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SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA
BROWARD COUNTY COURTHOUSE
201 S.E. SIXTH STREET
FORT LAUDERDALE, FL 33301-3360

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May 12, 2005

Mr. Jay Zager
4401 N.W. 95th Avenue
Coral Springs, Florida 33065


Dear Mr. Zager:

I have received your invoice dated May 9, 2005 in which you are seeking \$775.00 in expert fees for your testimony at the April 13, 2005 hearing. As I personally explained to both yourself and your attorney Michael Mermer, you were called to the stand by the State as a fact witness, not an expert, regarding your knowledge of activity that occurred while you were employed by the Broward Sheriff's Office. At no time did the State ask you your opinion regarding any of the issues that were being addressed. Furthermore, Assistant State Attorney In Charge Lee Cohen, spoke with Mr. Edward McGee regarding this matter and explained to him that although we had agreed to pay you an expert fee for your statement, you would not be receiving such a fee for your testimony at the hearing.

I have attached a copy of the transcript from the hearing of your testimony. I would like to point out that on page 183 of the transcript, I am on the record telling the judges that you are a fact witness and not an expert. You are entitled to the normal witness fee that can be collected by turning in your subpoena. If you have any further questions, please do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,

MICHAEL J. SATZ
STATE ATTORNEY


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cc: Mr. Edward McGee, Esq.
Mr. Michael Mermer, Esq.
ASAIC Lee Cohen, Esq.

1 JUDGE KAPLAN: Before September, 2003.

2 MS. BANDELL: No. The only evidence that she has
3 offered and I can ask the question again. I don't want
4 to missummarize. Is she does not know what type of
5 water Deputy Zager is using. He will take the stand
6 next. He is here.

7 JUDGE LEVENSON: As a defense expert or State
8 expert?

9 MS. BANDELL: He's a State expert. Actually, he's
10 not an expert. He's a fact witness.

11 Q. I'm showing you what's previously marked as
12 State's G. Do you recognize these documents?

13 A. Yes, I do.

14 Q. What are they?

15 A. These are the inspection documents.

16 Q. For what?

17 A. On the Intoxilyzers. These are department
18 inspections, and then the rest of them are agency
19 inspections.

20 Q. When you say department inspection, are you
21 referring to the annual inspection that's conducted by FDLE?

22 A. That's correct.

23 Q. Are these documents kept in the normal course of
24 your business at Broward Sheriff's Office?

25 A. Yes, they are.

1 much. Is the State ready with any further witnesses?

2 MS. BANDELL: Yes. At this time the State calls
3 former Deputy Jay Zager to the stand.

4 Thereupon, the witness, having been first duly
5 sworn by the Clerk of Court, was examined and testified as
6 follows:

7 THE WITNESS: Yes, I do.

8 THE CLERK: State your name and spell your last
9 name for the record.

10 THE WITNESS: My name is Jay Zager, Z-A-G-E-R.

11 DIRECT EXAMINATION

12 BY MS. BANDELL:

13 Q. Good evening. Were you ever employed by the
14 Broward Sheriff's Office?

15 A. Yes.

16 Q. Are you currently?

17 A. No.

18 Q. When did you leave the Broward Sheriff's Office?

19 A. I left-- let me tell you the exact date. I'll
20 have to look on my retirement badge. I left in September of
21 2003.

22 Q. And when did you begin your employment there?

23 A. Originally I started with the-- well, I started
24 with the Broward Sheriff's Office back in 1988. Before that
25 I was with the Dania Police Department.

1 Q. Were you ever certified as a breath test operator
2 or agency inspector?

3 A. Yes, I was.

4 Q. For both of them?

5 A. Yes. For both.

6 Q. When did you become certified to be an agency
7 inspector?

8 A. Well, that was the older program that essentially
9 that was back in 1996. That program allowed for the persons
10 to be certified in both at the same time. It was later on
11 that they came up with the dual type of certification one
12 for breath inspector and another one for just an operator.

13 Q. But you maintained your certification throughout
14 your employment at the Broward Sheriff's Office?

15 A. I did.

16 Q. As one of your main responsibilities was it not to
17 perform the monthly inspections on Intoxilyzer 5000
18 instruments that the Broward Sheriff's Office utilized?

19 A. Yes, it was.

20 Q. When did that become a responsibility of yours?

21 A. I took that over full time in 1996.

22 Q. And when you were conducting the inspections
23 from-- let me ask it this way. Did you ever use tap water
24 when using the simulator for the alcohol free or the alcohol
25 free with acetone testing?

1 A. No.

2 Q. What type of water did you use?

3 A. I used water that was purchased. Distilled water.

4 Q. Now, back in 1996 the rules did not require the
5 use of deionized or distilled water. Correct?

6 A. I don't recall what the rules were. I know the
7 training was. Because back then we were making up our own
8 solutions for the alcohol standards. Instead of them being
9 premixed and coming in a bottle you just slipped them out.
10 So back then we were always using distilled water. That was
11 the training.

12 Q. Is that because back then when you would receive
13 the premixes you were required to use distilled water with
14 those?

15 A. It wasn't called premix back then. It was called
16 stock solution. So you added a certain amount of water to
17 that to create your alcohol standard.

18 Q. You were required to use distilled water for that?

19 A. You know, I don't recall if the rule actually said
20 it back then. But I know that was our training.

21 Q. So that's why you used it for the other test in
22 the simulator?

23 A. Correct.

24 Q. At any point during your employment with the
25 Broward Sheriff's Office while conducting agency inspections

1 did you ever use tap water?

2 A. No.

3 Q. Why is it that CSA Nanz would testify that she
4 never saw a jug of distilled water? Do you know?

5 MR. CANET: Judge, I'd object. She's asking him
6 to speculate about what her motivations are.

7 JUDGE GEHL: If he knows. I really don't like the
8 witnesses to comment on another person's testimony.
9 But if you're going to proffer that to him, that that's
10 what she said.

11 MS. BANDELL: I would proffer that.

12 JUDGE GEHL: All right.

13 MR. CANET: Judge, still I'm going to object on
14 grounds of relevancy. Why is this relevant why she
15 would have said it?

16 MS. BANDELL: Judge, actually, it doesn't call for
17 speculation.

18 JUDGE GEHL: If he knows.

19 Q. If you know, why is it that CSA Nanz may not have
20 seen a bottle of distilled water?

21 A. You know, I don't know. Other than I kept some in
22 my car. I kept some in the back, you know. I know that the
23 CSAs would sometimes even drink that water. And I would
24 write on it do not drink, because it's distilled. I have no
25 idea. But the other thing, if I can add--

1 MR. CANET: Objection. Judge, there's no question
2 pending.

3 MS. BANDELL: That's fine.

4 Q. So throughout the time that you were using
5 distilled water, again, do you recall when the last agency
6 inspection that you conducted was prior to your leaving the
7 Broward Sheriff's Office?

8 A. That would have been a week or two of my
9 retirement.

10 MS. BANDELL: Thank you. I have nothing further.

11 JUDGE GEHL: Cross-examination, Mr. Canet.

12 CROSS EXAMINATION

13 BY MR. CANET:

14 Q. Mr. Zager, is it your testimony that in the three
15 and a half years that you did agency inspections along with
16 CSA Nanz she never actually saw you fill a simulator with
17 water?

18 A. I have no idea as what she actually saw or didn't
19 see. It's entirely possible that she saw me prepare the
20 solutions. I don't recall. Normally I would conduct or
21 prepare the simulator solutions either before she got
22 there--

23 Q. You're saying that in three and a half years she
24 never saw you prepare simulator solutions?

25 A. I just answered. I don't know what she saw. I

1 can't testify as to what she saw. She may or may not have.

2 Q. Do you remember her being there at any time in
3 three and a half years when you were preparing simulator
4 solutions?

5 A. She was always there with me.

6 Q. When you were preparing the simulator solutions?

7 A. Again, when I was preparing the simulator
8 solutions I don't remember if she was there or not. It's
9 entirely possible she was.

10 Q. In the three and a half years she was. Right?

11 A. It's entirely possible she was there with me.

12 Q. Where did you buy the water from?

13 A. The local stores that sold it.

14 Q. Name one.

15 A. Winn Dixie by my house.

16 Q. And what would you do with the receipts?

17 A. Nothing.

18 Q. You didn't want to be compensated?

19 A. No. It's fairly inexpensive. I only really put
20 in for petit cash on things that were of a significant
21 amount.

22 Q. So during all that time you never asked the
23 Broward Sheriff's Office to pay you back for the water you
24 bought for the inspections?

25 A. I may have. I don't recall. I did petit cash

1 over the years. I can't recall. I'm sure there will be
2 maybe some record of it if I did or didn't.

3 Q. So there is some record in existence to show this
4 much for distilled water?

5 A. If it was in there. I don't recall if I did put
6 it in because the amount was so small.

7 Q. Although you weren't required, why would you use
8 distilled water?

9 A. It was the training I received.

10 Q. Okay. Why were you trained to use distilled
11 water?

12 A. Well, because obviously distilled water is a known
13 sample. It's a clean sample. I wouldn't want to use the
14 tap water, because it's an unknown sample.

15 Q. And you're testing to see if there's any
16 contamination in your measuring system?

17 A. Well, yes. That is in essence what we're checking
18 for on the zero reference. We want to make sure that zeros
19 show up.

20 Q. Did you ever see an Intoxilyzer give a positive
21 response to a blank sample?

22 A. Yes.

23 Q. Yes, you have seen that happen?

24 A. Yes.

25 JUDGE GEHL: Anything more from the State?

1 MR. CANET: I have nothing further.

2 MS. BANDELL: Nothing.

3 JUDGE GEHL: Thank you, Mr. Zager. Nice to see
4 you again.

5 THE WITNESS: Same here.

6 JUDGE GEHL: Does the State rest?

7 MS. BANDELL: No. One last witness, Judge.

8 JUDGE GEHL: Okay. Fine.

9 MS. BANDELL: State calls CSA Franca Dicienzo.

10 JUDGE LEVENSON: The judges want to discuss an
11 issue before we go forward. How long is this witness
12 going to be?

13 MS. BANDELL: Five minutes.

14 JUDGE GEHL: She was quick.

15 JUDGE COWART: Would you be resting after that?

16 MS. BANDELL: I will.

17 JUDGE LEVENSON: So he's also the expert in the
18 other aspect of the hearing, the schematics?

19 MR. CANET: No.

20 JUDGE GEHL: Do you think your expert is going to
21 be more than one hour?

22 MR. CANET: No.

23 JUDGE KAPLAN: You have any idea how long it's
24 going to be?

25 MR. CANET: Probably up to an hour.