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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

VIDEO PROJECTS, INC.;  
**DIKE EDWARD WILLIAMS, aka DWIGHT  
WILLIAMS, aka D. E. WILLIAMS;** and  
ROBERT HOUSTON CALDWELL,

**Respondents.**

**OPPOSITION TO MOTION TO  
QUASH**

Docket No. SD 06-0023

**Docket No. SD 06-0024**

Docket No. SD 06-0025

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**LAW AND ARGUMENT**

Dike Williams (Williams) moves to quash the order to show cause against him on grounds that (a) the action is barred by the statute of limitations; (b) a parallel criminal action violates the double jeopardy clause of the United States Constitution; (c) the fine is excessive, especially, in light of his impecuniosity; (d) failure to pay the fine subjects him to a third degree felony; (e) he has been

denied the right to counsel; and (f) the Division has a conflict of interest because, David Sonnenreich, another attorney who is suing Williams in a private civil case, was a former employee of the attorney general's office. Williams cites no authority for any of his arguments. His arguments are without merit.

### **I No Statute of Limitations Bar Applies to Administrative Proceedings**

“In the absence of specific legislative authority, civil statutes of limitation are inapplicable to administrative disciplinary proceedings.” *Rogers v. Division of Real Estate*, 790 P.2d 102 (Utah App. 1990).

Williams cites no authority showing a statute of limitation applies to administrative proceedings.

### **II Criminal Proceedings Do Not Bar Parallel Administrative Proceedings**

Williams alleges that a parallel criminal prosecution bars the instant administrative action and that, to allow parallel proceedings, violates the double jeopardy clause of the United States Constitution.

Utah appellate courts also recognize the existence of parallel proceedings. “Both the United States Supreme Court and this court have allowed persons to be prosecuted criminally and simultaneously be subject to civil proceedings.” *State ex rel. S.A.*, 2001 UT App 308 ¶ 15, 37 P.3d 1172; *see also United States v. Kordel*, 397 U.S. 1, 11 (1970)(government did not violate due process by pursuing civil forfeiture while also proceeding against defendant in criminal setting).

The Division is not barred from pursuing an action against Williams administratively simply because it also has a parallel criminal proceeding against him. Parallel proceedings do not violate the double jeopardy clause.

### **III Dismissal Is Not Proper For Any Of The Other Reasons Cited**

Although Williams styles his motion as a motion to quash, in substance, the relief he seeks is dismissal. As a Rule 12 motion, dismissal is proper “only where it clearly appears that the plaintiff or plaintiffs would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim.” *Franco v. Church of Jesus Christ of Latter-day Saints*, 2001 UT 25 ¶ 10, 21 P.3d 198 (citations omitted). Under Rule 12(b)(6) motion, the allegations in a complaint are accepted as true and all reasonable inferences from them are considered in a light most favorable to the plaintiff. *Russell/Packard Development, Inc. v. Carson*, 2003 UT App. 316, ¶ 10, 78 P.3d. 616.

In this case, none of the reasons cited by Williams mandates dismissal. None of his arguments negates or invalidates any of the possibility of factual allegations in the complaint from being true. Moreover, his arguments about being impecunious, the existence of a conflict of interest, and being denied the right to counsel are unsupported. Unsupported claims are not evidence. *Ibanez v. Florida Dept. Business and Professional Regulation Bd. of Accountancy*, 512 U.S. 136, 149, 114 S. Ct. 2084, 2092, 129 L.Ed.2d 118 (1994). Unsworn statements are not evidence. *Leon Shaffer Golnick Advertising, Inc. v. Cedar*, 423 So.2d 1015, 1017 (Fla. App. 4<sup>th</sup> 1982). Even if David

Sonnenreich had worked for the Utah Attorney General's Office sometime in the past, his previous employment with the State does not create a conflict of interest. See S. Ct. R. Prof. Prac. R 1.11. Sonnenreich is not suing the State, but is suing Williams. The lawsuit does not create a conflict of interest. Even if his lawsuit did create a conflict, a conflict would warrant reassignment to another attorney, not dismissal.

Even if his arguments were supported by an affidavit or other document showing that he was impecunious or where he requested counsel and was denied, there is no constitutional or statutory right to counsel in an administrative proceeding. See e.g. Smith v. Secretary of Health, Educ. & Welfare, 587 F.2d 857, 860 (7th Cir.1978)(no constitutional right to counsel); or in civil proceedings generally, see also MacCuish v. United States, 844 F.2d 733, 735-36 (10th Cir.1988).

Whether an unpaid fine might subject Williams to a felony in the future is not ripe for consideration. Williams cites no authority requiring dismissal for any of the reasons given and the Division is not aware of any.

#### CONCLUSION

For these reasons, the William's motion to quash should be denied.

Respectfully submitted this 7 day of August 2006.

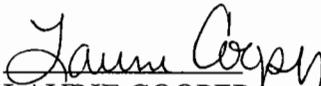
MARK L. SHURTLEFF  
UTAH ATTORNEY GENERAL

  
Jeffrey Buckner  
Assistant Attorney General

**MAILING CERTIFICATE**

I, Laurie Cooper, hereby certify that I have this day served a copy of the foregoing **Opposition to Motion to Quash** by mailing a copy, with postage prepaid, to Dike Williams, 336 Fifth Avenue, Salt Lake City, Utah 84103.

Dated at Salt Lake City, Utah this 9 day of August 2006.

  
LAURIE COOPER