



GRIEVANCE FORM

RETURN FORM TO: Oklahoma Bar Association
ATTN: General Counsel
P.O. Box 53036
Oklahoma City, OK 73152

Name: Mr. Charles Alan Dyer
 Mrs. (First) (Middle) (Last)
 Ms.

1200 S. Main
(Street Address)
Frederick OK 73542
(City) (State) (Zip)

Phone Number(s): Business: N/A Home: N/A

Attorney against whom you wish to file a grievance:

Albert J. Hoch Jr.

803 Robert S. Kerr Oklahoma City 73106
(City) (Zip)

Phone Number(s): Business: (405) 521-1155 Home: _____

Did you employ the attorney? Yes No _____

Approximate date you employed the attorney: October 3, 2011

Was there a written agreement for services? Yes _____ No _____ (If Yes, attach copy)

What, if any, was the amount paid to the attorney? \$24,000 cash \$2,000 goods

Date Paid: Oct 3, 2011 and Jan 19, 2012

If you did not employ the attorney, what is your connection to him/her?

Please furnish the following information, if available:
Name of Court/County: _____ Case Number: _____
Title of Suit: _____ vs. _____

Approximate Date case was Filed: _____

If you are or have been represented by any other attorney with regard to this same matter, state the name and address of the other attorney: _____

If you have made a grievance about this same matter to any other Official or Agency, state its (their) name(s), and the approximate date you reported it:

In the event a disciplinary hearing is held, would you be willing to appear and testify as a witness?
Yes No _____

*** DO NOT WRITE ON BACK OF FORM ***

*** DO NOT SEND ORIGINAL DOCUMENTS, PROVIDE COPIES
AS ORIGINALS CANNOT BE RETURNED ***

GRIEVANCE FORM

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Names and addresses of witnesses to this grievance:

<p>A. <u>Robert Jackson</u></p> <p>Name <u>OK, Intelligent Defense System</u> <u>General Appeals Division</u> <u>PO Box 426</u></p> <p>Address <u>Norman</u></p> <p>City <u>OK</u> <u>73070</u></p> <p>State <u>OK</u> Zip <u>73070</u></p> <p>Phone <u>(405) 801-2621</u></p>	<p>B. <u>Jan Dyer</u></p> <p>Name <u>5109 Hope</u></p> <p>Address <u>Marlow</u></p> <p>City <u>OK</u> <u>73055</u></p> <p>State <u>OK</u> Zip <u>73055</u></p> <p>Phone <u>(580) 252-7266</u></p>	<p>C. _____</p> <p>Name _____</p> <p>Address _____</p> <p>City _____</p> <p>State _____ Zip _____</p> <p>Phone _____</p>
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Nature of grievance against the attorney (State in full detail. Use separate piece of paper if necessary). If you employed the attorney, state what you employed him/her to do. Include what the attorney did or did not do. Further information may be requested.

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I employed Mr. Hoch to represent me on criminal charges that had resulted in a hung jury on the first trial with a different attorney. I was charged with child molestation. After the hung jury, The O.S.B. I performed a forensic exam on my wife's computer and found that her computer was used to do searches about how to get custody of our daughter, pornographic websites were viewed multiple times the day before our daughter had to describe sex acts that were able to be viewed on the site, and my ex-wife used the computer just minutes before one of the times pornography was viewed.

Mr. Hoch lied and said he was going to submit this in the trial. He did not add Agent Donald Rains to the exhibit list. He did not add the OSBI written report or data disk to the exhibit list. None of this was presented to the jury. After the trial, My appellate attorney, my mom, and I were all unable to get in contact with Hoch for extended periods of time. My appellate attorney was unable to get my evidence until after the initial due date of my appeal, months after sentencing. I wrote a pro se appeal and sent it to my attorney to give him ideas. It was only after he saw my brief that my attorney notified my mother that my evidence box contained no trace of the OSBI report. If I hadn't written that brief, no appeal would have been filed concerning that evidence. It wasn't until after paying Mr. Hoch that he told me he had a dating relationship with someone in the DA's office. Then he lied about presenting the OSBI evidence. Not only did he remove the written report and data disk. He even removed the hard drive that was listed as exhibit 11 without my knowledge.

I hereby certify that I have read the foregoing matters and that they are true and correct to the best of my knowledge.

May 01, 2013

Charles A. Dyer
Your Signature

**grievance form must be signed before it can be considered.
imperative that you notify this office of an address change.
I am not available as a witness, your grievance may be dismissed.**

Mr. Hoch lied to me, refused to present critical evidence, and then scrubbed my evidence box of all traces of this evidence. Upon further investigation in the last couple of weeks, I was able to locate the hard drive (Exhibit 11). Mr. Hoch, for reasons unknown to me, gave it to my mother. A photo that she took of it is with this complaint. A copy of exhibit lists and the OSBI report is with this complaint. I am currently appealing my case for ineffective assistance of counsel; A copy is with this complaint. I found a case where someone had similar difficulties with Mr. Hoch; a copy is with this complaint.

Affidavit to the Oklahoma Bar Association

April 25, 2013

My son, Charles Dyer, had removed an external harddrive he was trying to locate while incarcerated he had asked me to see if his harddrive from his computer had been found anywhere by law enforcement. I had been asking Mr. Hoch if he had ever found whether or not the missing harddrive belonging to our son Charles Dyer had been recovered. Mr. Hoch said that it had not as far as he knew but would ask again. Then, on the second day of the trial in April, 2012, Mr. Hoch handed me a harddrive at the end of the court day and said, "They said this is the only one they have". I took the harddrive home and we discovered that it was not our son's but a clone of the harddrive of my son's wife, Valerie Dyer's, computer that I thought was the one he had also had. I put it up and didn't look at it again as it was not what I was looking for and knew that the original was in the evidence with the District Attorney and Mr. Hoch had a clone in the evidence.

The case resulted in a conviction, a sentencing hearing was held and a motion for an appeal was filed in June, 2012. Our son was determined to be indigent and an attorney from Oklahoma Indigent Defense was appointed. Mr. Hoch told us that he knew Mr. Jackson, the appointed Indigent Defense attorney for Charles Dyer well and would help him any way he could with the appeal.

I received a call from Mr. Jackson, the Oklahoma Indigent Defense attorney in September, 2012 stating that he agreed to let the defendant assist in the research and completion of the brief that would be due November 17, 2012.

The defendant and myself did a lot of letter writing and research during which time the defendant sent a copy of an OSBI computer forensic report to Mr. Jackson who had not yet received the evidence box from Mr. Hoch. Mr. Jackson said Mr. Hoch was still trying to get the evidence together and would get it to him.

Received a call from Mr. Jackson on November 14, 2012 stating he still did not have the evidence box and would have to request a 30 day extension for the filing of the brief, of which he could request two. This resulted in a serious delay in the ability to research the case and file a timely brief for the appeal. On November 16, 2012 received a call from Mr. Jackson stating he still did not have the evidence box and had requested and was granted the first 30 day extension. On November 18, 2012 received a call from Mr. Jackson stating that he just acquired the evidence box from Mr. Hoch (the day after the first filing date of the appeal).

During the next month there were several calls regarding preparation and evidence. Mr. Jackson said it was very difficult to contact Mr. Hoch and on one call asked if I knew the chain of custody of the OSBI written computer forensic report. I told Mr. Jackson it had been given to Mr. Hammond (the attorney for the first trial in April, 2011 which had resulted in a mistrial). Mr. Hammond had been allowed to withdraw from the case but it had been generated at the request of the District Attorney after the first case but before Mr. Hammond withdrew keeping the chain of custody intact to that point. Mr. Jackson contacted Mr. Hammond and acquired an affidavit of his receipt of the report into evidence.

The brief was filed by Mr. Jackson with the appellate court on January 17, 2013.

At the end of the trial Mr. Hoch returned evidence to the family from the evidence box including a calendar, letters from Charles Dyer's wife and a baby book.

During the trial preparation Mr. Hoch talked frequently about being an attorney in California and working with the cartel. He discussed the fact that he was a Sgt. in the US Marine Corp (Charles Dyer was also a Sgt. in the Corp). Mr. Hoch made at least two trips to Las Vegas, Nevada to "help a friend with a big case" and then bragged frequently about being "catered to by the big casinos" in Las Vegas.

Mr. Hammond offered to help Mr. Hoch on his own time with any questions he might have about the case and had put together an informational packet which Mr. Hoch refused to accept. Mr. Hoch told me that he didn't need or want any help from anyone, that he "has it covered".

During the trial at one of the breaks Mr. Hoch bragged about being a "drinking buddy" with the District Attorney and knew the judge well, knew how to handle him and not to worry. Mr. Hoch refused to present the evidence which had been presented in the previous trial and called no expert witnesses. The previous trial resulted in a mistrial and we now had more evidence which he refused to present. When we met with Mr. Hoch in the evening between trial days he was drinking and said everything was going the way he wanted. Mr. Hoch and I had a verbal agreement as to the fact that he would provide a private investigator, acquire school records, provide expert witnesses and the trial would probably last at least one week. These were never provided and the trial lasted 2 ½ days at which time Mr. Hoch rested without any consultation or discussion with Charles Dyer that no further evidence would be provided and only called family and one friend to the stand besides the defendant.

During the trial preparation time and after the trial was over it was extremely difficult to contact Mr. Hoch. At first he would answer calls but the closer it got to

the trial date and after the trial it was next to impossible to get him to answer a call or give the answer to a question to his office manager to relay to us. Charles Dyer had a polygraph set up by Mr. Hoch prior to the trial and it was stopped half way through. I called to the courthouse to see why and the judge's office said Mr. Hoch would have to tell us. I called Mr. Hoch's office and this time he did call me back. He said to give him a week or so and he would find out because he didn't know either. It has now been 5 months and I have not heard from him.

On April 23, 2013 I asked Mr. Jackson, Charles Dyer's current attorney, if there was a harddrive clone in the evidence box and he said he had not seen one and there was not one in it when he received it. I then decided to look at the harddrive clone which Mr. Hoch had given me during the trial again as during the trial I just put it away for safe keeping for later.

On the back of the harddrive clone is a blue evidence sticker that says "exhibit 11" with a white sticker with "source" on it. On reviewing the exhibit lists for both trials the harddrive is listed under "exhibit 11". This is the harddrive which should have been in evidence box and should have been transferred to Mr. Jackson by Mr. Hoch contained in the evidence box. Also missing was the OSBI printed computer forensic report and the CD with the OSBI computer forensic report (which had been given to Mr. Hammond by the District Attorney at the same time the printed report was given to him). This evidence is a big part of the case and without the defendant bringing the existence to the attention of Mr. Jackson it would have been lost forever if the appeal had been filed without it.

Janet Dyer
5103 Hope
Marlow, OK 73055
(580) 252-7266

PROPOSITION I

MR. DYER FAILED TO RECEIVE THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTION 20 OF THE OKLAHOMA CONSTITUTION.

A. Standard of Review.

Claims of ineffective assistance of counsel are evaluated under the two-prong test of **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). First, it must be determined whether counsel's performance was deficient, whether it was unreasonable under prevailing professional norms and could not be considered sound strategy. Second, it must be determined whether counsel's deficient performance prejudiced the defense of the case. **Id.** at 687, 104 S.Ct. at 2064. Prejudice is shown if there is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different. A reasonable probability is one sufficient to undermine confidence in the trial's outcome. **Id.** at 694, 104 S.Ct. at 2068. These determinations are made using a *de novo* standard of review. **See United States v. Orange**, 447 F.3d 792, 796 (10th Cir. 2006) ("A claim for ineffective assistance of counsel presents a mixed question of fact and law, which we review *de novo*.").

B. Counsel's Performance was Deficient Because He Failed to Call Certain Witnesses.

Prior to Appellant's 2012 trial, Valerie Dyer had admitted on multiple occasions, under oath, that she would do or say anything – including committing

perjury – to keep Appellant from obtaining custody of H.D. For example, during the cross-examination of Valerie by defense counsel at the July 2010, preliminary hearing, the following occurred:

Q He [Appellant] told [you] that he was going to try to get custody of his daughter, didn't he?

A Yes.

Q That upset you, didn't it?

A Of course.

Q Did you tell Mr. Dyer that you would do anything or say anything to keep him from getting his daughter?

A Yeah.

(P Tr. 110) Valerie made similar admissions during an April 2011, motions hearing (M Tr. (4/8/2011) at 122) and during the first trial. (Tr. Valerie Dyer 4/25/2011 at 38, 72)

Essentially, Appellant's theory of defense at his first trial was that Valerie, fearing she would lose custody of H.D. and angered by Appellant's relationship with her one-time best friend, concocted the allegations and then coached H.D. to repeat them. In September of 2011, Appellant's original attorney, Mr. Hammond, withdrew from the case and was replaced by Mr. Hoch. (O.R. 287, 290) Despite the change in counsel, Appellant could have reasonably expected his theory of defense to remain unchanged. After all, the first trial had ended with a hung jury and, less than two weeks before the third trial began, Mr. Hoch filed a witness list

that listed the same witnesses previously listed by Mr. Hammond. (O.R. 105-10; 365-71)

Like Mr. Hammond, Mr. Hoch called *some* of the same witnesses to present Appellant's defense to the jury. These witnesses consisted of Appellant's sister, Amy Dark; his mother, Janet Dyer; his girlfriend, Amanda Monsalve and Appellant. (Tr. Day 3 at 154, 173; Tr. Day 4 at 4, 82) However, several witnesses who testified at the first trial were conspicuously absent during the 2012 trial. The absence of these witnesses left the presentation of Appellant's theory of defense dismally incomplete. Among the witnesses who testified at the first trial but did not testify at the last trial were sheriff's deputies Joshua Seely and Christopher Lemons, Oklahoma State Bureau of Investigation (OSBI) criminalists Sara Ferrero and Ashleigh Sosebee and computer expert Marvin Dutton. In addition, Appellant contends that defense counsel should have called OSBI Special Agent and forensic computer expert Donald Rains.

These witnesses would have cast devastating questions about Valerie's credibility regarding the circumstances of the alleged disclosure and reporting of the purported abuse, and would have demonstrated the utter lack of any corroborating physical evidence concerning the accusation that the alleged abuse occurred in Mr. Dyer's home. In addition, the testimony of defense computer expert Dutton and OSBI Agent Rains about searches and downloads made on

Valerie's computer would have significantly substantiated Mr. Dyers' defense theory that the allegations were concocted by his scorned and vengeful ex-wife.

Deputies Seely and Lemons possessed information which bore directly on Valerie Dyer's credibility. To begin with, Deputy Seely could have testified, as he did at the first trial, that Valerie reported the allegations on Friday, January 8, 2010. (Tr. Joshua Seely 4/27/2011 at 12, 20) This, in itself, is no trivial matter because, although Valerie has never been able to recall when the alleged disclosure occurred, she has testified that the child returned to her the day before school started. (Tr. Valerie Dyer 4/25-26/2011 at 44, 80) According to Janet Dyer, Monsalve and Appellant, Valerie picked H.D. up on the evening of January 3, 2010. (Tr. Day 3 at 177; Day 4 at 43, 138) According to Rodney Calhoun, an administrator with the Duncan Public School System, classes did, in fact, resume on Monday, January 4, 2010.⁵

The date that Valerie contacted authorities is important in light of her unyielding insistence that she reported the abuse to the Stephens County Sheriff's Department the day after H.D. disclosed the abuse to her. (Tr. Day 2 at 84, 125)⁶ Had Deputy Seely testified that Valerie did not report until January 8, 2010, the jury would have been forced to conclude that either H.D. did not disclose on the

⁵ An *Application for an Evidentiary Hearing on Sixth Amendment Claims* has been contemporaneously filed with this brief. Attached to the Application is Appellant's Ex. 1, the affidavit of Mr. Calhoun.

⁶ Throughout the course of this litigation, Valerie has consistently maintained that she reported the abuse the day after it was disclosed to her. (P Tr. 103; M Tr. (4/8/2011) at 123-24, 128; Tr. Valerie Dyer 4/25, 26/ 2011 at 50-51, 81)

day that she returned from the visit with her father, or Valerie delayed reporting the allegations to the authorities for five days. Either scenario is fundamentally at odds with Valerie's testimony as to how the disclosure occurred and had the jury known this, it would have done much to undermine her credibility.

Deputy Seely could have also testified, as he did during the 2011 trial, that Valerie's January 8, 2010, report to the sheriff's department included a report of two prior accusations of sexual abuse by H.D. against her father; one when the family lived in California and the other during the summer of 2009, shortly after Appellant got out of the Marine Corps and returned to Oklahoma. (Tr. Joshua Seely 4/27/2011 at 19) According to Seely's probable cause affidavit, Valerie claimed that she confronted Appellant following each of H.D.'s prior disclosures. (O.R. 2)

This information would have further undermined Valerie's credibility with respect to her account of the alleged disclosure that occurred following H.D.'s visit with Appellant. Valerie testified that following the visit, H.D. "was crying more and not acting like herself." (Tr. Day 2 at 72-73) Valerie claimed that she asked the child what was wrong and H.D. told her that she did not want to talk about it or that she did not want to tell her mother what was wrong. (Tr. Day 2 at 73-74) This caused Valerie to think that "maybe she got grounded or got a spanking." (Tr. Day 2 at 74) According to Valerie's account, even when H.D. began complaining that her vagina was hurting, Valerie's reaction was to think

that perhaps the child drank too much soda or had a urinary tract infection. (Tr. Day 2 at 74-75, 124) In light of Valerie's claim that H.D. had accused Appellant of sexually abusing her as recently as the summer of 2009, and given that Valerie found these accusations credible enough to confront Appellant about them, it seems incredulous that she would react to the child's demeanor and complaints in the way she described to the jury at the third trial.

Deputies Seely and Lemons were also important defense witnesses because they took various items from Appellant's trailer and submitted them to the OSBI for testing. As previously noted, Appellant and Monsalve went to the Stephens County Sheriff's Office on the afternoon of January 12, 2010. Appellant did so because the e-mail Valerie sent to Monsalve on the previous day made him suspect that Valerie had made some type of false allegation against him. (Tr. Amanda Monsalve 4/27/2011 at 18-19; Tr. Charles Dyer 4/28/2011 at 52-53) Appellant also wanted the help of the sheriff's office in enforcing his visitation rights with H.D. (Tr. Joshua Seely 4/27/2011 at 16; Tr. Charles Dyer 4/28/2011 at 54-55) Shortly after he arrived at the sheriff's office, Appellant was arrested and placed in jail. (Tr. Charles Dyer 4/28/2011 at 55, 77) Monsalve, who had accompanied Appellant to the sheriff's office, testified at the first trial that she remained at the sheriff's office for several hours after Appellant's arrest while the Department of Human Services contemplated the removal of Monsalve's daughter from her care. (Tr. Amanda Monsalve 4/27/2011 at 18, 20, 30) Monsalve did not

return to the trailer she shared with Appellant until deputies executed a search warrant for the premises during the late-evening hours of January 12, 2010. (Tr. Joshua Seely 4/27/2011 at 7;Tr. Amanda Monsalve 4/27/2011 at 21)

The search warrant authorized officers to seize items “that could have been worn or used by the victim and that could possibly contain DNA evidence of Charles Dyer.” (Tr. Christopher Lemons 4/27/2011 at 5) The officers, who had been informed that the abuse had occurred both in the master bedroom and in the living room, seized pillows, sheets, quilts and a comforter – all of the bedding – from the bed in the master bedroom. They also took the cushion covers from the furniture in the living area. (Tr. Christopher Lemons 4/27/2011 at 8)

At the trial that resulted in Appellant’s conviction, Monsalve testified that she gave officers panties and pajamas belonging to H.D. The garments had not been laundered and Monsalve believed that H.D. had worn the panties from the evening of December 31, 2009, to January 3, 2010. (Tr. Day 4 at 37-38) Monsalve’s account is consistent with the testimony of Deputies Lemons and Seely at the first trial. Deputy Lemons characterized Monsalve as “fully cooperative” during the search and stated that the pajamas and panties were retrieved from the “dirty clothes hamper.” (Tr. Christopher Lemons 4/27/2011 at 6, 8) Deputy Seely also observed Monsalve retrieve the pajamas and panties from the hamper. (Tr. Joshua Seely 4/27/2011 at 8)

Although the jury that convicted Appellant did not know it, the seized items were submitted to the OSBI where testing was performed by criminalists Sara Ferrero and Ashleigh Sosebee. Ferrero tested the bedding taken from Appellant's bedroom for the presence of blood, semen and seminal fluid. (Tr. Sara Ferrero 4/27/2011 at 5) Although Ferrero found spermatozoa on a sheet and on the comforter, no seminal fluid, or other fluid, was found on the pajamas or on the panties worn by H.D. on January 2, 2010, the date she claims she was last abused by Appellant. (Tr. Sara Ferrero 4/27/2011 at 7-9)

Sosebee subjected various stains found on the bedding to DNA testing. (Tr. Ashleigh Sosebee 4/27/2011 at 6-7) The substances matched the known DNA of Appellant and Monsalve, and, in one instance, Monsalve's daughter could not be excluded as a possible contributor of a mixed-substance stain. (Tr. Ashleigh Sosebee 4/27/2011 at 8-11) Sosebee did not find any DNA which could have originated from H.D. (Tr. Ashleigh Sosebee 4/27/2011 at 11; O.R. 42-47)

Deputies Seely and Lemons also had information about Valerie's computer which was valuable to the defense. Sometime after Valerie and H.D. returned to Oklahoma in September of 2008, Appellant sent her a computer. Valerie mentioned this fact in passing during her testimony at the final trial. (Tr. Day 2 at 52) During cross-examination, Valerie claimed that many people had access to her computer and she denied using to the computer to view pornography or to conduct various internet searches. (Tr. Day 2 at 113, 121-22)

What the jury did not know was that several days after she reported H.D.'s allegations to the sheriff's department, Valerie gave the computer to Deputy Lemons. (Tr. Christopher Lemons 4/27/2011 at 10) She did so because the computer had once belonged to Appellant and Valerie claimed that it contained child pornography. (Tr. Christopher Lemons 4/27/2011 at 10)

In April of 2011, Deputy Seely transported the computer from the Stephens County Sheriff's Department to Applied World Technology, in Duncan, Oklahoma, where Marvin Dutton "cloned" the computer's hard drive. (Tr. Joshua Seely 4/27/2011 at 17-18) This was done at the request of David Hammond, who was Appellant's defense counsel at the time. (Tr. Joshua Seely 4/27/2011 at 17)

During the first trial, Dutton testified that he first began working with computers in the military in 1962 and has continued to work with computers, in various capacities, since that time. (Tr. Marvin Dutton 4/27/2011 at 4-7) In 1980, Dutton founded Applied World Technology, a company that, among other things, designs and manufactures computer systems. (Tr. Marvin Dutton 4/27/2011 at 4, 7)

Dutton testified that he cloned – or made an exact duplicate of – the computer's hard drive. (Tr. Marvin Dutton 4/27/2011 at 9-10) The cloned data indicated that the computer had been used on December 25, 2009, eight days before the alleged disclosure, to conduct internet searches "in reference to child abuse and custody of children versus how to gain custody" and "[h]ow to report

crimes against children.” (Tr. Marvin Dutton 4/27/2011 at 23) According to Dutton, there were “probably 20 different searches” done on December 25, 2009, “all in reference to the same line of sexual abuse, misconduct of a child, and what’s required to report – what’s required to file such a case.” (Tr. Marvin Dutton 4/27/2011 at 14) Dutton also testified that the computer was used to visit various pornographic websites during the end of December 2009 and the first days of January 2010. (Tr. Marvin Dutton 4/27/2011 at 16)

The jury that convicted Mr. Dyer also did not know that days after the first trial resulted in a mistrial, the prosecution requested that the OSBI perform a forensic examination of the computer “for any evidence of the possession of child pornography, any electronic communications between [CHARLES] DYER and VALERIE DYER, and an analysis of the Internet history from October 2009 through January 2010.” Appellants Ex. 2.⁷

According to Agent Rains’ report, the computer did not contain child pornography, as Valerie had told Deputy Lemons. In a finding consistent with Dutton’s testimony, Agent Rains found that the computer “was used to access Internet search engines or websites and search for terms related to ‘parental rights.’” Agent Rains also found the computer to contain 1,083 graphic image files

⁷ Appellant’s Ex. 2 is the affidavit of David Hammond and the report of OSBI agent Donald Rains. According to the affidavit, the Stephens County District Attorney’s Office provided Mr. Hammond with a copy of Agent Rains’ report prior to the time that Mr. Hammond withdrew as Mr. Dyer’s counsel in September 2011. The affidavit and report are attached to the *Application for an Evidentiary Hearing on Sixth Amendment Claims* filed contemporaneously with this brief.

which depicted pornography. The images were accessed on six different dates beginning on December 25, 2009, and ending on January 12, 2010. The report indicates that 97 pornographic images were downloaded before H.D. made the alleged disclosure and 438 pornographic images were downloaded on January 11, 2010, one day before H.D. was forensically interviewed by Jessica Taylor.

C. The Failure to Present the Witnesses was Prejudicial.

Appellant contends that if the above-described evidence had been presented to the jury, there is, at least, a reasonable probability that the outcome of his trial would have been different. Appellant's jury had no concrete evidence concerning when the alleged disclosure was made by H.D. to Valerie or when Valerie reported the allegations to the Stephens County Sheriff's Department. In what is obviously an error, Valerie testified that the disclosure was made around "the end of December of '09." (Tr. Day 2 at 73) On cross-examination, Valerie testified that she did not remember the date of the disclosure. (Tr. Day 2 at 125) However, during the first trial, Valerie acknowledged that the disclosure was made "the day before school started." (Tr. Valerie Dyer 4/25-26/2011 at 90)

Given this state of affairs, it was important for the defense to demonstrate to the jury that H.D.'s school reconvened on Monday, January 4, 2010.⁸ **See** Appellant's Ex. 1. This fact is consistent with Valerie's earlier testimony and the

⁸ Despite Valerie's claim that H.D. did not attend school the week following the disclosure, school records obtained by previous defense counsel indicate that H.D. attended school every day the following week except, Friday January 8, 2010. (Tr. Valerie Dyer 4/25-26/2011 at 80) **See** Appellant's Ex. 1.

testimony of Janet Dyer, Monsalve and Appellant, that the child was returned to Valerie on the evening of January 3, 2010. (Tr. Day 3 at 177; Day 4 at 43, 138) Mr. Dyer's jury should have known that the alleged disclosure occurred on January 3 and that Valerie did not report the allegations until January 8. (Tr. Joshua Seely 4/27/2011 at 12, 20)

The combination of this evidence indicates that Valerie, who claimed that she was faced with a tearful seven-year-old with an obvious vaginal injury who was reporting sexual abuse against her father for the third time, waited five days before she reported the allegations to authorities. Alternatively, the evidence suggests that H.D. did not disclose the abuse on the day that she returned to Valerie's home. The omitted evidence would have rendered Valerie's emotional and tearful account of H.D.'s disclosure completely unworthy of belief. (Tr. Day 2, at 74)

Defense counsel's failure to call OSBI criminalists Ferrero and Sosebee also was prejudicial. During her forensic interview, H.D. claimed that she was raped and sodomized on Appellant's bed and in the living room of the trailer on January 2, 2010. **See** State's Ex. 3. The jury knew that Monsalve gave clothing belonging to H.D. to deputies on the evening of January 12, 2010, and that the clothing included panties worn by H.D. from December 31, 2009 to January 3, 2010. (Tr. Day 4 at 37-38) Monsalve also testified that officers took bedding from the bed in the master bedroom. (Tr. Day 4 at 35) The jury did not know, however, that subsequent testing of these items failed to reveal any evidence to corroborate

H.D.'s claims of abuse. (Tr. Sara Ferrero 4/27/2011 at 7-9; Tr. Ashleigh Sosebee 4/27/2011 at 11; O.R. 42-47)

Finally, given that Appellant's theory of defense was that H.D. made the allegations because she was coached to do so by Valerie, defense counsel's failure to inform the jury about the activity found on Valerie's computer was, unquestionably, prejudicial. Had the jury known that in the days before the alleged disclosure was made, Valerie's computer was used to research "what's required to file" a sexual abuse case, Appellant's theory of defense would have been made more believable. (Tr. Marvin Dutton 4/27/2011 at 14) Even more powerful would have been testimony from Agent Rains indicating that an extensive amount of pornography was downloaded on Valerie's computer the day before H.D. was forensically interviewed. This evidence would have given force to Appellant's claim that H.D. had been coached.

There can be no reasonable strategic reason for the failure to call these witnesses. The deputies, the criminalists, and Marvin Dutton are each listed on the witnesses list filed by Mr. Hoch on April 3, 2012, less than two weeks before trial. (O.R. 365-71) Despite defense counsel's professed intention to call the witnesses, he did not do so and the result devastated the defense of Mr. Dyer's case. As to Agent Rains, defense counsel knew, or should have known, that his forensic examination of Valerie's computer uncovered information that was vital to Mr. Dyer's defense.

D. Conclusion.

“Omissions [that] cannot be explained convincingly as resulting from a sound trial strategy, but instead arose from oversight, carelessness, ineptitude, or laziness, may fall below the constitutional minimum standard of effectiveness.” **Rosario v. Ercole**, 601 F.3d 118, 130 (2nd Cir. 2010) (quoting **Eze v. Senkowski**, 321 F.3d 110, 112 (2nd Cir. 2003)). Appellant contends that this is such a case. Accordingly, this Court should find that counsel’s failure to call the witnesses identified in this proposition constitutes deficient performance. The Court should also find that Mr. Dyer was prejudiced by his counsel’s deficiencies. The defense advanced during the first trial included the testimony of the witnesses identified in this proposition, with the exception of Agent Rains. That trial did not end in Mr. Dyer’s conviction. Mr. Dyer’s conviction in a trial in which the testimony of the above-described witnesses was excluded should lead this Court to conclude that Appellant has sufficiently demonstrated a reasonable probability that, but for counsel’s errors, the outcome of his trial would have been different. Accordingly, this Court should reverse Appellant’s conviction and remand this case to the district court for a new trial. In the alternative, the Court should provide Mr. Dyer with the opportunity to demonstrate that, but for the deficiencies of his trial counsel, the result of his trial would have been different by remanding the case to the district court for an evidentiary hearing. **See Application of an Evidentiary Hearing on Sixth Amendment Claims**, filed contemporaneously with this brief.

Lawton, Oklahoma 73507, who may be called to testify about facts related to the analysis of the DNA evidence in this case.

28. Sara Ferrero, Oklahoma State Bureau of Investigation, 5 N.E. 22nd Street, Lawton, Oklahoma 73507, who may be called to testify about facts related to the stain(s) and samples taken and the testing of DNA evidence.

29. Jim Taylor with Colt Defense, PO Box 118, Hartford CT 06141; will testify about the authenticity of the grenade launcher.

30. Abigail Wilson – Department of Human Services; Will testify about the investigation of sexual abuse allegations against H.D. and I.C.

31. Justin McCowen, 1323 N. 7th Street, Duncan, Oklahoma; Will testify to the character of the Defendant and to the facts related to this matter.

32. Diedre Hampton, (580) 467-7861, Duncan, Oklahoma; Will testify to the fact that she is a former neighbor of Valerie Dyer and that witnessed numerous men entering and leaving Valerie Dyer's residence during the time period when the alleged sexual assault had occurred.

33. Carl Ray Wylie, Father of Valerie Dyer, 6506 Clear Creek, Duncan, Oklahoma, 73533; Will testify to the fact that he attempted to assault the Defendant and Amanda Monsolve, by pointing a loaded firearm at them, on or about the 4th day of May, 2011. Will testify about Valerie Dyer and her family's hatred toward the Defendant at the time the allegations were made.

34. Dan Fletcher, Duncan Police Officer, Duncan, Oklahoma, 73533; Will testify regarding his investigation of a complaint filed by Valerie dyer on or about May 24, 2011, wherein she claimed the Defendant was in the vicinity of her workplace and that these actions violated a protective order.

35. Custodian of Records, Duncan Public School System, Duncan, Oklahoma; Will testify about the verification of school attendance records of H.D. between January 3, 2011 to January 8, 2011. Will testify regarding the dates students were out of school during Christmas break.

36. Connie Elam, Stephens County Court Clerk, Duncan, Oklahoma; Will testify the authenticity of certified court records of James Hekia.

37. Nathan Cario, 580-606-7054; Will testify regarding the Defendant's character.

38. Justin Dill, 580-736-3109; Will testify regarding his recent encounters with Valerie Dyer, to his status as the father of the child she is pregnant with, and her statements regarding what she would do to prevent him from seeing the child and its relation to the present case.

39. Charles Dyer, Defendant; Mr. Dyer will testify regarding the allegations against him. He will also testify regarding his relationship with Valerie Dyer and her character and credibility.

EXHIBIT LIST

1. Recorded phone conversations between Charles Dyer, Amanda Monsolve and other family members from the Stephens County Jail.
2. Recorded conversation between Charles dyer and Valerie Dyer. (*CD cannot be duplicated and is available for inspection at the office of Stuart & Hammond).
3. Recorded conversation with Charles Dyer and John Davis. (*CD cannot be duplicated and is available for inspection at the office of Stuart & Hammond).
4. Facebook message from Valerie Dyer to Amanda Monsolve, dated January 11, 2010 and Facebook Message posted by Valerie Dyer dated December 14, 2009.
5. Certificate of Release or Discharge from Active Duty number(s) 29 and 49.
6. Medical report by Dr. Preston Waters dated January 13, 2010.
7. Copy of affidavits from search warrants and search warrants return.
8. CD of the interview taken at the Mary Abbott's House with the minor child.
9. Oklahoma Statute Bureau of Investigation Criminalities Examination Report regarding analysis of the DNA report prepared by Ashleigh Sosebee and report prepared by Sara Ferrero.
10. Report to the District Attorney from Oklahoma Department of Human Services; Order records pursuant to the Order Authorizing Disclosure of Records.
11. Hard drive of the computer from Valerie Dyer; description of the pornography material and searches.
12. Pictures of the M203 Grenade Launcher.
13. Criminal felony conviction records of Erick McQuiston.
14. Judgment of Acquittal in Federal Court Case CR-2010-38-R.
15. Defendant's Motion in Limine filed in the Federal Court Case to exclude evidence that the grenade launcher was stolen.
16. Consent to search documents signed by Amanda Monsolve.

17. Divorce Pleadings: Dyer vs Dyer, Stephens county FD-2009-348.
18. Protective Order – PO-2010-13, wherein Valerie Dyer obtained protective order against the Defendant.
19. Criminal records of James Hekia, Valerie Dyer's uncle as related to his sex crime conviction upon a family member, to include Judgment and Sentence, Application to Revoke Judgment and Sentence and documents reflecting James Hekia's residence or where he resides.
20. Photographs of H.D. and I.C., taken during the Christmas break, at the Defendant's home.
21. Tape recordings of conversation between Valerie Dyer and Defendant, wherein Valerie Dyer called the Defendant on the 30th day of June, 2011. In said conversation, Valerie Dyer admits she made a mistake and filed a false complaint against the Defendant, alleging he violated the Protective Order. The discussion includes issues related to the case, the hatred between the parties and Valerie Dyer's hatred towards Amanda Monsolve.
22. Criminal records, to include, but not limited to, the Information Sheet and Officer's Affidavit, relative to the arrest of Carl Ray Wylie wherein he was charged after pointing a firearm at the Defendant and Amanda Monsolve.
23. Calendar of the months of December 2009 and January 2010.
24. School records of H.D. between the dates of January 3, 2010 through January 8, 2010, said records evidencing the attended days of school by H.D. during that period.
25. Calendar for December, 2009.
26. Calendar for January, 2010.
27. Chart of events.
28. Transcript of the previous trial in this matter, to include all witness testimony.
29. Baby book of H.D. including but not limited to family photographs within the book.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

IN THE DISTRICT COURT OF STEPHENS COUNTY, OKLAHOMA
FILED DISTRICT COURT
Stephens County, Okla.

THE STATE OF OKLAHOMA,)
Plaintiff,)
VS.) CF-2010-17
CHARLES ALLEN DYER,)
Defendant.)

APR 03 2012

MARGARET CUNNINGHAM
COURT CLERK

**NOTIFICATION OF WITNESS
AND EXHIBIT LIST**

COMES NOW the Defendant, by and through his attorneys, Hoch & Associates, and notifies the District Attorney's office that the Defendant reserves the right to call the following witnesses and/or introduce the following exhibits at trial:

1. The Defendant gives notice of his right to call any and all of the State's endorsed witnesses and any witnesses interviewed or mentioned in police reports, whose testimony will be in accordance with information provided in police reports and discovery from the State.
2. The Defendant gives notice of his right to call any and all witnesses in the event that they are required for impeachment and/or rebuttal of the testimony offered by the State of Oklahoma.
3. The Defendant reserves the right to introduce any document or other exhibit previously provided by the State of Oklahoma to counsel for the Defendant or described in documents provided to counsel for the Defendant pursuant to discovery requests.
4. The Defendant reserves the right to call any witness and/or introduce any document or other exhibit previously identified to the State of Oklahoma through notifications and/or amended notifications previously filed in this case.
5. Jan Dyer, 5103 Hope, Marlow, Oklahoma, who may be called to testify: (a) as to the Defendant's relationship with the alleged victim, H.D. (b) that the Defendant was not left alone with H.D. during the time the State alleges that the sexual abuse occurred; and (c) about the Defendant's character.
6. Amanda Monsolve, 126 Cottonwood Drive, Jonesboro, TN 73659, who may be called to testify: (a) about times Defendant was allegedly left alone with H.D. (b) about Valerie Dyer's hatred toward the Defendant; and, (c) the normal demeanor and conduct of H.D. on the 2nd day of January, 2010.

8. Defendant's sister Amy Dark, 126 Cottonwood R., Jonesborough, TN 73659, who may be called to testify: (a) about Defendant's relationship with H.D. (b) about Valerie Dyer's hatred toward the Defendant; and, (c) her observations the demeanor and conduct of H.D. and the Defendant during the Christmas break of 2010.
9. Christopher Lemons, Stephens County Sheriff's Office, Duncan, Oklahoma, who may be called to testify: (a) facts relating to the investigation of this alleged offense, (b) false allegations made by Valerie Dyer against the Defendant during her attempt to have the Court system punish the Defendant in a protective order/violation proceeding, (c) issues relating to obtaining DNA evidence; and, (d) Valerie Dyer's computer seizure and chain of custody.
10. Lawson Guthrie, Stephens County sheriff's Office, Duncan, Oklahoma, who may be called to testify: (a) facts relating to the investigation of this alleged offense, (b) issues relating to obtaining DNA evidence; and, (c) Valerie Dyer's computer seizure, chain of custody, contents and reproduction of the computer hard drive by Defendant's expert.
11. Valerie Dyer, 1820 W. Plato, Apt. 2 C, Duncan, Oklahoma, who may be called to testify: (a) about statements made by H.D. (b) about issues relative to her animosity and hatred against the Defendant, (c) about matters related to reports of sexual abuse allegations to authorities; and, (d) the search history on her computer.
12. H.D. c/o Valerie Dyer, 1820 W. Plato, Apt. 2C, Duncan Oklahoma, who may be called to testify about the sexual abuse allegations against Defendant and the family history of the Defendant and Valerie Dyer, including the post-divorce visitation history and conflicts.
13. Gene Pool, Federal Bureau of Investigation, Oklahoma City, Oklahoma, who may be called to testify: (a) about the facts related to the investigation of this matter, (b) the search and seizure issues related to Count II; and, (c) knowledge/lack of knowledge of items in Count II being stolen.
14. Sergeant Borgouis, who may be called to testify: (a) about his presence at the time the Defendant received the items listed in Count II, (b) about the Defendant's lack of knowledge of being stolen; and, (c) the Defendant's and his belief that the Defendant had received a "flare launcher."
15. Josh Seely, Stephens County Sheriff's Department, Duncan, Oklahoma, who may be called to testify: (a) about facts related to the investigation of this matter, (b) about the collection of DNA evidence in this case, (c) about the voluntary surrender of the Defendant; and, (d) Valerie Dyer's computer seizure, chain of custody, contents and reproduction of the computer hard drive by Defendant's expert.
16. Marvin Dutton, Duncan, Oklahoma, who may be called to testify: (a) about cloning the computer hard drive on Valerie Dyer's computer, (b) searches made on the

Oklahoma State Bureau of Investigation

Computer Crimes Unit

Computer Forensic Examination Report

Examination Report Number: DE11-0895

Examination Report Date: July 29, 2011

SUMMARY OF REQUEST

On May 02, 2011, Stephens County District Attorney's Office Investigator JUSTIN SCOTT requested partial OSBI investigative assistance regarding allegations that CHARLES <st1:stockticker w:st="on">ALAN DYER, W/M, DOB: 08/17/1980, <st1:stockticker w:st="on">SSN: 444-88-6987, 5819 Hope Road, Marlow, Oklahoma, used a computer at his residence to download and view images which depicted child pornography from the Internet. SCOTT indicated DYER was also charged with the sexual abuse of his daughter, HALEY DYER, W/F, DOB: 11/25/2002, SSN : 445-17-3256, 1829 West Plato Road, Duncan, Oklahoma, which allegedly occurred between December 2009 through January 2010. SCOTT indicated DYER had been tried in April 2011 for the sexual abuse of HALEY DYER and that trial resulted in a mistrial. SCOTT indicated DYER's defense attorney's introduced evidence at the April 2011 trial from a computer which belonged to VALERIE DYER, CHARLES DYER's former wife. SCOTT indicated that computer had been maintained in the custody of the Stephens County Sheriff's Department for approximately one year prior to the trial but had never been examined by the state. On May 02, 2011, SCOTT obtained consent to search the computer from VALERIE DYER ([Click here to view the Consent to Search Form](#)) and requested a computer forensic examination of the computer for any evidence of the possession of child pornography, any electronic communications between DYER and VALERIE DYER, and an analysis of the Internet history from October 2009 through January 2010.

EVIDENCE LIST <st1:stockticker w:st="on">AND CHAIN OF CUSTODY

On July 15, 2011, the following listed items were transported by SCOTT to the OSBI Computer Crimes Unit Office, Weatherford, Oklahoma to OSBI Special Agent DONALD RAINS for forensic examination.

<st1:stockticker w:st="on">**ONE (1) GATEWAY BRAND TOWER STYLE COMPUTER, MODEL: 510G, SERIAL NUMBER: 1099832145 (KNOWN AS COMPUTER 1) (WITH NO HARD DISK DRIVE INSTALLED)**

<st1:stockticker w:st="on">**ONE (1) WESTERN DIGITAL 3.5" INTERNAL HARD DISK DRIVE, MODEL: WD800BB-53DKA0, SERIAL NUMBER: WMAHL4112586, LISTED CAPACITY: 80GB (KNOWN AS HD1)**

On July 15, 2011, SCOTT departed the OSBI Computer Crimes Unit Office, Weatherford, Oklahoma, with the same above listed items following the completion of forensic processing.

FORENSIC SOFTWARE UTILIZED FOR PROCESSING AND EXAMINATION

Unless otherwise indicated or specified in this report, the software application "FTK Imager" version 3.0 by AccessData Corporation was used to produce exact copies of all items of evidence media. Likewise, the forensic software application "Forensic ToolKit" version 3.2 by AccessData Corporation was utilized to conduct the examination of the exact copies of all items of evidence media unless indicated otherwise.

PROCESSING OF COMPUTER #1

On July 15, 2011, RAINS attempted to start the computer system without

a hard disk drive installed. The computer failed to power on or to respond in any way from what appeared to be a failure of the computer's power supply. As a result of the failure of the computer to power on, a check of the time and date settings stored on the computer's main system board could not be made.

On July 15, 2011, the computer was determined to be a Gateway brand tower style computer, model: 510G, serial number: 1099832145, and listed a manufacture date code of "2003/11/21" on the manufacturer's label. RAINS labeled the single hard disk drive which was submitted with Computer 1 "HD1".

On July 15, 2011, an exact copy of the hard drive, HD1 was created at RAINS' Office in Weatherford, Oklahoma. The hard drive was Western Digital brand, model: WD800BB-53DKA0, serial number: WMAHL4112586. The manufacturer's label on HD1 listed a storage capacity of 80.0 gigabytes and listed a manufacture date code of "04 NOV 2003". HD1 had a single IDE type data cable connection and was connected to a Tableau brand T35i Forensic SATA/IDE write blocking device during the entire time it was connected to the forensic computer to create the exact copy. ([Click here to view Evidence Photographs of Computer 1 and HD1](#))

EXAMINATION OF COMPUTER #1 (HD1)

WINDOWS REGISTRY

Examination of the exact copy of HD1 revealed numerous files pertaining to the computer's Microsoft Windows XP Operating System Registry Files. Examination of these files revealed a recorded installation date of September 21, 2008, and recorded the last shut down time of January 13, 2010 at 0330. The registry files identified the registered owner as "charles", the computer name as "VALERIE" and revealed additional information pertaining to the registration and use of the operating system. ([Click here to access the HD1 Registry Reports](#))

Further examination of the registry files found on HD1 revealed there was one user created profile which appeared to be the primary profile used on the computer. The profile was assigned the Security Identifier (SID) Unique Identifier "1003", recorded the user name as "Charles Dyer", the full name as "Valerie Renee", and indicated a

password was required to logon using the profile. The registry files associated with this profile identified a total of 638 logons, recorded a last logon time of January 12, 2010 at 2324, and recorded the last password change time of January 12, 2010 at 0013. ([Click here to access the HD1 Registry Report which lists the profiles and scroll to <st1:stockticker w:st="on">SID 1003](#))

INSTANT MESSENGER APPLICATIONS

Examination of the exact copy of HD1 revealed a total of fifty files of potential evidentiary value which were related to the use of instant messenger or chat applications. Forty-two of the files were database files associated with the use of the application "Skype" which was a program which was used to communicate between computers with video, audio, or text based chat and messaging. The forty-two files were all associated with the use of the text based chat or messaging feature of the Skype application and appeared to be conversations between CHARLES DYER and VALERIE DYER, the mother of HALEY DYER and wife of CHARLES DYER. ([Click here to view the HD1 Skype Chat Database Files Report](#)) NOTE: Due to the proprietary nature of the database files associated with the Skype application, see the selected text sections of the aforementioned report for conversation details.

The remaining eight instant messenger or chat related files of potential evidentiary value were associated with the use of the "Yahoo Instant Messenger" application and appeared to be conversations between VALERIE DYER and either CHARLES DYER or five other unknown identities or individuals. ([Click here to view the HD1 Yahoo Instant Messenger Conversations Report](#))

GRAPHICS FILES

Examination of the exact copy of HD1 revealed a total of 1,083 graphic image files which depicted pornography. Of the 1,083 files, 1,079 were found stored in the Temporary Internet Files Cache of HD1, and four were found to be thumbnail images which were stored within "thumbs.db" database files. Analysis of the time and date attributes of these images revealed all of these images were created and/or access from the Internet on six different dates. See the table below for additional information.

DATE	Time Start	Time End	Number of Images
			Found During Timeframe
12-25-09	2114	2125	13
12-26-09	1928	1928	2
12-31-09	1005	1008	82
01-05-11	2038	2038	1
01-11-11	1225	1229	17
01-11-11	1451	1451	1
01-11-11	1923	1925	210
01-11-11	2033	2036	210
01-12-11	1126	1141	543

All of the images which depicted pornography appeared to be associated with the Internet Website "v.ww.redtube.com", which was an adult pornography site. None of the pornography images were stored in user created folders and none of the files would have been accessible to a computer user who was not familiar with the storage location of the temporary Internet cache and how to browse to and view files stored within the temporary cache locations.

During the examination of the exact copy of HD1, RAINs utilized the data carving function within Forensic ToolKit to search the unallocated disk space of HD1 for all graphic image files larger than two kilobytes.

Examination of all graphic image files found during the examination of the exact copy of HD1 did not reveal any images which depicted child pornography, child erotica, or any other or additional graphic image files of evidentiary value.

DESKTOP WALLPAPER

The Desktop Wallpapers of HD1 were identified as a graphic image files which were of no evidentiary value.

VIDEO AND MULTIMEDIA FILES

Examination of the exact copy of HD1 did not reveal any video or multimedia files of evidentiary value.

RECYCLE BIN ANALYSIS

Examination and analysis of the Recycle Bin and it'sassociated index files found on HD1 revealed no files or data of evidentiary value.

E- <st1:stockticker w:st="on">MAIL ANALYSIS

Examination of the resident client and Internet based Email found during the examination of all data on the exact copy of HD1 revealed no Email messages or Email related files or data of evidentiary value.

INTERNET HISTORY

The examination and analysis of the Internet History and it'sassociated cache, database, and index files found on HD1 revealed numerous files, data, and records of evidentiary value which were associated with the use of the Internet Explorer Web Browser application.

Internet History Related to Pornography Websites

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of four database files of potential evidentiary value which recorded entries associated with the use of the Internet Explorer Web Browser to access the Internet pornography website "www.redtube.com". ([Click here to view the HD1 Internet History Databases Containing References to Pornography Websites Report](#))

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of 755 Index Entries of potential evidentiary value which recorded information associated with the use of the Internet Explorer Web Browser to access the Internet pornography website "www.redtube.com". ([Click here to view the HD1 Internet History Index Entries Containing References to Pornography Websites Report](#))

Internet History Related to Searches and Search Engines

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of three database files of potential evidentiary value which recorded entries associated with the use of the Internet Explorer Web Browser to access the Internet search engine or website "www.bing.com". ([Click here to view the HD1 Internet History Databases Containing References to the Bing Search Engine Report](#))

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of forty-four Index Entries of potential evidentiary value which recorded information associated with the use of the Internet Explorer Web Browser to access the Internet search engine or website "www.bing.com". ([Click here to view the HD1 Internet History Index Entries Containing References to the Bing Search Engine Report](#))

Internet History Related to Parental Rights

The examination and analysis of the Internet History and its associated cache files found on HD1 revealed a total of twelve cached web pages of potential evidentiary value which contained information associated with parental rights. Nine of the web pages were stored directly as web pages and three of the nine stored web pages contained the return results from the use of the Bing search engine to search for the term "Oklahoma parental rights". ([Click here to view the HD1 Searches for Parental Rights Report](#))

The examination and analysis of the Internet History and its associated cache files found on HD1 revealed a total of three files of potential evidentiary value which were found to contain web pages which were return results from the use of the U.S. Department of Health and Human Services Child Welfare Information Gateway website to search for the term "getting parental rights back". ([Click here to view the Searches for Parental Rights – Files Containing Web Pages Report](#))

The examination and analysis of the Internet History and its associated cache files found on HD1 revealed a total of twelve Internet Cookies (Cookies were small text files cached by web browsers which were used to record and track visits to Internet Websites) of potential evidentiary value which contained information associated visits to the Internet website "www.childwelfare.gov". ([Click here to view the HD1 Searches for Parental Rights – Internet Cookies Report](#))

Internet History Related to the name "Amanda Monsalve"

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of two Index Entries of potential evidentiary value which recorded information associated with the use of the Internet Explorer Web Browser to access the Internet website "www.myspace.com" and use the search functionality of that website to search for the term "Amanda Monsalve". ([Click here to view the HD1 Internet History References to Amanda Monsalve Report](#))

Internet History – All History Database Files, Index Files, and Index Entries

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of thirty-three History database index files which recorded entries associated with the use of the Internet Explorer Web Browser to access the Internet. ([Click here to view the HD1 All Internet Explorer History Index Databases Report](#))

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of 23,613 Index Entries which recorded information associated with the use of the Internet Explorer Web Browser to access the Internet. ([Click here to view the HD1 All Internet Explorer History Index Entries Report](#))

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of thirteen cache database index files which recorded entries associated with the use of the Internet Explorer Web Browser to access the Internet. ([Click here to view the HD1 All Internet Explorer Cache Index Databases Report](#))

The examination and analysis of the Internet History and its associated cache, database, and index files found on HD1 revealed a total of two cookie database index files which recorded entries associated with the use of the Internet Explorer Web Browser to access the Internet. ([Click here to view the HD1 All Internet Explorer Cookie Index Databases Report](#))

<st1:stockticker w:st="on">FILE SYSTEM ANALYSIS

The examination of the exact copy of HD1 revealed the disk contained a single partition which spanned the entire usable disk space of the device and was formatted with the NTFS file system using the default sector size of 512 bytes per sector.

Further examination of the files and folders stored on HD1 revealed there

were a total of ten files which had modified date and time attributes on April 6, 2011, nine files which had modified date and time attributes on April 22, 2011, and one file had a modified date and time attribute on April 26, 2011. With the exception of the aforementioned seventeen files, the latest modified date and time attribute of any other file stored on HD1 was on January 12, 2010 at 1530. ([Click here to view the HD1 Files Modified after January 12, 2010 Report](#))

Further examination of the files and folders stored on HD1 revealed there were a total of twelve files which had accessed date and time attributes on April 6, 2011 and three files which had accessed date and time attributes on April 22, 2011. With the exception of the aforementioned fifteen files, the latest accessed date and time attribute of any other file stored on HD1 was on January 12, 2010 at 1530. ([Click here to view the HD1 Files Accessed after January 12, 2010 Report](#))

Further examination of the files and folders stored on HD1 revealed there were a total of twelve files which had created date and time attributes on April 6, 2011. With the exception of the aforementioned twelve files, the latest created date and time attribute of any other file stored on HD1 was on January 12, 2010 at 1529. ([Click here to view the HD1 Files Created after January 12, 2010 Report](#))

OTHER FILES AND DATA

There were no additional files or data of evidentiary value found during the examination of the exact copy of HD1.

EXAMINATION SUMMARY

The examination of HD1 revealed the Windows XP registry files recorded a last logon date and time of January 12, 2010 at 2324 and that the "Charles Dyer" profile password was last changed on January 12, 2010 at 0013.

The examination of HD1 did not reveal any graphic image files or video or multimedia files which depicted suspected child pornography or child erotica. The

examination of HD1 did reveal the presence of adult pornography which was all associated with the Internet Explorer web browser to access the Internet website "www.redtube.com" on nine different instances over six different days between December 25, 2009 and January 12, 2010.

The examination of HD1 revealed a total of fifty chat or instant messaging related files, none of which appeared to contain any specific information pertaining to the sexual abuse of HALEY DYER.

The examination of HD1 revealed evidence the Internet Explorer browser was used to access Internet search engines or websites and search for terms related to "parental rights". Analysis of the Modified, Accessed, and Created date and time attributes of all files associated with these searches revealed they all occurred between December 25, 2009 and January 12, 2010; which corresponds exactly with the dates and times the Internet Explorer browser was used to access the pornography website "www.redtube.com".

The examination of HD1 revealed evidence the Internet Explorer Browser was used to access the Internet website "www.myspace.com" and use the search functionality of that website to search for the term "Amanda Monsalve" on January 11, 2011 at 2023.

The examination of HD1 revealed seventeen files which were modified, accessed, or created in April 2011. The latest modified, accessed, or created date associated with any file prior to that was on January 12, 2010 at 1530. The modified, accessed, and created date in April 2011 corresponds with the time period which HD1 was made available for defense examination and appears to be the result of the failure to use a functional write blocking or write protecting device when HD1 was examined or copied.

PHOTOGRAPHS OF EVIDENCE

On July 15, 2011, RAINS took a total of twenty-five digital photographs of Computer 1 and HD1 during the examination process. ([Click here to view the photographs of all items of evidence](#)) All evidence was retained by the requestor and no further examination was requested or required. This request has been completed.

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Approved by the Oklahoma Bar Association Board of Governors April 20, 2006.

Definition

Professionalism for lawyers and judges requires honesty, integrity, competence, civility and public service.

Approved by the Oklahoma Bar Association Board of Governors November 20, 2002 and the Oklahoma Judicial Conference on December 20, 2002.

PREAMBLE

We judges and lawyers of the State of Oklahoma recognize our responsibility to uphold the longstanding traditions of professionalism and civility within the legal system. The very nature of our adversary system of justice requires respect for the law, the public, the courts, administrative agencies, our clients and each other. While the Rules of Professional Conduct establish the minimum standards a lawyer must meet to avoid discipline, the following Standards of Professionalism represent the level of behavior we expect from each other and the public expects from us in our dealings with the public, the courts, our clients and each other. The Standards of Professionalism are not intended to be used as a basis for discipline by the Court on the Judiciary or the Professional Responsibility Tribunal, or for establishing standards of conduct in an action against a lawyer.

SECTION 1

LAWYERS' RESPONSIBILITIES TO THE PUBLIC

1.1 We understand that the law is a learned profession and that among its tenets are devotion to public service, improvement of the administration of justice, and access to justice for our fellow citizens.

1.2 A lawyer's word should be his or her bond. We will not knowingly misstate, distort or improperly exaggerate any fact, opinion or legal authority, and will not improperly permit our silence or inaction to mislead anyone. Further, if this occurs unintentionally and is later discovered, it will immediately be disclosed or otherwise corrected.

1.3 We will donate legal services to persons unable to afford those services.

1.4 We will participate in organized activities designed to improve the courts, the legal system and the practice of law.

1.5 We will contribute time on a pro bono basis to community activities.

1.6 Our conduct with clients, opposing counsel, parties, witnesses and the public will be honest, professional and civil.

1.7 Our public communications will reflect appropriate civility, professional integrity, personal dignity, and respect for the legal system and the judiciary. However, we may make good faith expressions of dissent or criticism in public or private discussions when the purpose is to promote improvements in the legal system.

1.8 We will not make statements which are false, misleading, or which exaggerate, for example, the amount of damages sought in a lawsuit, actual or potential recoveries in settlement or the lawyer's qualifications, experience or fees.

1.9 We will promptly return telephone calls and respond to correspondence from clients, opposing counsel, unrepresented parties and others.

1.10 We will refrain from engaging in professional conduct which exhibits or is intended to appeal to or engender bias against a person based upon that person's race, color, national origin, ethnicity, religion, gender, sexual orientation or disability.

SECTION 2

LAWYERS' RESPONSIBILITIES TO CLIENTS

2.1 We will be loyal and committed to our client's lawful objectives, but will not permit our loyalty to interfere with giving the client objective and independent advice.

2.2 We will advise our client against pursuing litigation (or any other course of action) that does not have merit.

2.3 We will endeavor to achieve our client's lawful and meritorious objectives expeditiously and as efficiently as possible.

2.4 We will continually engage in legal education and recognize our limitations of knowledge and experience.

2.5 We will reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect a client's lawful objectives.

2.6 We will advise our client, if necessary, that the client has no right to demand that we engage in abusive or offensive conduct and that we will not engage in such conduct.

2.7 We understand, and will impress upon our client, that reasonable people can disagree without being disagreeable; and that effective representation does not require, and in fact is impaired by, conduct which objectively can be characterized as uncivil, rude, abrasive, abusive, vulgar, antagonistic, obstructive or obnoxious. Ill feelings between clients will not dictate or influence a lawyer's attitude, demeanor, behavior or conduct.

2.8 We will always look for opportunities to de-escalate a controversy and bring the parties together.

2.9 We will readily stipulate to undisputed facts in order to avoid needless costs, delay, inconvenience, and strife.

2.10 We will consider whether the client's interests can be adequately served and the controversy more expeditiously and economically resolved by arbitration, mediation or some other form of alternative dispute resolution, or by expedited trial; and we will raise the issue of settlement and alternative dispute resolution as soon as a case can be evaluated and meaningful compromise negotiations can be undertaken.

2.11 When involved in an alternative dispute resolution process, we will participate in good faith, and will not use the process for the purpose of delay or for any other improper purpose.

2.12 We will not falsely hold out the possibility of settlement as a means to adjourn discovery or delay trial.

SECTION 3

LAWYERS' RESPONSIBILITIES TO OTHER LAWYERS

3.1 Communications with Adversaries

- a. We will be civil, courteous, respectful, honest and fair in communicating with adversaries, orally and in writing.
- b. We will promptly return telephone calls and respond to correspondence reasonably requiring a response.
- c. The timing and manner of service of papers will not be designed to annoy, inconvenience or cause disadvantage to the person receiving the papers; and papers will not be served at a time or in a manner designed to take advantage of an adversary's known absence from the office.
- d. We will not write letters ascribing to an opposing lawyer a position that lawyer has not taken, creating a "record" of events that have not occurred, or otherwise seeking to create an unjustified inference based on that lawyer's statements or conduct.
- e. Unless specifically permitted or invited by the court, copies of correspondence between counsel will not be sent to a judge or administrative agency.

3.2 Discovery

a. General

- (1) A reasonable effort should be made to conduct discovery by agreement.
- (2) We will not use discovery, the scheduling of discovery, or the discovery process to annoy or harass opposing counsel, to generate needless expense, or as a means of delaying the timely, efficient and cost-effective resolution of a dispute.
- (3) We will comply with reasonable discovery requests.
- (4) We will object to discovery requests only when we have a good-faith belief in the merit of the objection; and we will not object solely for the purpose of withholding or delaying the disclosure of relevant information or documents.

(5) We will agree to reasonable requests for extensions of deadlines, scheduling changes and other accommodations, provided the client's legitimate rights and interests will not be adversely affected.

(6) We will seek court sanctions or disqualification only after conducting a diligent investigation, and then only when justified by the circumstances and necessary to protect the client's legitimate and lawful interests.

b. Depositions

(1) We will take depositions only when actually needed to ascertain facts or information or to preserve testimony.

(2) In scheduling depositions, reasonable consideration will be given to accommodating schedules of opposing counsel and the deponent (both professional and personal schedules), when it is possible to do so without prejudicing the client's rights. When practical, we will consult with opposing counsel before scheduling any deposition. If a request is made to schedule a time for a deposition, the lawyer to whom the request is made should confirm that the proposed time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event, before the end of the following business day).

(3) When a deposition is scheduled and noticed by another party for the reasonably near future, a lawyer ordinarily should not schedule another deposition for an earlier date without the agreement of opposing counsel.

(4) We will delay a deposition only for good-faith reasons.

(5) Prompt notice of cancellation of a deposition will be given to opposing counsel.

(6) We will not, even when called upon by a client to do so, abuse others or indulge in offensive conduct directed to other counsel, parties or witnesses. We will refrain from disparaging personal remarks or acrimony toward other counsel, parties and witnesses; and will treat adverse parties and witnesses with civility and fair consideration.

(7) We will not ask questions about a deponent's personal affairs or which needlessly impugn a deponent's integrity when such questions are irrelevant to the subject matter of the action or proceeding, except that questions on these topics may be asked if they are likely to elicit admissible evidence.

(8) We will avoid repetitive and argumentative questions and those asked solely for the purpose of annoyance or harassment.

(9) We will limit deposition objections to those which are well-founded and permitted by (as applicable) the Oklahoma Discovery Code, the Federal Rules of Civil Procedure, any governing local court rules, and any apposite case law. Any such objections will be stated concisely and in a non-argumentative and non-suggestive manner. We will remember that most objections are preserved and need be made only when the form of a question is defective or when privileged information is sought.

(10) Once a question is asked, we will not, through objections or otherwise, coach the deponent or suggest answers.

(11) We will not direct a deponent to refuse to answer a question unless specifically permitted by (as applicable) 12 O.S. 2001, Section 3230.E.1, or Federal Rule 30(d)(1), F.R.Civ.P.

(12) We will refrain from self-serving speeches during depositions.

(13) We will not engage in any conduct during a deposition which would not be allowed in the presence of a judicial officer, including disparaging personal remarks or acrimony toward opposing counsel or the witness, as well as gestures, facial expressions, audible comment, or other manifestations of approval or disapproval during the testimony of the witness. We will not engage in undignified or discourteous conduct which degrades the legal proceeding or the legal profession. Our clients, colleagues and staff will be admonished to conduct themselves in the same dignified and courteous manner.

c. Document Requests

(1) We will limit requests for production of documents to materials reasonably believed to be needed for the prosecution or defense of an action; and requests

will not be made to annoy, embarrass or harass a party or witness, or to impose an undue burden or expense in responding.

(2) We will not draft a request for document production so broadly that it encompasses documents clearly not relevant to the subject matter of the case or proceeding.

(3) When responding to unclear document requests, receiving counsel will make a good-faith effort to discuss the request with opposing counsel to clarify the scope of the request.

(4) In responding to document requests, we will not strain to interpret the request in an artificially-restrictive manner in an attempt to avoid disclosure.

(5) When responding to document requests, we will withhold documents on the basis of privilege only when appropriate.

(6) We will not produce documents in a disorganized or unintelligible manner, or in a manner calculated to conceal or obscure the existence of particular documents.

(7) We will not delay producing documents to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any improper purpose.

d. Interrogatories and Requests for Admissions

(1) We will exercise discriminating judgment in using written discovery requests, and will not use them to annoy, embarrass or harass a party or witness, or to impose undue burden or expense on the opposing party or counsel.

(2) We will read and respond to written discovery requests in a reasonable manner designed to assure that answers and admissions are truly responsive.

(3) When responding to unclear written discovery requests, receiving counsel should have a good-faith discussion with opposing counsel to obviate or limit the scope of any objections to the discovery requests.

(4) We will object to written discovery requests only when a good-faith belief exists in the merit of the objection. Objections will not be made solely for the

purpose of withholding relevant information. If a written discovery request is objectionable only in part, we will answer the unobjectionable portion.

3.3 Scheduling

- a. We understand and will advise our clients that civility and courtesy in scheduling meetings, hearings and discovery are expected and do not indicate weakness.
- b. We will make reasonable efforts to schedule meetings, hearings and discovery by agreement, and will consider the scheduling interests of opposing counsel, the parties, witnesses and the court or agency. Misunderstandings should be avoided by memorializing any agreements reached.
- c. We will not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations
- d. We will not engage in delaying tactics in scheduling meetings, hearings and discovery.
- e. We will verify the availability of key participants and witnesses either before a meeting, hearing or trial date is set or, if that is not feasible, immediately afterward, and we will promptly notify the court, or other tribunal, and opposing counsel of any problems.
- f. We will notify opposing counsel and, if appropriate, the court or other tribunal as early as possible when scheduled meetings, hearings or depositions must be cancelled or rescheduled.

3.4 Continuances and Extensions of Time

- a. We will agree, consistent with existing law and court orders, to reasonable requests for extensions of time when the legitimate interests of our clients will not be adversely affected.
- b. We will agree to reasonable requests for extensions of time or continuances without requiring motions or other formalities, unless required by court rules.
- c. We will agree as a matter of courtesy to first requests for reasonable extensions of time unless time is of the essence.

d. After agreeing to a first extension, we will consider any additional request for extension by balancing the need for prompt resolution of matters against the consideration which should be extended to an adversary's professional and personal schedule, the adversary's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if requested to do so.

e. We understand and will advise clients that the strategy of refusing reasonable requests for extension of time simply to appear "tough" is inappropriate.

f. We will not seek extensions or continuances for the purpose of harassment or extending litigation.

g. We will not condition an agreement to an extension on unfair and extraneous terms. This Standard does not preclude a lawyer from imposing reasonable terms, such as preserving rights that an extension might jeopardize or seeking fair reciprocal scheduling concessions.

h. We will agree to reasonable requests for extensions of time when new counsel is substituted for prior counsel.

3.5 Motion Practice

a. Motions will be filed or opposed only in good faith, and only when the issue cannot otherwise be resolved.

b. Before filing a non-dispositive motion, we will engage in a reasonable effort to resolve the issue. In particular, we will exercise discriminating judgment in filing any discovery motion.

c. We will not engage in conduct which forces opposing counsel to file a motion and then not oppose the motion.

3.6 Non-Party Witnesses

a. Dealings with a non-party witness will be civil, courteous and professional, and designed to instill in that witness an overall favorable impression of the legal system.

b. We will issue a subpoena to a non-party witness only to compel such person's actual appearance at a hearing, trial or deposition, and not for inappropriate tactical or strategic purposes, such as merely to annoy, humiliate, intimidate or harass such individual.

c. When we obtain documents pursuant to a deposition subpoena, we will offer to make copies of the documents available to all other counsel at their expense even if the deposition is cancelled or adjourned.

d. We will take special care to protect a witness under the age of 14 from undue harassment or embarrassment. We also will take special care to ensure that questions are stated in a form which is appropriate to the age and development of the youthful witness.

3.7 Privacy

a. All matters will be handled with due respect for protecting the privacy of parties and non-parties.

b. We will not inquire into, attempt to use, or threaten to use facts concerning private matters relating to any person for the purpose of gaining psychological advantage in a case. Inquiry into sensitive matters which are relevant to an issue should be pursued as narrowly as reasonably possible.

c. If there is a legitimate basis for inquiry into such private matters, we will cooperate in arranging for protective measures designed to assure that the information obtained is disclosed only to persons who need it in order to present the relevant evidence to the court or administrative agency.

3.8 Default Judgment

We will seek a default judgment in a matter in which an appearance has been made or where it is known that the defaulting party is represented by a lawyer with respect to the matter, only after giving the opposing party sufficient advance written notice to permit cure of the alleged default.

3.9 Social Relationships with Judicial Officers, Court-appointed Experts, Administrative Agency Hearing Officers and Agency Board Members

- a. We will avoid the appearance of impropriety or bias in our relationships with judicial officers, court-appointed experts, administrative agency hearing officers and agency board members.
- b. Prior to appearing before a judicial officer, administrative agency hearing officer or agency board member with whom we have a social relationship or friendship beyond a normal professional association, we will notify opposing counsel (or an unrepresented party) of the relationship.
- c. We will disclose to opposing counsel (or an unrepresented opposing party) any social relationship or friendship between the lawyer and any court-appointed expert.

3.10 Negotiation of Business Transactions

- a. We will adhere strictly to an express promise or agreement with the opposing lawyer, whether oral or in writing, and will adhere in good faith to any agreement implied by the circumstances or local custom.
- b. Business transactions should be negotiated, documented and consummated in an atmosphere of cooperation and informed mutual agreement.
- c. Meetings, conferences and closings with opposing lawyers and clients will be scheduled at the most practical location.
- d. We will make every effort to appear promptly with our clients at a scheduled meeting; and the lawyer who provides facilities for a meeting will be prepared to receive the opposing lawyer and his or her client at the scheduled time.
- e. We will clearly identify, for other counsel or parties, all requested changes and revisions that we make in documents.
- f. Correspondence will not be written to ascribe to an opposing lawyer a position he or she has not taken or to create a "record" of events which have not occurred.

SECTION 4

LAWYERS' RESPONSIBILITIES TO THE COURTS AND ADMINISTRATIVE AGENCIES

4.1 We will speak and write civilly and respectfully in all communications with the court or administrative agency.

4.2 We will be punctual and prepared for all appearances so that all conferences, hearings and trials may commence on time.

4.3 We will be considerate of the time constraints and pressures on the court, agency and related staff inherent in their efforts to fulfill their responsibilities.

4.4 We will not engage in conduct which brings disorder or disruption to a proceeding. We will advise our clients and witnesses of the proper conduct expected and required and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

4.5 We will never knowingly misrepresent, mischaracterize, misquote, miscite facts or authorities, or otherwise engage in conduct which misleads the court or agency.

4.6 We will avoid argument or posturing through sending copies of correspondence between counsel to the court or agency, unless specifically permitted or invited by the court or agency.

4.7 Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court or tribunal of any problems.

4.8 We will act and speak civilly and respectfully to all other court and tribunal staff with an awareness that they, too, are an integral part of the system.

4.9 Writings Submitted to the Court or Tribunal

a. Written materials submitted to a court or tribunal will be factual and concise, accurately state current law, and fairly represent the party's position without unfairly attacking the opposing party or opposing counsel.

b. Facts that are not properly introduced in the case and part of the record in the proceeding will not be used in briefs or argument.

c. Copies of any submissions to the court or tribunal will be provided simultaneously to opposing counsel by substantially the same method of delivery by which they are provided to the court or tribunal.

d. We will avoid disparaging the intelligence, ethics, morals, integrity, or personal behavior of the opposing party, counsel or witness unless any such characteristics or actions are directly and necessarily at issue in the proceeding.

e. We will promptly submit to opposing counsel for review and approval any written order or judgment proposed by us prior to submitting it for entry by any court or tribunal.

f. We will promptly review and approve, or submit proposed changes, modifications or revisions of, any order or judgment proposed by opposing counsel within a brief time period of its receipt.

g. We will not unreasonably delay the entry of any order or judgment of any court or tribunal.

4.10 *Ex Parte* Communications with the Court

a. Except as permitted in Section 4.10(c) below, we will avoid *ex parte* communications involving the substance of a pending matters with an assigned judge (and members of the judge's staff) and an agency hearing officer or board member in an individual proceeding, whether in person (including social, professional or other contexts), by telephone, and in letters or other forms of written communication, unless such communications relate solely to scheduling or other non-substantive administrative matters, or are made upon advice and consent by all parties, or are otherwise expressly authorized by statute or applicable rule.

b. Even when applicable laws or court or agency rules permit an *ex parte* application or communication to the court or agency, before making any such application or communication, we will make diligent efforts to notify the opposing party or a lawyer known or likely to represent the opposing party; and we will make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented.

c. When rules permit an *ex parte* application or communication to the court, hearing officer or board member in an emergency situation, we will make any such application or communication (including an application to shorten an otherwise applicable time period) only when there is a bona fide emergency such that our client will be seriously prejudiced if the application or communication were made with regular notice.

d. We will immediately notify opposing counsel of any oral or written communication with the court or agency.

e. Only lawyers will communicate with a judge or appear in court on substantive matters on behalf of a client. Non-lawyers may communicate with court personnel regarding scheduling matters and other non-substantive matters.

SECTION 5

JUDGES' RESPONSIBILITIES TO LITIGANTS AND LAWYERS

5.1 We will be courteous, respectful and civil to lawyers, parties and witnesses. We will maintain control of the proceedings, recognizing that we have both the obligation and the authority to ensure that all proceedings are conducted in a civil manner.

5.2 If we observe a lawyer being uncivil to another lawyer or others, we will tactfully call it to the attention of the offending lawyer on our own initiative.

5.3 We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

5.4 We will be punctual in convening all hearings, meetings and conferences; if delayed, we will notify counsel, if possible.

5.5 In scheduling all hearings, meetings and conferences, we will be considerate of time schedules and prior commitments of lawyers, parties and witnesses.

5.6 We will make a reasonable effort to decide promptly all matters presented to us for decision.

5.7 We will give the issues in controversy deliberate, impartial and studied analysis and consideration.

5.8 While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

5.9 We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a party has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

5.10 We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom, or the causes which, that lawyer represents.

5.11 We will do our best to ensure that court personnel act civilly and respectfully toward lawyers, parties and witnesses.

5.12 We will avoid procedures that needlessly increase litigation expense.

SECTION 6

JUDGES' RESPONSIBILITIES TO EACH OTHER

6.1 In all opinions and other written and oral communications, we will refrain from disparaging personal remarks, criticisms, or sarcastic or demeaning comments about a judicial colleague.

6.2 We will endeavor to work with other judges in an effort to foster a spirit of cooperation in furtherance of our mutual goal of promoting and nurturing the administration of justice.