

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

20070019

Vogel, Weir, Hunke and }  
 McCormick, Ltd.. }  
 Plaintiff and Appellee, }  
 }  
 vs. }  
 }  
 Terry Serbus, individually }  
 and dba Serbus Bail Bonds, }  
 Defendant and Appellant. }

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SUPREME COURT No. 20070019  
 Superior Court No. 06-C-00128

**FILED**  
 IN THE OFFICE OF THE  
 CLERK OF SUPREME COURT

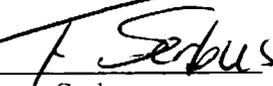
APPELLANT'S OPENING BRIEF

Appeal from the judgment of the Superior Court  
 East Central Judicial District at Cass  
 The Honorable Judge Frank L. Racek

FEB 14 2007

STATE OF NORTH DAKOTA

Terry Serbus, dba. Serbus Bail Bonds pro se  
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By:   
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Filed in the North Dakota Supreme Court  
 February 15, 2007

By: \_\_\_\_\_  
 Deputy Clerk

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TABLE OF AUTHORITIES

CASES

Amwest Surety Insurance Company v. Maria Contreras and Maximo Contreas, P. 1 (New York 2001).....

Minnesota Rules of Professional Responsibility.....

**AUTHORITIES PRINCIPALLY RELIED UPON**

There are no statutes or rules primarily relied upon. The Argument cites cases which are not supposed to be included in this section.

**JURISDICTIONAL STATEMENT**

Appellant Terry Serbus dba., Serbus Bail Bonds appeals from the December 29, 2006 final judgment issued by East Central Judicial District Court Judge Frank L. Racek. [ Exc.. 01-07] This Court has appellate jurisdiction under AS N.D.C.C. 27-11-01 and North Dakota Appellate Rules.

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Did Vogel Law under the Rules of Professional Responsibility consult and advise Terry Serbus, of each and every decision and legal matter they proceeded with and the consequences of their legal actions?
2. Did the Vogel Law agree the retainer fee only and no hourly rate in excess of the \$3000.
3. Did Vogel Law provide an agreement and explain the legal representation, did include the representation for Bankruptcy prior to May 01, 2004?
4. Did the Cass County Court have jurisdiction to hear and deny Terry Serbus his counterclaim, under North Dakota Rules of Civil Procedure and Lawyers Professional Responsibility, since the complete case was conducted in the State of Minnesota?
5. Did the Vogel law firm act in the best interest of Terry Serbus and not malpractice?
6. Did the actions of the Vogel Law directly cause the Bankruptcy on regard to Vogel Law file Serbus vs Qiilantan, Diaz #30600.
7. Did the Vogel Law firm attempt to file a final judgment without the signed District Court Judge final determination and after Terry Serbus's appeal.
8. Did the Vogel Law Firm fail to recognize the Case #01-41694 (AJG) and advise Terry Serbus, prior to the 10/2005 Bankruptcy, in regard to their letters to Terry Serbus for 05/2004 and 09/2005?

9. Did the Vogel Law Firm have the experience and counsel to represent Terry Serbus, as a surety in such litigation?

## STATEMENT OF THE CASE

### I. Facts

Terry Serbus dba Serbus Bail Bonds, retained the Vogel Law Firm for the sum of \$3000.00 to represent him, on the real estate and personal property used to secure and indemnify Serbus Bail Bonds, on a bond fugitive recovery and bond forfeiture. Terry Serbus not less than a month after retaining and making a payment in excess of \$2000.00, disputed and continued to question the direction and reasoning of the firms representation. This continued until the actual March, 2005 billing was received, and all client and attorney relationship, deteriorated. Pleas were made to the firm, starting as early as 12/2004 to avoid any bankruptcy and communicate and ceased upon the notice of bankruptcy and attorney withdraw of 09/2005. As a direct result of the firms actions, negligence, including inability to communicate, advise and consult with the client, the Vogel Law firm created and caused the defendants in the Vogel Law case file #30600, to file bankruptcy. As a result the parties of Quilantan and Diaz did file on October 15, 2005 for the amount in excess of \$85,000.00. The two other parties involved in this case, did not have time to file bankruptcy. This was a result of Terry Serbus, filing a Motion to Vacate the Summary and Partial Summary Judgments, originally filed by the Vogel Law Firm. To date the Quilantan and Diaz parties have been the only two parties to file bankruptcy as a result of bond and bond forfeiture.

## **II. Procedural History**

On November 29, 2005 the Vogel Law filed a complaint for the excessive legal charges, in Cass County District Court. Terry Serbus filed a counter-claim for the bankruptcy and Professional Responsibility. December 19, 2006 a two hour court hearing was held in the East Central District Court of Cass County. The Vogel Law Firm provided a statement of charges, without any additional support. Terry Serbus provided over 90 exhibits. The Vogel Law and Jon Brakke testified, under oath Mr. Brakke, did acknowledge, he had never represented a surety or bondsman before, had no experience with bailbonds and such criminal proceedings, in fact he stated, he had no criminal court experiences. Because of such negligence, errors and omissions, Terry Serbus filed the appeal on January 10, 2007, in North Dakota Superior Court.

## STANDARD OF REVIEW

The Court should review the Superior Court's factual finding that the Vogel Law Firm, clearly and erroneously failed to provide, ommit. or did not have the experience, in regard to Terry Serbus's cases with the Vogel Law Firm #30600 and pursuant to Rules of Professional Conduct and Responsdiability, and if Vogel Law acted in a good faith and best interest of their client.

The Court should review the question of wether the District Court, did have jurisdiction over the counter-claim, since the Vogel Law Firm represented this in the State of Minnesota, and under Minnesota Rule and Procedures.

\ The Court should reviw the filing of the Judgment on January 15, 2007, was done after the filing of the appeal on January 10, 2007, by Terry Serbus.

Court should review the statements and correspondance regarding the withdraw and bankruptcy, in regard to the Vogel File #30600. Amwest Surety Insurance Company, v. maria Contreas and Maximo Contreas, Case #01-41694 (AJG) United States Bankruptcy Court, For Souther District of New York.

Court should review the District Court's record, File No. 09-06-C-128, Findings of Fact, Conculsions of Law and Order of Judgment, *Vogel v. Serbus*, p. 2 sec. 5 parag. 1-4 7, and 8.

Court should review the District Court denial of the Exhibit #1 *Affidavit of Curt Reese*.

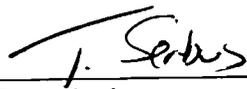
## ARGUMENT

- I. The Superior Court erred in finding that the documents secured by Terry Serbus were not sufficient.  
The Superior Court had no evidence that would verify or substantiate a finding and the decision.
- II. The Superior Court did not have jurisdiction and could hear the counter-claim in North Dakota, this should of been heard in Minnesota.
- III. The Superior Court erred in omitting of the exhibits, pertaining to Curt Reese.
- IV. The Superior Court erred in communication and number of consultation actually initiated by Jon Brakke and did not review the actual phone records.
- V. The Superior Court did not review the contractual agreements or non-existence of such records or evidence, and relied only on the billing records of Vogel Law.
- VI. The Superior Court did not review and have any evidence to determine that the Vogel Law firm did not error, misrepresent, malpractice and act in a goodfaith, for the representation and furthering. *Serbus vs Quilintan and Diaz*, 30600.

**CONCLUSION**

For the reasons stated above, this Court should reverse the Superior Court's findings that Terry Serbus owes the judgment and denied the mal-practice, counter-claim. The court should reverse the judgment and award the counter-claim to Terry Serbus.

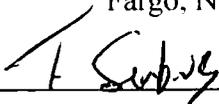
Respectively submitted at Bismarck, North Dakota, on February 14, 2007.

  
\_\_\_\_\_  
Terry Serbus  
pro-se Appellant

**CERTIFICATE OF SERVICE**

I certify that on the following date: February 14, 2007, I served a copy of:

this brief on: The Vogel Law Firm  
218 NP Ave.  
P.O. BX 1389  
Fargo, ND. 58107-1389

By:  \_\_\_\_\_