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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MOHAVE**

8 STATE OF ARIZONA,
9 Plaintiff,

10 vs.

11 **WARREN STEED JEFFS**
12 Defendant.

No. CR-2007-743 & CR-2007-953

RESPONSE TO MOTION TO
DETERMINE NATURE, SCOPE
AND EXTENT OF PROPOSED
EXPERT TESTIMONY

13 COMES NOW, the State of Arizona, by the Mohave County Attorney, and hereby
14 requests the Court deny Defendant's request to have an evidentiary hearing to
15 determine the nature, scope and extent of proposed expert testimony. The State is
16 aware of the necessary qualifications for a witness to properly testify as an expert
17 witness. The State is also aware of the types of expert testimony that would be
18 appropriate in the two cases involving the Defendant. The State should not be forced to
19 put on an evidentiary hearing and call witnesses who have already been interviewed by
20 the defense to give the defense another shot at these witnesses prior to their testifying
21 at trial. The State should also not be forced to reveal its "Q & A", i.e. the questions and
22 answers it will be eliciting at the trial of these matters. The defense has already
23 conducted extensive discovery through the interview process, including multiple
24 interviews with some of the State's experts. The State does not have to set out for the
25 defense exactly what questions it will be asking at trial.

1 If the defense feels that there is a particular area or areas of potential expert
2 testimony that would be illegal, inappropriate or violative of Rule 403 of the Arizona
3 Rules of Evidence, it can file a specific motion in limine on those points. The defense is
4 aware of the types of expert testimony that had been presented in similar cases in this
5 same Court, including *State v. Kelly Fischer*, which is a recorded Arizona Court of
6 Appeals decision at 219 Ariz. 408, 199 P.3rd 663 (2008). Expert witness Richard Holm
7 testified at that trial, and the subject matter of his testimony has been available to the
8 defense not only with their consultation with then defense attorney Bruce Griffen, but
9 also in a review of the *Fischer* reported decision.

10 If technical or other specialized knowledge will assist the trier of fact to
11 understand the evidence, a witness qualified as an expert by knowledge, skill,
12 experience, training or education may testify in the form of an opinion or otherwise.
13 Rule 702 of the Arizona Rules of Evidence. Arizona case law has interpreted this Rule
14 as meaning that as long as a witness knows more about the subject matter than the
15 average lay juror and his or her testimony can assist the jury in its determination, then
16 the witness will qualify as an expert. Becky Musser, Richard Holm and Carolyn Jessop
17 all were part of the FLDS religion for a significant period of time and lived in Colorado
18 City during relevant time periods in these cases. They all personally have knowledge of
19 Warren Jeffs and Rulon Jeffs and the way that the FLDS church has been run by its
20 leaders. All three of them will easily qualify as experts in these cases.

21 One of the more interesting and accurate statements in defense counsel's motion
22 is the statement on page 4 in which counsel indicates it is difficult to determine the
23 nature and extent of the expert testimony from the witness interviews conducted in this
24 case. This despite the fact that the defense had two attorneys present at the lengthy
25 interview of Richard Holm, the two fairly lengthy interviews of Carolyn Jessop, and the

1 two lengthy interviews of Becky Musser. During the interviews of Carolyn Jessop the
2 defense focused almost exclusively on monies received by Carolyn for her first book,
3 her proposed second book, and the movie rights dealing with her first book.
4 Secondly there were numerous questions asked of Carolyn Jessop concerning any
5 relationship or benefits she has received from Doctor Dan Fischer or Diversity
6 Foundation. Defense counsel showed little interest in asking Carolyn about her
7 experiences while living in the FLDS or questions about her proposed expert testimony.

8 The main questioning of Richard Holm dealt with potential impeachment issues
9 that came from information supplied by Richard's ex-wife and were part of Bruce
10 Griffen's cross-examination of Richard Holm at the trial of *State v. David Bateman* in
11 Division 4 in November of 2007. There was also a lot of questioning about Mr. Holm's
12 relationship with Mohave County Attorney Investigator Gary Engels. The interviews of
13 Becky Musser spent a great deal of time with her involvement in the state of Texas.
14 Although there were some questions concerning her relationship with the FLDS church
15 and her "marriage" to Rulon Jeffs, a lot of other subject matters were explored. The
16 State is not criticizing the interview techniques of the two lead defense counsel in this
17 case; the State is merely pointing out that the defense interviewed these expert
18 witnesses for hours and did not spend a lot of time probing into areas that would be the
19 obvious areas of expert testimony in these two pending cases. The defense was
20 already armed with the letter from the State which set out the proposed potential areas
21 of expert testimony of the State's experts, and that letter was included in defense
22 counsel's present motion.

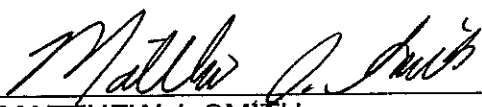
23 Although the defense is somewhat critical of the proposed State's expert
24 witnesses and comments that they are merely relaying anecdotal factual stories which
25 are in dispute, the possible impeachment of these witnesses or possibility that other

1 FLDS members may contradict some of their information goes to the weight rather than
2 the admissibility of their expert testimony.

3 The short answer is that the defense has raised a few issues concerning expert
4 testimony that may be valid and could be the subject of a motion in limine. For
5 example, when they state that they bulk of Becky Musser's expert testimony revolves
6 around the bitterness that members of her family share about the removal of her mother
7 and her sister's from their father, that could well be the subject of a motion in limine.
8 However, the defense is not entitled to an evidentiary hearing in which the State would
9 have to present its "Q & A" to the defense.

10 For all these reasons, the Defendant's request for an evidentiary hearing should
11 be denied.

12 RESPECTFULLY SUBMITTED THIS 4th day December, 2009.

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14 _____
15 MATTHEW J. SMITH
16 MOHAVE COUNTY ATTORNEY

17 Copy of the foregoing delivered this 4th day of
18 December, 2009, to:

19 HONORABLE STEVEN F. CONN
20 SUPERIOR COURT JUDGE

21 Copy of the foregoing emailed
22 this 4th day of December, 2009, to:

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