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March 15, 2010

The Honorable Susan N. Burke  
Judge of District Court  
Hennepin County Government Center  
300 South 6<sup>th</sup> Street  
Minneapolis, MN 55487

Re: *Christopher Roller v. Wagner, Falconer & Judd, Ltd., et al*  
Court File No. 27-CV-09-22812  
Our File No. 1-671-0001

Dear Judge Burke:

We are in receipt of the Court's Order dated March 4, 2010, which denied Defendant Wagner, Falconer & Judd, Ltd's ("WFJ") Motion to Dismiss but ordered the dismissal of the plaintiff's complaint with prejudice. Pursuant to Rule 115.11 of the General Rules of Practice, WFJ respectfully requests that the Court permit it to file a motion for reconsideration. WFJ seeks reconsideration of the Court's Order because the Court's Order is incomplete, inconsistent and includes incorrect applications of the law.

First, the Court's Order failed to address WFJ's motion to dismiss for insufficient service of process. Still to this day, plaintiff has not perfected service of process of the Summons and Complaint on WFJ. If service of process is invalid, the district court lacks jurisdiction to consider the case, and the case should be dismissed. *Leek v. Am. Express Prop. Cas.*, 591 N.W.2d 507, 509 (Minn. Ct. App. 1999). Consequently, the Court erred in not dismissing the Complaint under Rule 12.02(d).

Second, the Court applied the wrong standard in determining that Plaintiff's Complaint alleged sufficient facts to survive a motion to dismiss under Rule 8.01 of the Minnesota Rules of Civil Procedure. The "factual" allegations contained in the Complaint are so convoluted that it is virtually impossible to glean anything comprehensible from them whatsoever other than through impermissible imagination. However, it is uncontroverted that the fabric of plaintiff's claim against WFJ is based on the firm's declination to pursue a frivolous piece litigation on plaintiff's behalf that could not be supported under Minnesota law and Rule 11 of the Minnesota Rules of

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Civil Procedure. As outlined in WFJ's Memorandum of Law in Support of its Motion to Dismiss, Minnesota does not recognize a cause of action for "conflict of interest."


As to the remaining random and incomprehensibly pled allegations, the Complaint fails to plead the elements of breach of a fiduciary duty, including the existence of a fiduciary duty and any causal connection between such a duty and any injury. The absence of any attorney-client relationship alone obviates any claim for breach of fiduciary duty. Moreover, plaintiff does not have a legal cause of action on behalf of his daughter for the obvious reason that she is not even listed as a plaintiff in the case caption. Further, to allege a claim for emotional distress, plaintiff must allege the alleged of the tortuous conduct, the date of its occurrence and damages, which he has not. Finally, the spurious allegations relating to WFJ's conspiracy to murder Roller are assertions unsupported by factual allegations, lack lucidity and are tantamount to a mockery of the court. Plaintiff's complaint does not mention with whom WFJ allegedly conspired, what they allegedly conspired to do, not to mention any causal damages. Minnesota law requires more than imaginary allegations to state a claim upon which relief can be granted.

Aside from the Court's misapplication of the law, the Court's Order denying WFJ's motion to dismiss is also incomprehensible. On the one hand the Order denies WFJ's motion to dismiss, and on the other, it *sua sponte* dismisses Roller's Complaint with prejudice.

Because the Court's ruling is incomplete, inherently inconsistent and contrary to Minnesota law, WFJ respectfully requests that the Court permit it to file a motion for reconsideration. Based on the foregoing, we request that the Court permit WFJ to file a formal motion for reconsideration.

Very truly yours,

**LARSON • KING, LLP**

 (351106) for:  
Mark A. Solheim

MAS: lab

cc: Christopher Roller, pro se (via email and U.S. mail)  
Richard Allyn, Esq. (via email and U.S. mail)