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June 7, 2005

Bill Gausewitz, Director  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Dear Director Gausewitz:

Please consider this a request from my office for you to find that the decision of Administrative Law Judge Samuel D. Reyes, Case No. 1E-2000-109815, OAH No. L2004090477 from the Los Angeles office of the Office of Administrative Hearings (OAH), (of which I understand you received a copy last week from Mr. Charles Bennighoff) is an underground regulation that cannot be enforced.

My request stems from my review of a list of documents which I understand you were provided by Mr. Benninghoff, and which included Professor Emeritus Michael R. Asimow's Friend of the Court Brief submitted to the California State Bar in the instant case. That brief is patently clear and I believe it to be correct when it states that lay representation is permissible. After all, the State in effect hired Professor Asimow to help draft this very law. Professor Asimow also states that any agency can change such permission by properly issuing a regulation.

Even cursory reading of the Reyes decision reveals that he decided that lay representation is not permissible either before the OAH or under the Administrative Procedure Act (APA). In it he concludes that the APA does not authorize lay representation and that decision clearly is new rulemaking. It can be nothing else. The OAH, of course, is subject to the rulemaking requirements of the APA.

I also read Legislative Counsel Opinion 18108, which states that a resigned attorney, such as Mr. Benninghoff, can act as a non-attorney lay representative so long as there is a no statute, rule or regulation prohibiting it. In this case there is no such statute, rule or regulation except the Reyes decision which did not undergo the required rulemaking procedure under Chapter 3.5 of the APA.

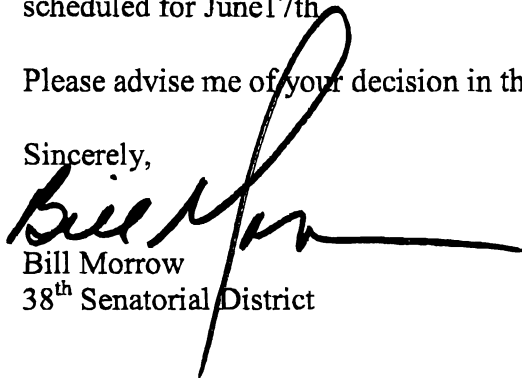
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Office of Administrative Law

Most importantly, if any agency wishes to stop Mr. Benninghoff – or, if for that matter any other non-lawyer – from appearing before it, then that agency should do so legally and correctly by either having a statute passed or properly promulgating a regulation as the APA specifically allows it to do so at § 11400.20(b)(3).

What the Reyes decision does is create an *ex post facto* criminal “statute” which mystically turns legal conduct into illegal conduct. Our Great State cannot conduct its business in this manner. Accordingly, consistent with the requirements of § 11340.5 (a) and (b), I strongly urge the Office of Administrative Law to declare that the Reyes decision is an underground regulation and therefore under the law unenforceable. I additionally request that such a determination be made as expeditiously as possible, and in no event later than June 15, 2005, inasmuch as a court hearing on the subject is scheduled for June 17th.

Please advise me of your decision in this matter.

Sincerely,



Bill Morrow  
38<sup>th</sup> Senatorial District

Cc: Mr. Charles Benninghoff