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BY:

SUPERIOR COURT OF THE STATE OF ARIZONA

COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, v. STEVEN CARROLL DEMOCKER, Defendant.	NO. P1300CR201001325 **MOTION TO COMPEL PRODUCTION OF *EX PARTE* AND SEALED DOCUMENTS** (Expedited briefing and ruling requested) (Assigned to the Honorable Gary E. Donahoe)

Yavapai County Attorney's Office ("YCAO") moves this Court for an order requiring Defendant to produce the *ex parte* and sealed documents that he claims were improperly viewed and/or printed by YCAO. The Court already ordered Defendant to provide a copy of those documents to the Court. Defendant's counsel recently refused a request from the undersigned outside counsel to YCAO to provide a complete set of the documents provided to the Court absent an order from this Court to do so.[1]

YCAO has a right to these documents for three reasons. First, these documents are at the very heart of the evidentiary hearing scheduled for three days starting May 30, 2012. For YCAO to contest the sanctions sought by Defendant, it needs to view the

[1] *See* email from Craig Williams to Russell Yurk, dated April 2, 2012 2:54 p.m. (attached as Exhibit 1).

documents. The actual prejudice to the Defendant by YCAO's alleged viewing and/or printing of the documents is one of the primary factors identified by the Court of Appeals regarding whether sanctions are appropriate. In order to fully analyze and present argument that there was no prejudice, YCAO must be able to view and elicit testimony regarding the documents at issue. Furthermore, the Court has ordered that YCAO disclose by April 16, 2012 a description of each document viewed, the reason the document was viewed, and what the person did with the information contained in the document. YCAO will not be able to make the required disclosures if it is not provided a complete set of the documents at issue.

Second, all of the documents at issue have allegedly already been viewed and/or printed by YCAO. Indeed, one of the reasons why Defendant seeks sanctions is that he claims YCAO improperly benefitted from knowledge in those documents. If YCAO has already viewed and/or printed the documents, then what is the basis for withholding those documents from YCAO now? Either YCAO already knows the information contained in a document (and, consequently, there is no harm in providing another copy now) or YCAO does not know the information contained in a document (and, consequently, the document does not provide a basis for seeking sanctions). The very nature of Defendant's sanctions argument defeats his reason for refusing to provide YCAO a complete set of the documents at issue.

Third, YCAO had a right to view the documents on which Defendant relies in seeking sanctions. Many of the documents were simply sealed, meaning that although they were not viewable by the public or those not involved in the case, they were not filed *ex parte*. In other words, although they were not accessible to the public pursuant to applicable Court rules, they were still legitimately accessible to YCAO as a party. Because YCAO had a right to view and print sealed documents, there is no reason why Defendant can not produce those documents to YCAO.

Finally, to the extent that the Court determines that there are any documents or portions of documents that YCAO should not view going forward, then the undersigned

outside counsel to YCAO should be allowed to view those documents with a corresponding order that such documents or portions of documents cannot be shared with the current YCAO attorneys prosecuting claims against Defendant. However, YCAO should be allowed to discuss and share those documents with John Butner the YCAO attorney initially assigned to the initial prosecution of Defendant, and any other witnesses necessary for YCAO to defend against the request for sanctions.

Because of the abbreviated deadlines for initial disclosures, discovery, and conducting the evidentiary hearing, YCAO requests that the Court consider this matter on an expedited basis and requests a hearing on this issue no later than April 10, 2012. YCAO further requests that the Court rule on this motion as soon as practicable following the April 10, 2012 hearing or, in the alternative, continue YCAO's current disclosure deadline of April 16, 2012.

For these reasons, YCAO respectfully requests an order compelling the production of *ex parte* and sealed documents provided to the Court and which comprise the full set of documents that Defendant claims were improperly viewed and/or printed by YCAO.[2]

RESPECTFULLY SUBMITTED this 3rd day of April, 2012.

JONES, SKELTON & HOCHULI, P.L.C.

By _____

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Russell R. Yurk
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012
Attorneys for Plaintiff Yavapai County Attorneys Office

ORIGINAL of the foregoing sent via FedEx for filing this 3rd day of April, 2012 to:

Clerk of the Court
Yavapai County Superior Court
120 South Cortez Street
Prescott, AZ 86303

[2] A proposed form of Order is attached as Exhibit 2.

COPY of the foregoing mailed
this 3rd day of April, 2012, to:

Honorable Gary Donahoe
Visiting Judge
8442 North 17th Drive
Phoenix, AZ 85021
Tel: 602-318-7707

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Email: gparzlaw@aol.com
Attorneys for Defendant

Exhibit 1

Russell Yurk

From: Craig Williams [craigwilliamslaw@gmail.com]
Sent: Monday, April 02, 2012 2:54 PM
To: Russell Yurk
Cc: 'Gregory Parzych'
Subject: DeMocker Documents

Russell:

I have given it a lot of thought, and I do not think it is appropriate for the Defense to turn any of the documents over to your firm. If you think you need the documents, you will need to get a Court Order.

Thanks,
Craig Williams

From: Russell Yurk [mailto:ryurk@JSHFIRM.com]
Sent: Tuesday, March 27, 2012 11:12 AM
To: Craig Williams
Cc: GEORGIA STATON
Subject: RE: test

Craig,

It was good talking with you this morning. I look forward to hearing from you regarding your forthcoming submission to the Court of the documents at issue. As I mentioned, we'd appreciate a copy of that submission when you file it. In the alternative, my understanding is that if you claim we should not be allowed to view all of the documents submitted, you will make that argument by motion to the Court. Of course, if you make such an argument by motion, please email Georgia and me a copy of that motion so we can respond. Thank you.

Russell

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Exhibit 2

Georgia A. Staton, Bar #004863
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SUPERIOR COURT OF THE STATE OF ARIZONA

COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, v. STEVEN CARROLL DEMOCKER, Defendant.	NO. P1300CR201001325 **[PROPOSED] ORDER RE MOTION TO COMPEL PRODUCTION OF *EX PARTE* AND SEALED DOCUMENTS** (Assigned to the Honorable Gary E. Donahoe)

Upon consideration of the Motion to Compel Production of *Ex Parte* and Sealed Documents filed by Yavapai County Attorney's Office, and for good cause showing,

IT IS ORDERED that Defendant shall produce to outside counsel for Yavapai County Attorney's Office by April _____, 2012 a full copy of the set of *ex parte* and sealed documents provided to the Court by Defendant and on which Defendant relies in seeking sanctions against Yavapai County Attorney's Office.

DATED this _____ day of _____, 2012.

_____
Hon. Gary E. Donahoe