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SEPTEMBER 23, 2019
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Terry Kemmet,	)	
	)	
Appellant,	)	**Supreme Ct. No. 20190189**
	)	
v.	)	
	)	**District Ct. No. 08-2019-CV-00693**
Jeanne M. Steiner, Rosellen M. Sand,	)	
Governor Doug Burgum,	)	**ORAL ARGUMENT REQUESTED**
Attorney General Wayne Stenehjem,	)	
WSI Director Brian Klipfel,	)	
WSI Employee Barry Schumacher,	)	
Others, unknown at present,	)	
	)	
Appellees.	)	

APPEAL FROM THE APRIL 18, 2019
JUDGMENT OF THE DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE DANIEL J. BORGEN

BRIEF OF APPELLEES

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STATEMENT OF ISSUES

[¶1] Whether the District Court correctly found that the Plaintiff's Complaint is an impermissible collateral attack on an order of the Office of Administrative Hearings.

[¶2] Whether the District Court correctly found that Administrative Law Judges Jeanne M. Steiner and Rosellen M. Sand are immune from Plaintiff's claims due to the doctrine of judicial immunity.

[¶3] Whether the District Court correctly found that it lacked subject matter jurisdiction because the Plaintiff failed to timely file a notice of claim with the director of the Office of Management and Budget under N.D.C.C. § 32-12.2-04(1).

[¶4] Whether the District Court correctly found that it lacked subject matter jurisdiction because the Plaintiff failed to timely deliver the pleadings in this lawsuit to the director of the Office of Management and Budget under N.D.C.C. § 32-12.2-04(5).

STATEMENT OF CASE

[¶5] Plaintiff Terry Kemmet ("Kemmet") initiated this lawsuit as an attempt to collaterally attack the Findings of Fact, Conclusions of Law, and Final Order ("OAH Order"), Appellee's Appendix ("Appellee's App.") 017, issued by Administrative Law Judge Rosellen M. Sand ("Sand") of the Office of Administrative Hearings in the appeal of a Workforce Safety and Insurance order in OAH File No. 20170058 ("OAH Appeal"). Concurrent with this lawsuit, Kemmet filed an appeal of the OAH Order in North Dakota District Court, South Central Judicial District, filed as Case No. 08-2018-CV-03158 ("Concurrent District Court Appeal"). See Appellee's App. 028. In the Concurrent District Court Appeal, Kemmet relied on the same

arguments he asserts as allegations in this lawsuit. See infra, ¶¶ 12-20. At the time he commenced this lawsuit, Kemmet had not served the director of the Office of Management and Budget with notice of his claim as required by N.D.C.C. § 32-12.2-04(1), and likewise did not serve the director of the Office of Management and Budget with a copy of the pleadings from this lawsuit as required by N.D.C.C. § 32-12.2-04(5). Index #22, ¶¶ 2-6. While Kemmet later served the director of the Office of Management and Budget with both a notice of claim and his Complaint in this lawsuit, neither was timely. Appellee's Appendix 014-015, ¶¶ 6-8.

[¶6] In lieu of an answer, Defendants filed Defendants' Motion To Dismiss, Index #14, seeking dismissal of Kemmet's Complaint on four grounds: 1) the Complaint is an impermissible collateral attack on the OAH Order and thus fails to state a claim; 2) with respect to defendants Sand and Jeanne M. Steiner ("Steiner"), the claims are barred by the doctrine of judicial immunity and thus the Complaint fails to state a claim; 3) the District Court lacked subject matter jurisdiction because Kemmet failed to timely file a notice of claim with the director of the Office of Management and Budget under N.D.C.C. § 32-12.2-04(1); and 4) the District Court lacked subject matter jurisdiction because Kemmet failed to timely deliver the pleadings in this lawsuit to the director of the Office of Management and Budget under N.D.C.C. § 32-12.2-04(5). Each of these four grounds alone provides an independent and sufficient basis for dismissal.

[¶7] On April 17, 2019, the District Court issued its Order For Judgment Of Dismissal, Appellee's App. 013, agreeing with Defendants on all four grounds asserted in their motion, and directing that judgement be entered accordingly.

Consistent with the Order For Judgment Of Dismissal, a Judgment Of Dismissal was entered on April 18, 2019. Appellant Appendix ("Appellant App") 6. On June 17, 2019, Kemmet filed a Notice of Appeal, appealing the Order For Judgment Of Dismissal to the North Dakota Supreme Court. Appellant App. 5. "Although an order for judgment is not appealable, 'an attempted appeal from an order for judgment will be treated as an appeal from a subsequently entered consistent judgment, if one exists.'" Haugenoe v. Bambrick, 2003 ND 92, ¶ 1 n. 1, 663 N.W.2d 175, 177 (quoting Koehler v. County of Grand Forks, 2003 ND 44, ¶ 6 n. 1, 658 N.W.2d 741).

REQUEST FOR ORAL ARGUMENT

[¶8] Kemmet has requested oral argument on his appeal. Appellant's Brief, p. 1. While Defendants assert the arguments in this brief are sufficient, they reserve the right to appear and rebut Kemmet's arguments if the Court grants oral argument.

STATEMENT OF FACTS

I. The Parties.

[¶9] In the Complaint, in addition to "[o]thers, unknown at present", Kemmet named six State defendants: Administrative Law Judges Steiner and Sand, Governor Doug Burgum, Attorney General Wayne Stenehjem, Workforce Safety and Insurance ("WSI") Director Brian Klipfel, and WSI employee Barry Schumacher ("Schumacher"). Appellee's App 003. Since "[t]here are no specific allegations in the Complaint directed toward the individual State defendants, except Administrative Law Judges [Steiner and Sand], who's [sic] alleged actions were all taken in their official capacities", the District Court "construe[d] Plaintiff's

Complaint as a complaint against the State, not against the individually named State defendants." Appellee's App. 013, ¶ 2 (citing Sanderson v. Walsh County, 2006 ND 83, ¶¶ 10-11, 712 N.W.2d 842; N.D.C.C. § 32-12.2-03(1)). In Sanderson, 2006 ND 83, ¶¶ 10-11, 712 N.W.2d 842, the North Dakota Supreme Court held that claims against State officials only in their official capacity are essentially claims against the State. Further, N.D. C.C. § 32-12.2-03(1) states, "[a]n action for an injury proximately caused by the alleged negligence, wrongful act, or omission of a state employee occurring within the scope of the employee's employment must be brought against the state."

II. Kemmet's Allegations.

[¶10] All of the allegations in the Complaint in this lawsuit stem from the OAH Order in the OAH Appeal. Appellee's App. 003-010, ¶¶ 1-22. Administrative Law Judge Sand issued the OAH Order on November 7, 2018, affirming an October 13, 2016 order from WSI in all respects except for the total amount due, finding Kemmet personally liable for unpaid premiums, penalties and interest related to unpaid workers compensation premiums by K & K Well Drilling, of which Kemmet is the sole proprietor. Appellee's App. 025-026. Under N.D.C.C. § 65-02-22.1, "workforce safety and insurance shall contract with the office of administrative hearings for the designation of administrative law judges who shall conduct evidentiary hearings and issue final findings of fact, conclusions of law, and orders." Kemmet appealed the OAH Order to the North Dakota District Court in the Concurrent District Court Appeal. See Appellee's App. 028. At the time the District Court issued its Order For Judgment Of Dismissal and judgment was

entered in the present case, the Concurrent District Court Appeal was an active appeal that had not yet concluded. See id. Various relevant documents from the Concurrent District Court Appeal docket were submitted to and considered by the District Court in the present case, and are now in the record on appeal in this case. See Index #16, Appellee's App. 017-048. "Courts have the power to judicially recognize their own records of prior litigation closely related to the present case." Bender v. Beverly Anne, Inc., 2002 ND 146, ¶ 5, 651 N.W.2d 642 (quoting 1 Weinstein's Fed. Evid., § 201.12[3], p. 201–29 (2d ed.2002)). After the Concurrent District Court Appeal concluded, the matter was appealable to the North Dakota Supreme Court. See State ex rel. Workforce Safety and Ins. v. Larry's On Site Welding, 2014 ND 81, ¶ 13, 845 N.W.2d 310.

[¶11] In the present case, each of the allegations in the Complaint is an attempt to collaterally attack the OAH Order. Further, each of the allegations in the Complaint has already been raised by Kemmet as an argument in the OAH Appeal and/or in the Concurrent District Court Appeal. While the Complaint is not a model of clarity, it appears to contain nine basic claims.

[¶12] First, Kemmet alleged in his Complaint that Administrative Law Judge Steiner, who initially presided over the OAH Appeal before leaving her employment with the OAH, was not an administrative law judge because she allegedly did not file an oath of office. Appellee's App. 005-006, ¶¶ 1-9; Appellee's App. 019. Kemmet unsuccessfully raised the same issue in the OAH Appeal. Appellee's App. 019-0120; 030-033. He also raised the same issue in the Concurrent District Court Appeal. Appellee's App. 039-040, ¶¶ 25-26; 062-068, ¶¶ 13-28.

[¶13] Second, Kemmet alleged in the Complaint that the adverse findings against him in the OAH Appeal were based upon an allegedly improper subpoena duces tecum to Kemmet's bank. Appellee's App. 006, ¶ 10. Kemmet raised this issue without success in the OAH Appeal, Appellee's App. 020, and raised it again in the Concurrent District Court Appeal, Appellee's App. 055-056, ¶ 4.

[¶14] Third, Kemmet alleged that the complaint against him in the OAH Appeal was defective and not "verified". Appellee's App. 003, ¶¶ 11-13. Kemmet made the same argument in the Concurrent District Court Appeal. Appellee's App. 053-057, ¶¶ 1, 6.

[¶15] Fourth, the Complaint alleged violation of copyright laws relating to the North Dakota Century Code. Appellee's App. 007-008, ¶ 14. Kemmet also raised this argument in the Concurrent District Court Appeal. Appellee's App. 041, ¶ 29.

[¶16] Fifth, the Complaint alleged a statute cited in the OAH Appeal, N.D.C.C. § 65-01-05, has been repealed. Appellee's App. 008, ¶ 15. This argument was also raised in the Concurrent District Court Appeal. Appellee's App. 041-042, ¶ 30.

[¶17] Sixth, Kemmet alleged in the Complaint that a statute cited in the OAH Appeal, N.D.C.C. § 65-09-01, does not have an enabling clause. Appellee's App. 008, ¶ 16. Kemmet raised this argument in the Concurrent District Court Appeal. Appellee's App. 041, ¶ 29.

[¶18] Seventh, Kemmet alleged in the Complaint that WSI is a monopoly. Appellee's App. 008-009, ¶¶ 17-19. Kemmet unsuccessfully made this same argument in the OAH Appeal. Appellee's App. 019. He made the argument again in the Concurrent District Court Appeal. Appellee's App. 041-042, ¶ 30.

[¶19] Eighth, Kemmet's Complaint made allegations based on UCC and contract law. Appellee's App. 009-010, ¶¶ 20-21. Kemmet argued the same thing in the Concurrent District Court Appeal. Appellee's App. 045, ¶ 39.

[¶20] Ninth, the Complaint alleged "[s]landerous and libelous actions by state actors". Appellee's App. 010, ¶ 22. Kemmet alleges, "[w]ords that were spoken presumed me to be at fault with the law" and "[m]y constitutional arguments were ignored because people from the state were presumed to know more about the law." Id. Kemmet raised this same issue in the Concurrent District Court Appeal. Appellee's App. 046, ¶ 42.

[¶21] In his prayer for relief in the Complaint, Kemmet seeks "[d]ismissal of void judgment by WSI in void hearing", "[i]njunctive relief to bar action of WSI being brought forth again", "$30,000 for lawyer fees to represent me", "$30,000 for my time and work defending against an unverified claim", "$1,500,000 for loss of half [of his] property in a suit of divorce ongoing now", "$120,000 pain and suffering for loss of income defending against an unverified claim", and "$500,000 loss of companionship and respect of family and friends over allegations which cannot be proven and which were based on false assumptions under color of law." Appellee's App. 011-012.

[¶22] At time of commencement of this lawsuit, Kemmet had not served the director of the Office of Management and Budget with a notice of claim and did not at the time deliver a copy of the pleadings to the director. Index #22, ¶¶ 2-6. Rather, in response to Defendants Motion To Dismiss, Kemmet finally sent the director a notice of claim and copy of the Complaint on April 1, 2019, but neither

was timely. Appellee's App. 014-015, ¶¶ 6-8.

LAW AND ARGUMENT

[¶23] Initially, it should be noted, Kemmet has failed to provide a statement of issues on appeal, in violation of North Dakota Rule of Appellate Procedure 28(b)(4). The bases of Kemmet's appeal must therefore be gleaned from the various arguments in his brief, most of which were not decided by the District Court in its Order For Judgment Of Dismissal. In large part, Appellant's Brief simply restates the allegations in the Complaint, without explaining any alleged errors in the Order For Judgment Of Dismissal under appeal. Kemmet is attempting to litigate his entire case before this Court, rather than focusing on the District Court's order and his appeal of it. As this Court has noted on numerous occasions, the Justices of the North Dakota Supreme Court "are not ferrets", and they are not required to "search through the record to find a party's argument for them." State v. Rourke, 2017 ND 102, ¶ 8, 893 N.W.2d 176, 178 (citing Jury v. Barnes County Municipal Airport Authority, 2016 ND 106, ¶ 12, 881 N.W.2d 10; State v. Noack, 2007 ND 82, ¶ 8, 732 N.W.2d 389).

I. Standard of Review.

[¶24] The District Court granted Defendants' Motion To Dismiss under North Dakota Rule of Civil Procedure 12(b)(6) due to Kemmet's failure to state a claim upon which relief can be granted, and under North Dakota Rule of Civil Procedure 12(b)(1) because the District Court lacked subject matter jurisdiction. Appellee's App. 015, ¶ 8.

[¶25] The North Dakota Supreme Court "reviews a district court's decision

granting a motion to dismiss under N.D.R.Civ.P. 12(b)(6) de novo." Nandan, LLP v. City of Fargo, 2015 ND 37, ¶ 11, 858 N.W.2d 892 (citing Brandvold v. Lewis & Clark Pub. Sch. Dist. No. 161, 2011 ND 185, ¶ 6, 803 N.W.2d 827; Bala v. State, 2010 ND 164, ¶ 7, 787 N.W.2d 761). In such cases, the North Dakota Supreme Court has summarized its standard of review as follows:

> A motion to dismiss a complaint under N.D.R.Civ.P. 12(b)(vi) tests the legal sufficiency of the claim presented in the complaint. On appeal from a dismissal under N.D.R.Civ.P. 12(b)(vi), we construe the complaint in the light most favorable to the plaintiff and accept as true the well-pleaded allegations in the complaint. Under N.D.R.Civ.P. 12(b)(vi), a complaint should not be dismissed unless it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted. We will affirm a judgment dismissing a complaint for failure to state a claim if we cannot discern a potential for proof to support it.

Id. (quoting Brandvold, at ¶ 6; Vandall v. Trinity Hosps., 2004 ND 47, ¶ 5, 676 N.W.2d 88).

[¶26] Likewise, "[a] dismissal for lack of subject-matter jurisdiction [under North Dakota Rules of Civil Procedure 12(b)(1)] will be reviewed de novo on appeal if the jurisdictional facts are not disputed", which they are not disputed in this case. Vogel v. Marathon Oil Co., 2016 ND 104, ¶ 7, 879 N.W.2d 471 (citing Thompson v. Peterson, 546 N.W.2d 856, 860 (N.D. 1996)).

II. The Complaint fails to state a claim upon which relief can be granted.

[¶27] The District Court properly dismissed Kemmet's Complaint under Rule 12(b)(6) of the North Dakota Rules of Civil Procedure because the Complaint failed to state a claim. Appellee's App. 015, ¶ 8. As found by the District Court, the Complaint constitutes an impermissible collateral attack on the OAH Order and, with respect to Administrative Law Judges Steiner and Sand, Kemmet's claims are

barred by the doctrine of judicial immunity. Id.

A. The Complaint constitutes an impermissible collateral attack on the OAH Order.

[¶28] "It is axiomatic that a judgment imports absolute verity and is not subject to collateral attack so long as it stands. . . . Any attempt to avoid, defeat or evade a judgment, or to deny its force and effect, in some incidental proceeding *not provided by law*, with the express purpose of obtaining relief from that judgment is a collateral attack." Hamilton v. Hamilton, 410 N.W.2d 508, 519-20 (N.D. 1987) (citations omitted); see also Harchenko v. Harchenko, 43 N.W.2d 200, 201-02 (N.D. 1950); 47 Am. Jur. 2d Judgments §§ 738, 741 (2006). Thus, a collateral attack "is an attempt to avoid the binding force of a judgment in a separate proceeding brought for some other purpose. It is an attempt to avoid, evade, or deny the force and effect of a judgment in an indirect manner and not in a direct proceeding as prescribed by law . . . ." 47 Am. Jur. 2d Judgments § 744 (2008). "An attack upon a judgment is regarded as collateral if it is made when the judgment is offered as the basis of an opponent's claim." Id. "A collateral attack on a judgment may be any attack made in a proceeding that has an independent purpose other than to impeach or overturn the judgment, even if impeaching or overturning the judgment is necessary to the success of the action." Id. An action to recover damages may be considered a collateral attack. See Hamilton, 410 N.W.2d at 520; 47 Am. Jur. 2d Judgments §749 (2008).

[¶29] "A judgment may not be collaterally attacked by a party to the action in which it was rendered." State v. Mertz, 514 N.W.2d 662, 666 (N.D. 1994); see also Gruebele v. Gruebele, 338 N.W.2d 805, 810 (N.D. 1983); Harchenko, 43 N.W.2d at

201; 47 Am. Jur. 2d Judgments § 742 (2008). Collateral attacks on judgments are disallowed "because it is the policy of the law to give finality to the judgments of the courts, and to avoid endless litigation, recognizing the public interest in the final adjudication of controversies." 47 Am. Jur. 2d Judgments § 739 (2008). "The rule against collateral attacks on prior judgments is also based upon the doctrine of res judicata." Id.

[¶30] "Res judicata prevents the relitigation of claims that were raised, or could have been raised, in a prior action between the same parties or their privies and were resolved by a final judgment in a court of competent jurisdiction." Williams County v. Don Sorenson Investments, LLC, 2017 ND 193, ¶ 9, 900 N.W.2d 223 (citing Cridland v. ND Workers Comp. Bureau, 1997 ND 223, ¶ 17, 571 N.W.2d 351). Relevant to the present case, "[a]dministrative res judicata is the judicial doctrine of res judicata applied to an administrative proceeding." Id. (citing Cridland at ¶ 18). In applying administrative res judicata, the Court takes into consideration "(1) the subject matter decided by the administrative agency, (2) the purpose of the administrative action, and (3) the reasons for the later proceeding." Id. at ¶ 10 (citing Cridland at ¶ 18).

[¶31] Application of this doctrine to Kemmet's claim is apparent. Kemmet is seeking to void the OAH Order in this separate lawsuit, an impermissible collateral attack, while at the same time pursuing an appeal of the OAH Order in the Concurrent District Court Appeal, which is Kemmet's correct remedy. Appellee's App. 011-012. Not only is Kemmet seeking to overturn the same OAH Order in this lawsuit, he is using the exact same arguments in support of his claims. See supra ¶¶ 12-20. In addition to seeking to overturn the OAH Order, Kemmet also seeks

"[i]njunctive relief to bar action of WSI being brought forth again". Appellee's App. 011. There is no legal authority that such a potential remedy is available. He is also seeking money damages for various costs allegedly incurred as a result of the OAH Appeal, including attorney's fees, Kemmet's own work in defending the claim, lost income in defending the claim, potentially lost property in a pending divorce, and lost companionship and respect from family and friends due to allegedly false allegations against him. Id. at 011-012. Again, there is no legal authority for the recovery of such damages as a result of a WSI order. In short, Kemmet seeks to indirectly impeach or overturn the OAH Order through a damages action, even while he pursues an appeal of that order. Doing so constitutes an impermissible collateral attack. Kemmet's remedy if he disagreed with the OAH Order is to appeal that order to the district court, which he has in fact done in the Concurrent District Court Appeal. Accordingly, the Complaint fails to state a claim upon which relief can be granted.

[¶32] Kemmet attempts to avoid the natural conclusion that this lawsuit is an impermissible collateral attack on the OAH Order by claiming he "is not seeking to void an order by OAH" in this case. Appellant's Brief at ¶ 51. Rather, he claims the OAH Order "is already void because of numerous mistakes and violations…." Id. He appears to be arguing that, since the OAH Order is void in his opinion, it is already void, and this lawsuit is not a collateral attack on the OAH Order. Id.

[¶33] Kemmet's argument in this regard is nonsensical and contrary to his own pleadings. In his prayer for relief in the Complaint, Kemmet seeks "[d]ismissal of void judgment by WSI in void hearing". Appellee's App. 011. Kemmet is directly

requesting in this lawsuit that the District Court find the OAH Order to be void, and "[d]ismiss[]" the OAH Order. Id. This can only be described as a collateral attack. See Hamilton, 410 N.W.2d at 520 ("Any attempt to avoid, defeat or evade a judgment, or to deny its force and effect, in some incidental proceeding *not provided by law*, with the express purpose of obtaining relief from that judgment is a collateral attack.").

B. The claims against Administrative Law Judges Steiner and Sand are barred by the doctrine of judicial immunity.

[¶34] As noted above, the District Court found that Kemmet's claims are in essence claims against the State. Appellee's App.013, ¶ 2. However, regardless of how the claims are construed, the District Court correctly found that the State and Administrative Law Judges Steiner and Sand are immune from Kemmet's claims due to the doctrine of judicial immunity. Id. at 014; 015, ¶¶ 5, 8.

[¶35] Courts have long recognized the doctrine that judges may not be held civilly liable for judicial acts within their jurisdiction. See Pierson v. Ray, 386 U.S. 547, 553-54 (1967) (stating "[f]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction"). As early as 1897, the North Dakota Supreme Court adopted the doctrine of absolute judicial immunity in Root v. Rose, 6 N.D. 575, 72 N.W. 1022 (1897). In Root, the court explained that a judge can never be held responsible in a civil action for damages for any judicial act. Id. at 1024. The court explained that it would be against the public interest to permit any exceptions to the doctrine of absolute immunity, and that under no facts can a judge be held civilly liable for misconduct in the performance of his judicial duties. Id. at 1025.

[¶36] The North Dakota Supreme Court addressed the issue of judicial immunity again in Landseidel v. Culeman, 181 N.W. 593, 595 (N.D. 1921), where the Court explained:

> It is elementary that judicial officers are not liable for the erroneous exercise of the judicial powers vested in them. This immunity from liability is based upon considerations of public policy. To hold judicial officers personally liable for errors of judgment concerning either questions of law or fact would be subversive of both independence and efficiency in the administration of justice. This rule of public policy applies as well to inferior courts of limited jurisdiction as to superior courts of general jurisdiction.

See also Gottschalck v. Shepperd, 260 N.W. 573, 575 (N.D. 1935) (stating it is settled beyond controversy that judicial officers cannot be held personally liable for exercising their judicial powers). Judges are thus entitled to immunity from liability for judicial acts within their jurisdiction.

[¶37] In Stump v. Sparkman, 435 U.S. 349 (1978), the United States Supreme Court held the doctrine of judicial immunity must be applied broadly. In its decision the Supreme Court set forth the following test for determining the application of the judicial immunity doctrine:

> [T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. Because "some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction . . . ," (quoting *Bradley v. Fisher*, 80 U.S. 335, 352 (1871)), the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the "clear absence of all jurisdiction." (quoting Bradley at 351.

Id. at 356-57 (footnote omitted). The Supreme Court reaffirmed this principle in

1991, stating:

> [O]ur cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

Mireles v. Waco, 502 U.S. 9, 11-12 (1991) (citations omitted); see also Liles v. Reagan, 804 F.2d 493, 495 (8th Cir. 1986) ("[A] judge is entitled to absolute immunity if the acts complained of were 'judicial acts' and were not taken in the 'clear absence of all jurisdiction.'").

[¶38] The test enunciated in Stump and Mireles is consistent with North Dakota case law. For example, in Root the North Dakota Supreme Court held a judge can never be held civilly liable for judicial acts. 72 N.W. at 1024. The court further explained that even if the judge lacked jurisdiction over the matter the judge was immune, except in those rare instances where the judge could not possibly believe he was acting within his jurisdictional limits:

> Where there is a palpable want of jurisdiction over the subject-matter, -as in case a county judge should try a person for murder, -it might be claimed that he did not in fact act as a judge, and could not have considered that he was so acting. But we do not wish to be understood as holding that in every case where the court has no jurisdiction of the subject-matter the judge thereof is liable for acts performed by him as judge. It will not do to assert that he never can act as judge where he has no jurisdiction of the subject-matter, as the question whether such jurisdiction exists is not infrequently a question difficult of solution, and in every instance a judge does in fact act as a judge in determining whether, in the particular case, jurisdiction over the subject-matter exists, unless perhaps in those rare instances in which the assumption of jurisdiction is so extravagant as to preclude any possibility that the judge ever thought he was acting as such.

Id. at 1025 (emphasis added). Thus, under North Dakota law judges are immune

from suit for damages for "judicial acts" not done in the clear absence of all jurisdiction. See Lang v. State, 2001 ND APP 2, ¶ 7, 622 N.W.2d 238 (stating "[a] judge acting within his or her jurisdiction is immune from liability for damages").

[¶39] In Loran v. Iszler, 373 N.W.2d 870, 876 (N.D. 1985), the North Dakota Supreme Court held that "state administrative proceedings are sufficiently comparable to judicial proceedings to warrant the extension of immunity to an administrative hearing officer engaging in a function that is quasi-judicial in nature." Thus, like district court judges, Administrative Law Judges Steiner and Sand are "immune from suit for damages for [their] discretionary acts not done in the clear absence of all jurisdiction." Id.

[¶40] In 1995, the North Dakota Legislative Assembly codified the common law doctrine of judicial immunity by adopting N.D.C.C. § 32-12.2-02(3)(d). See 1995 N.D. Sess. Laws, ch. 329, § 11. That section provides "[n]either the state nor a state employee may be held liable . . . for . . . [a] claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial." N.D. C.C. § 32-12.2-02(3)(d). Section 32-12.2-02(3)(d) has been applied in at least two reported decisions. See Kouba v. State, 2004 ND 186, ¶¶ 8-10, 687 N.W.2d 466 (applying quasi-judicial immunity to administrative official's decision to suspend a driver's license); Riemers v. State, 2007 ND APP 2, ¶¶ 6-8, 732 N.W.2d 398 (stating § 32-12.2-02(3)(d) "codified common law judicial immunity" and finding the plaintiff's claims for money damages barred by judicial immunity). The State and

Administrative Law Judges Sand and Steiner are immune from suit. The Complaint fails to state a claim upon which relief can be granted.

[¶41] Kemmet argues that Steiner was not an administrative law judge because Kemmet could not find evidence that Steiner had taken or filed an oath of office with the Secretary of State's Office. [1] Appellant's Brief, ¶¶ 16-19; Appellee's App. 005-006, ¶¶ 1-10. After being appointed to preside over the OAH Appeal and issuing several interlocutory orders, Steiner left her employment with the OAH and Sand was appointed to preside in the remainder of the proceedings. Appellee's App. 019-020. Kemmet raised the issue of Steiner's alleged lack of an oath in the OAH Appeal in a motion to dismiss, which Sand denied. Appellee's App. 031-032. He also raised the same issue in the Concurrent District Court Appeal. Appellee's App. 039-040; 062-068.

[¶42] In the OAH Appeal, Sand correctly determined that Kemmet's argument regarding an oath of office is without merit. Appellee's App. 031-032. Kemmet's argument is entirely without merit and does not establish that either Steiner or Sand acted in clear absence of all jurisdiction. Administrative law judges are not required under North Dakota law to take an oath of office or to file an oath with the Secretary of State. Administrative law judges and administrative hearings are governed by N.D.C.C. ch. 54-57 and N.D.C.C. ch. 28-32. The eligibility requirements to preside as an administrative law judge are established in N.D.C.C.

[1] Kemmet conflates the alleged requirement for an oath of office relating to Steiner's prior service as an assistant attorney general with the oath of office allegedly required for her service as an administrative law judge. Kemmet has failed to explain how Steiner's prior service as an assistant attorney general, or her oath of office related to that role, is relevant to this case.

§ 54-57-01(3), which states in relevant part:

> The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners.

[¶43] Additionally, N.D.C.C. § 65-02-22, relating to administrative hearings in WSI proceedings, states, "[a] hearing officer designated by the office of administrative hearings under chapter 28-32 must be an individual licensed to practice law in this state. A hearing officer may not maintain an office within the organization." The only legal requirements for an administrative law judge appointed to preside in a WSI proceeding are to be an attorney at law in good standing, admitted to the bar in this state, currently licensed by the state board of law examiners, and to not maintain an office within the WSI offices. N.D.C.C. §§ 54-57-01(3); 65-02-22. There is no legal requirement that administrative law judges presiding over a WSI matter must take an oath of office or that the oath is filed with the Secretary of State.

[¶44] The authority Kemmet relies on relates to oaths of office for civil officers, but administrative law judges are not civil officers. Kemmet asserts that every civil officer must file an oath of office under N.D.C.C. § 44-01-05, and that an office becomes vacant if the incumbent fails to take an oath of office, pursuant to N.D.C.C. § 44-02-01(6). Appellant's Brief, ¶¶ 16-19. N.D.C.C. § 44-01-05 does in fact require civil officers to take an oath of office, but specifically defines the term

"civil officer" to include only elected officials, individuals appointed by elected officials, certain individuals appointed by the governor, appointed members of a state authority, board bureau, commission, or council, and the appointed heads of state agencies and divisions. Id. Administrative law judges do not fall under any of the categories defined as "civil officers" in N.D.C.C. § 44-01-05. Kemmet apparently relies on the language in N.D.C.C. § 44-01-05 that states, "[t]he term civil officer includes every elected official and any individual appointed by such elected official". Appellant's Brief, ¶ 16 (quoting N.D.C.C. § 44-01-05). However, administrative law judges are neither elected officials, nor appointed by elected officials. Under N.D.C.C. § 54-57-01(3), administrative law judges are employed or appointed by the director of the Office of Administrative Hearings. Under N.D.C.C. § 54-57-01(2), the director of the Office of Administrative Hearings is appointed by the governor and confirmed by the senate. Thus, the director, who employs or appoints administrative law judges, is not an elected official. Steiner was not an elected official and she was not appointed by an elected official. Quite simply, administrative law judges such as Steiner are not "civil officers" required to take an oath of office. Kemmet's position is fundamentally flawed. As both Steiner and Sand were administrative law judges making judicial or quasi-judicial decisions in an administrative proceeding, they are both entitled to judicial immunity from Kemmet's claims. Loran, 373 N.W.2d at, 876.

III. The Court lacks subject matter jurisdiction over the Complaint.

[¶45] The District Court properly dismissed Kemmet's Complaint under Rule 12(b)(1) of the North Dakota Rules of Civil Procedure because the District Court

lacked subject matter jurisdiction. Appellee's App. 015, ¶ 8. Kemmet failed to file a timely notice of claim with the director of the Office of Management and Budget. Further, Kemmet failed to timely serve process on the director of the Office of Management and Budget.

A. Kemmet failed to file a notice of claim with the director of the Office of Management and Budget.

[¶46] Prior to serving a responsive pleading, a defendant may move to dismiss the action for lack of jurisdiction over the subject matter. N.D.R.Civ.P. 12(b)(1). If a court determines that it does not have subject matter jurisdiction, it must dismiss the action. N.D.R.Civ.P. 12(h)(3). In this case, the District Court correctly determined that it lacked subject matter jurisdiction over the Complaint because Kemmet did not timely present notice of his claim with the director of the Office of Management and Budget, as required by N.D.C.C. § 32-12.2-04(1). Kemmet did not serve notice of his claim before commencing this lawsuit. Index #22, ¶ 4. Rather, he served the director of the Office of Management and Budget with a notice of claim and a copy of the Complaint on April 1, 2019, after Defendants served their Motion To Dismiss. Appellee's App. 014-015, ¶ 6. All of Kemmet's claims were known or should have been known to him more than 180 days before he submitted his notice of claim to the director of the Office of Management and Budget on April 1, 2019, and thus his claims are barred.

[¶47] N.D.C.C. ch. 32-12.2 governs claims against the State and its employees. N.D.C.C. § 32-12.2-04 is a "notice of claim" provision and provides, in relevant part:

> A person bringing a claim against the state or a state employee for an injury shall present to the director of the office of management and budget within one hundred eighty days after the alleged injury is

> discovered or reasonably should have been discovered a written notice stating the time, place, and circumstances of the injury, the names of any state employees known to be involved, and the amount of compensation or other relief demanded.

N.D.C.C. § 32-12.2-04(1).

[¶48] N.D.C.C. § 32-12.2-04(1) provides that a claimant "shall" present written notification to the director of the Office of Management and Budget of any "claim" against the state or a state employee. The requirement that the claim be timely presented is mandatory and, as repeatedly held by the North Dakota Supreme Court, jurisdictional. See Moen v. State, 2003 ND 17, ¶ 5, 656 N.W.2d 671 ("A court lacks subject matter jurisdiction to entertain a lawsuit in the absence of a timely filing of a notice of claim under N.D.C.C. § 32-12.2-04(1)."); Knutson v. County of Barnes, 2002 ND 68, ¶ 4, 642 N.W.2d 910 ("The notice of claim requirements in N.D.C.C. § 32-12.2-04 implicate a court's subject-matter jurisdiction."); Ghorbanni v. North Dakota Council on Arts, 2002 ND 22, ¶ 8, 639 N.W.2d 507 ("Our prior cases indicate strict compliance with the requirements of N.D.C.C. § 32-12.2-04(1) is a prerequisite to bringing an action against the State or its employees. Absent the timely filing of a notice of claim under N.D.C.C. § 32-12.2-04(1), the court lacks subject matter jurisdiction to entertain the lawsuit."); Kautzman v. McDonald, 2001 ND 20, ¶ 11, 621 N.W.2d 871; Dimond v. State ex rel. State Bd. of Higher Educ., 1999 ND 228, ¶¶ 25-26, 603 N.W.2d 66; Earnest v. Garcia, 1999 ND 196, ¶ 7, 601 N.W.2d 260; Allied Mut. Ins. Co. v. Director of N.D. Dep't of Transp., 1999 ND 2, ¶ 16, 589 N.W.2d 201. Notice is a condition precedent to a complainant's cause of action and must be pleaded and proved by the claimant to recover. See Ghorbanni, 2002 ND 22, ¶ 8, 639 N.W.2d 507;

Dimond, 1999 ND 228, ¶¶ 25-26, 603 N.W.2d 66; Messiha v. State, 1998 ND 149, ¶ 19, 583 N.W.2d 385.

[¶49] The District Court was required to dismiss the Complaint if Kemmet failed to present timely written notification to the director of Office of Management and Budget as required by N.D.C.C. § 32-12.2-04(1). In Messiha, the North Dakota Supreme Court affirmed summary judgment dismissing the plaintiffs complaint for failure to present a written claim to the director of Office of Management and Budget. After noting that the plaintiff's non-contractual claims are governed by the presentment requirement of N.D.C.C. § 32-12.2-04(1), the court held actual notice of a claim is not sufficient:

> Under similar statutes, we have held that actual notice of a claim does not satisfy the statutory requirement for presenting written notice of a claim to a governmental body. See [Livingood v. Meece, 477 N.W.2d 183, 189 (N.D. 1991)]; Besette v. Enderlin Sch. Dist. No. 22, 288 N.W.2d 67, 71 (N.D. 1980). In Besette, 288 N.W.2d at 73, we held a similar ninety-day presentment requirement for claims against political subdivisions was mandatory and the failure to present the claim within that time precluded a tort claim against the political subdivision.
>
> [Plaintiff] failed to present any evidence by affidavit or otherwise that he presented a written claim for compensation to OMB as required by N.D.C.C. § 32-12.2-04. We therefore hold the trial court did not err in granting summary judgment dismissal of his noncontractual claims.

Id. at ¶¶ 21-22. Since Messiha, the North Dakota Supreme Court has repeatedly affirmed dismissal of suits against the State and its employees when the plaintiff failed to comply with N.D.C.C. § 32-12.2-04(1). See State v. New Holland, 2015 ND 223, ¶ 26, 869 N.W.2d 136 (stating, "[t]he notice-of-claim requirement implicates a court's subject matter jurisdiction for claims brought against the state or a state employee, and dismissal of the claim is proper if the party suing the state

fails to comply with the notice requirement", and finding in error an order to pay compensatory remedial contempt sanctions when the claimant did not claim and the record did not show compliance with the notice requirement in N.D.C.C. § 32-12.2-04(1).); Moen, 2003 ND 17, ¶ 11, 656 N.W.2d 671; Knutson, 2002 ND 68, ¶ 4, 642 N.W.2d 910 ("The notice of claim requirements in N.D.C.C. § 32-12.2-04 implicate a court's subject matter jurisdiction."); Ghorbanni, 2002 ND 22, ¶ 8, 639 N.W.2d 507 (stating strict compliance with the notice of claim requirements is a prerequisite to bringing an action against the state); Kautzman, 2001 ND 20, ¶¶ 11-14, 621 N.W.2d 871 (affirming dismissal of claim for plaintiffs' failure to file a timely notice of claim); State v. Haskell, 2001 ND 14, ¶¶ 9-10, 621 N.W.2d 358 (granting supervisory writ and directing district court to enter an order dismissing complaint for failure to file a notice of claim); Cooke v. UND, 1999 ND 238, ¶ 8, 603 N.W.2d 504 ("A person bringing a claim against the state must present the requisite written notice."); Dimond, 1999 ND 228, ¶ 26, 603 N.W.2d 66 (holding "the trial court lacked subject matter jurisdiction over Dimond's claims" because he failed to present the required written notice and "erred as a matter of law in denying" the state's motion to dismiss); Earnest, 1999 ND 196, ¶ 6, 601 N.W.2d 260 ("The statute requires written notice of a claim; actual notice is insufficient."); Allied Mut. Ins. Co, 1999 ND 2, ¶ 16, 589 N.W.2d 201 (affirming dismissal for lack of subject matter when written notice was not provided).

[¶50] N.D.C.C. § 32-12.2-04(1) requires that notice must be given "within one hundred eighty days after the alleged injury is discovered or reasonably should have been discovered…." The OAH Order was issued on November 7, 2018,

which was admittedly less than 180 days before notice was received by the director of the Office of Management and Budget. Appellee's App. 027. However, despite Kemmet's assertion to the contrary (Appellant's Brief, ¶ 49) the date the OAH Order was issued is not the relevant date to determine when the 180-day time limit started to run. It started to run when Kemmet's alleged injury was "discovered or reasonably should have been discovered". N.D.C.C. § 32-12.2-04(1)

[¶51] Kemmet makes nine basic claims in his Complaint. Appellee's App. 003-010, ¶¶ 1-22. The District Court correctly found that all of the nine claims are based on facts that Kemmet knew about more than 180 days prior to his providing notice of his claim on April 1, 2019. Appellee's App. 014-015, ¶ 6.

[¶52] Kemmet's first claim is that Steiner was not an administrative law judge because she allegedly did not take an oath of office. Appellee's App. 005-006, ¶¶ 1-9. Kemmet raised this issue in the OAH Appeal in a Motion to Dismiss filed on September 11, 2018, seeking a dismissal of the OAH Appeal. Appellee's App. 030. Kemmet filed that Motion to Dismiss 202 days before Kemmet submitted his notice of claim to the director of the Office of Management and Budget. Administrative Law Judge Sand denied the motion by Order dated September 22, 2018, which is 191 days before Kemmet submitted his notice of claim to the director of the Office of Management and Budget. Id. at 032-033.

[¶53] Kemmet's second claim is based on an allegedly improper subpoena duces tecum issued by WSI to Kemmet's bank in the investigation leading up to the WSI complaint against Kemmet. Appellee's App. 006, ¶ 10. As noted in Kemmet's Complaint in this action, the allegedly improper subpoena duces tecum was issued

in June of 2015, nearly four years before Kemmet submitted his notice of claim to the director of the Office of Management and Budget. Id. at 006, ¶ 10.

[¶54] Kemmet's third claim is that the complaint against him by WSI was defective and not "verified". Id. at 007, ¶¶ 11-13. The WSI order being appealed in the OAH Appeal was issued October 13, 2016, more than two years before Kemmet submitted his notice of claim to the director of the Office of Management and Budget, and any complaint in the WSI matter would have been served even earlier. Appellee's App. 019.

[¶55] Likewise, Kemmet's fourth, fifth, sixth, and seventh claims all relate to alleged defects that Kemmet would have known about at the time WSI initially took action against him more than two years before Kemmet submitted his notice of claim to the director of the Office of Management and Budget. Those claims are, respectively: that it was a violation of copyright law to enforce the North Dakota Century Code against Kemmet because allegedly LexisNexis is the owner of the words in the North Dakota Century Code and thus it is allegedly private in nature and not public law (Appellee's App. 007-008, ¶ 14); that WSI relied on N.D.C.C. § 65-01-05 in its allegations against Kemmet, but that law was repealed (id. at 008, ¶ 15); that WSI relied on North Dakota Century Code provisions in its allegations against Kemmet, but those provisions do not have enabling clauses (id. at 008, ¶ 16); and that WSI is a monopoly (id. at 008-009, ¶¶ 17-19).

[¶56] Kemmet's eighth claim is based on UCC and contract law. Id. at 009-010, ¶¶ 20-21. Kemmet claims he made an offer on November 15, 2016 to pay WSI the total amount owed, and that WSI had 30 days to accept the offer or the matter

would be resolved. Id. This allegedly occurred more than two years before Kemmet submitted his notice of claim to the director of the Office of Management and Budget.

[¶57] Kemmet's ninth and final claim is based on allegedly "[s]landerous and libelous actions by state actors". Id. at 010, ¶ 22. Kemmet gives no details on the allegedly slanderous and libelous actions, but Kemmet's claim appears to be based simply on WSI's allegations against him, leading to its October 13, 2016 order. See id. Again, Kemmet knew of this claim years before Kemmet submitted his notice of claim to the director of the Office of Management and Budget.

[¶58] All of Kemmet's claims were known or should have been known to him more than 180 days before he submitted his notice of claim to the director of the Office of Management and Budget. Thus, Kemmet has not complied with N.D.C.C. § 32-12.2-04(1) and the District Court lacked subject matter jurisdiction. Moen, 2003 ND 17, ¶ 5, 656 N.W.2d 671 ("A court lacks subject matter jurisdiction to entertain a lawsuit in the absence of a timely filing of a notice of claim under N.D.C.C. § 32-12.2-04(1).").

B. Kemmet failed to properly serve process on the director of the Office of Management and Budget.

[¶59] In addition to the notice requirement discussed above, N.D.C.C. ch. 32-12.2 also contains service requirements when a claimant brings a legal claim against the State or State employees, which must be complied with for the District Court to have subject matter jurisdiction over the claim. In that regard, N.D.C.C. § 32-12.2-04(5) states:

> A person bringing a legal action against the state or a state employee

> for a claim shall deliver a copy of the summons, complaint, or other legal pleading in which the claim is first asserted in the action to the director of the office of management and budget at the time the summons, complaint, or other legal pleading is served in the action. This provision is in addition to any applicable rule of civil procedure.

[¶60] In Voigt v. State, 2008 ND 236, 759 N.W.2d 530, the North Dakota Supreme Court analyzed whether the district court had subject matter jurisdiction in an action against the State when the plaintiff did "not assert he complied with N.D.C.C. § 32–12.2–04(1) or (5), and nothing in the record show[ed] he complied with either subsection of this statute." Id. at ¶ 5. After citing case law discussed above relating to the notice requirement in N.D.C.C. § 32–12.2–04(1) (supra ¶¶ 48-49), the North Dakota Supreme Court extended the rule on subject matter jurisdiction to the service requirement in N.D.C.C. § 32-12.2-04(5). As with the notice requirement in N.D.C.C. § 32–12.2–04(1), Kemmet was required to comply with the service requirement in N.D.C.C. § 32–12.2–04(5), or the District Court lacked subject matter jurisdiction to hear his Complaint.

[¶61] N.D.C.C. § 32-12.2-04(5) requires that the pleadings in a legal action against the state or state employees must be delivered to the director of the Office of Management and Budget "at the time the summons, complaint, or other legal pleading is served in the action." Id. Kemmet did not allege and presented no evidence that he delivered a copy of his Summons and Complaint to the director of the Office of Management and Budget at the time it was served in this action, as required by N.D.C.C. § 32-12.2-04(5). Further, an affidavit filed with Defendants' Motion To Dismiss established that Kemmet did not deliver a copy of his Summons and Complaint to the director of the Office of Management and Budget at the time

it was served in this action. Index #22, ¶¶ 5-6. Instead, Kemmet sent the Complaint to the director of the Office of Management and Budget in response to Defendants' Motion To Dismiss, after commencing this lawsuit and after Defendants responded to the pleadings. Appellee's App. 014-015, ¶ 6.

[¶62] Kemmet has failed to comply with the plain language of N.D.C.C. § 32-12.2-04(5) by failing to deliver the pleadings in this lawsuit to the director of the Office of Management and Budget "at the time the summons, complaint, or other legal pleading is served in the action." The North Dakota Supreme Court has made clear that failure to comply with N.D.C.C. § 32-12.2-04(5) deprives the court of subject matter jurisdiction, and accordingly, Kemmet's Complaint was properly dismissed by the District Court. Voigt, 2008 ND 236, ¶ 5, 759 N.W.2 530.

CONCLUSION

[¶63] For the above reasons, the District Court properly dismissed the Complaint against Defendants. The Complaint fails to state a claim because it is an impermissible collateral attack on the OAH Order. Further, with respect to defendants Sand and Steiner, the claims are barred by the doctrine of judicial immunity. Additionally, the District Court lacked subject matter jurisdiction because Kemmet failed to file a timely notice of claim and failed to timely deliver the pleadings to the director of the Office of Management and Budget.

Dated this 23rd day of September, 2019.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Terry Kemmet, Appellant, v. Jeanne M. Steiner, Rosellen M. Sand, Governor Doug Burgum, Attorney General Wayne Stenehjem, WSI Director Brian Klipfel, WSI Employee Barry Schumacher, Others, unknown at present, Appellees.	)	**CERTIFICATE OF COMPLIANCE** **Supreme Ct. No. 20190189** **District Ct. No. 08-2019-CV-00693**

[¶1] The undersigned certifies pursuant to N.D.R.App.P. 32(a)(8)(A), that the Brief of Appellee contains 36 pages.

[¶2] This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2017 word processing software in Arial 12 point font.

Dated this 23rd day of September, 2019.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Terry Kemmet, Appellant, v. Jeanne M. Steiner, Rosellen M. Sand, Governor Doug Burgum, Attorney General Wayne Stenehjem, WSI Director Brian Klipfel, WSI Employee Barry Schumacher, Others, unknown at present, Appellees.	)	**Supreme Ct. No. 20190189** **District Ct. No. 08-2019-CV-00693** **CERTIFICATE OF SERVICE**

[¶1] I hereby certify that on September 23, 2019, the following documents: **BRIEF OF APPELLEES, CERTIFICATE OF COMPLIANCE, and SUPPLEMENTAL APPENDIX TO BRIEF OF APPELLEES** were filed through electronic filing and served upon Terry Kemmet at ndrainmkr@yahoo.com.

[¶2] I further certify that a copy of the forgoing document was served upon the following by mailing a true and correct copy thereof:

Terry Kemmet
3949 38th Ave SE
Tappen, ND 58487

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

State of North Dakota
Wayne Stenehjem
Attorney General

By: /s/ David R. Phillips
David R. Phillips
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