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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2010 JUN 10 AM 10: 46
JEANNE HICKS, CLERK
BY: S Bagnall

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. STEVEN CARROLL DEMOCKER, Defendant.	No. P1300CR20081339 Div. 6 **SUPPLEMENTAL REQUEST REGARDING SANCTIONS BASED ON THE STATE'S DESTRUCTION OF BIOLOGICAL EVIDENCE, FALSE REPORTING OF BIOLOGICAL EVIDENCE RESULTS AND DEFIANCE OF COURT ORDERS**

MOTION

Steven DeMocker, by and through counsel, hereby supplements his Motion for Sanctions based on the State's destruction of biological evidence, false reporting of biological evidence results and defiance of this Court's orders regarding the notice of

destruction of biological evidence filed on May 14, 2010.[1] On June 2, 2010 the Court found that the State had violated its Orders and Rule 15.1 and precluded evidence regarding testing of evidence item 400. The Court took further sanctions under advisement.

Rule 15.7 gives the Court wide discretion in imposing a sanction. The permitted sanctions include imposing costs or other appropriate sanctions. Counsel have previously advised the Court that the costs associated with the defense expert Dr. Norah Rudin to travel to Salt Lake City and attend this testing on behalf of the defense were $7,070.46.

Counsel have identified the hours required for Larry Hammond and Anne Chapman to address these issues. This time includes consulting with defense experts regarding the State's Notice of Additional YSTR Testing, reviewing hundreds of pages of late disclosed Sorenson materials, preparation for interviews of Sorenson employees, traveling to Salt Lake City to interview Sorenson employees about this testing, interviewing Sorenson employees regarding this testimony both in person in Salt Lake and by telephone, reviewing corrected Sorenson materials with defense experts, and drafting motions regarding Sorenson's testing and the State's violations.

Osborn Maledon attorneys regularly keep track of time spent on tasks undertaken for clients along with a description of activities. This information is entered into a software billing program. The program produces a pro forma, which we have reviewed in connection with this Motion. The time recorded for both Mr. Hammond and Ms. Chapman for the above described activities totals 99.1 hours. At Osborn Maledon's rates regularly billed and paid by clients of Mr. Hammond and Ms. Chapman, this time

[1] On April 30, 2010, the defense filed a motion which raised, among other things, some of the issues with the State's late disclosure of information relating to Sorenson Laboratories. The State responded on May 11, 2010, and on the same date, the Court heard argument on some of these issues. The Court found that the State had violated its disclosure obligations and took the sanction under advisement.

amounts to $40,143.00 in fees. Total out-of-pocket costs for Mr. Hammond and Ms. Chapman were $2,036.85 for travel to Salt Lake City for interviews of Sorenson employees.

We are aware that the hourly rates of private law firms are routinely higher than the rates paid to court-appointed defense counsel. The Osborn Maledon rates are nonetheless reasonable and comparable to rates typically charged in Phoenix for complex criminal defense work. We have also considered what the accumulated fees would have been had this work been performed by contract counsel in this County. At rates approximating court-paid rates for contract counsel in capital litigation in Yavapai County, the fees incurred would have been in the range of $9,910.

Counsel hereby request that this Court order the State to reimburse the costs and expenses for Dr. Rudin, Mr. Hammond and Ms. Chapman's as sanctions for the State's violations. The total fees, costs and expenses incurred for these activities are $49,230.31. We submit that this amount is fully warranted, but we also recognize that the combination of Dr. Rudin's time and ours if charged at County rates would result in a sanction closer to the $16,000 range. We leave to the Court the appropriate balance.

DATED this 10th day of June, 2010.

By: _____

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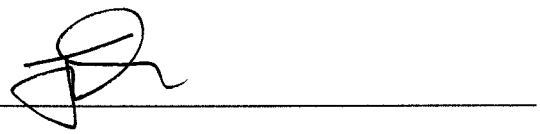
ORIGINAL of the foregoing
hand delivered for filing this 10th day
of June, 2010, to:

Jeanne Hicks
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

COPIES of the foregoing hand delivered
this 10th day of June, 2010, to:

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six
120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Jeffrey Paupore
Prescott Courthouse basket



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