Order based on the July 14 hearing (Doc. # 138). If we provide such a letter to him, we will copy you (and other counsel in the case) on the final version. However, I can't see how we could avoid stating that his Order seems clear, and it seems that taking the position that it does not apply to the Hoehn case appears to be contrary to the Order's intent.

>>

>> I respect that you wish to reflect on this. However, the Hoehn case is not truly closed, despite what the docket says - there is a pending fee motion, and the information Hunt seeks to have disclosed seems to be precisely the kind of facts a judge would want to see when making a fee determination. Furthermore, it will likely bear directly upon issues on appeal.

>>

>> I know that you must represent your client, but at the same time, I think an abundance of caution would auger well for Righthaven in light of recent events. If you are compelled not to file such documents in Hoehn, I hope that you re-evaluate your relationship with any client who would instruct you to risk running afoul of a court's Order. I know that you are better than that, even if we disagree on various things.

>>

>> If you wish, I think a good compromise would be for you to file a request for clarification with Judge Hunt, identifying the three cases you have that are on appeal (Hoehn, Realty One Group and Center for Intercultural Organizing), and asking him if he meant for the Order (Doc. # 116) and Transcript (or subsequent superseding written order) to be filed in those cases as well. If you do that, then the decision is out of your hands, you will appear to be completely reasonable, and there can be no question as to your desire to follow his instructions.

>>

>> Whichever position you take, we do believe that time is of the essence. Therefore, we do need you to commit to a position by the time the mail goes out tomorrow, even if there isn't a filing made at that time. Lets say 10:00 AM?

>>

>> Jay

>>

>> On Jul 20, 2011, at 12:21 PM, <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)> wrote:

>>

>>> Right now it is not part of the record nor should it be at this point. I have not considered whether Judge Hunt's order requires it to be made part of the Hoehn case, which has been closed for a month. That said, I'm willing to consider it. I just haven't done so as of now.

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>>> S

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>>> ----- Original Message -----

>>> Subject: Hoehn Appeal

>>> From: "J. Malcolm DeVoy" <[jmd@randazza.com](mailto:jmd@randazza.com)>

>>> Date: Wed, July 20, 2011 9:26 am

>>> To: Shawn Mangano <[shawn@manganolaw.com](mailto:shawn@manganolaw.com)>

>>> Cc: "Marc J. Randazza" <[mjr@randazza.com](mailto:mjr@randazza.com)>

>>>

>>> Shawn,

>>>

>>> Is Righthaven going to be putting the OSC hearing transcript and Democratic Underground order (Doc. # 116) on the pre-appeal record in Hoehn pursuant to Judge Hunt's July 14th Order? Technically, the Hoehn case is closed. But, with a pending motion for attorney's fees and now an ostensible appeal forthcoming, we believe the case is "pending" within the ambit of Hunt's order, and those documents should be on the appellate record.

>>>

>>> We have no interest in making this a lengthy issue of motion practice or even adversarial - we're just interested in what Righthaven's position is on the issue. If you could let us know by 5 pm, it would be appreciated (and don't worry, we're not trying to meet some media deadline).

>>>

>>> Jay

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>>> \_\_\_\_\_  
>>> J. Malcolm DeVoy\*

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