



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

PHONE (954) 831-6955

May 13, 2006

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

RE: State v. Jeffery Forcinito, Case No. 02-29068MM10A

Dear Mr. Zager:

It appears that an invoice that you have presented for the above mentioned matter has been forwarded to me for approval. I have had the opportunity to discuss this matter with Assistant State Attorney Taryn Goodman who originally discussed the case with you, as well as the one who originally sent you the subpoena, Assistant State Attorney Vanessa Tabares. Assistant State Attorney Goodman indicates that she did discuss with you that you would be testifying as the maintenance technician but that there was no discussion of you testifying as an expert or any fee arrangements.

In this particular case, in that there was no discussion concerning whether or not you would be paid an expert or skilled witness fee, in the interest of fairness, this office will compensate you at the "skilled" rate that you indicated on your invoice based on our previous correspondence. **On the other hand, I want to be perfectly clear that in the future you will only be compensated as a "fact" witness unless a Supervising Assistant State Attorney has specifically agreed to do otherwise. The regular division prosecutors are not authorized to agree to compensate you as a "skilled" or "expert" witness.** The determination whether to agree to compensate you as a "skilled" witness will be made on a case-by-case basis. If a Supervising Assistant State Attorney does verbally agree to authorize that you may be called as a "skilled" witness, I would strongly recommend that you memorialize such in writing and copy me prior to you traveling to the courthouse to testify. Furthermore, if you have any outstanding cases where you have been subpoenaed and you believe that you will be testifying as anything other than a "fact" witness, as per the above, you will not be compensated as a "skilled" or "expert" witness unless such has been authorized by a Supervising Assistant State Attorney.

If you have any questions concerning any of these matters or any particular cases, please feel free to contact me or Senior Supervising Assistant State Attorney Melissa Steinberg. Thank you for your attention to this matter.

Sincerely,

MICHAEL J. SATZ
STATE ATTORNEY



LEE G. COHEN

Assistant State Attorney In Charge
County Court Division
201 S.E. 6th Street, Suite 730
Fort Lauderdale, Florida 33301
(954) 831-8446

cc: Monica Hofheinz, Executive Director
All Supervising Assistant State Attorneys
Assistant State Attorney Taryn Goodman
Assistant State Attorney Vanessa Tabares
Alyce Schnetzer, Administration

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

7001 1940 0003 4757 2011

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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Sent To Jay Zager
Street, Apt. No.,
or PO Box No. 4401 NW 95th Ave.
City, State, ZIP+4 Coral Springs 33065

Jay H. Zager
4401 NW 95th Ave
Coral Springs, FL 33065
Tel: (954) 709-0033

Invoice

March 12, 2006

Broward State Attorney Office
Lee Cohen, Chief
County Court Div.
201 SE 6 St. Rm. 730
Fort Lauderdale, FL 33301

Re: St. V. Forcinito, Jeffery
Case Number: 02-029068-MM10A

Mandatory Court Appearance: March 06, 2006

Professional Time as follows:

1.00hr. travel to court house from office
0.25hr. Broward Court Judge Ghel
1.00hr. travel back to office

Total 2.25 hours professional time per court ordered pay schedule for **skilled** witnesses.

1 hour @ \$150.00 per hour = \$150.00

1.25 hours @ \$125.00 per hour = \$156.25

Total Due \$ 306.25

Please remit to the above address payable to Jay Zager

*As per attached
letter dated
5/13/06*

Note: Trial was cancelled due to mis-trial by arresting officer.

PLEASE PLACE ON DASH SO IT IS VISIBLE
WITNESS PARKING

STATE OF FLORIDA VS FORCINITO, JEFFERY A:
COURT CASE NUMBER: 02029068MM10A
JUDGE: PEGGY GEHL (A)

VALID MARCH 06 2006 ONLY

Subpoena

IN THE COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA
STATE OF FLORIDA VS FORCINITO, JEFFERY A TO:

IMPORTANT: SEE REVERSE SIDE FOR EXPLANATION OF MANDATORY/STANDBY STATUS AND IMPORTANT PARKING INFORMATION

MANDATORY - MUST APPEAR ON DATE AND TIME BELOW CALL NUMBERS INDICATED BELOW

STANDBY - CALL NUMBERS INDICATED BELOW FOR EXACT TIME YOU WILL BE NEEDED.

CALL WITNESS LIAISON AT 954-831-6212 OR
CALL STATE ATTORNEY'S OFFICE AT 954-831-8430
MONDAY THROUGH FRIDAY BETWEEN 8:30 A.M. AND 5:00 P.M.

ZAGER, JAY H
4401 NW 95 AVE
CORAL SPRG FL33065

MTC MM 1 A25 0746 02029068MM10A

WITNESS, HOWARD C. FORMAN CLERK OF SAID COURT AND THE SEAL OF SAID COURT. AT FT. LAUDERDALE, BROWARD COUNTY, FLORIDA
THIS THE 03 DAY OF FEBRUARY 2006

Howard C. Forman
HOWARD C. FORMAN, CLERK



Taryn Goodman
11:15

TO THE SHERIFFS OF THE STATE OF FLORIDA:
WE COMMAND YOU TO SUMMON THE WITNESS NAMED
HEREIN TO APPEAR AT THE: BROWARD COUNTY CTHSE
201 SE SIXTH STREET
FORT LAUDERDALE, FL 33301
ON: MARCH 06 2006

AT: 12:30PM IN ROOM: 0730

JUDGE: PEGGY GEHL (A)
MAIN CHARGES: 1ST DEGREE MISDEMEANOR
D.U.I./U.B.A.L. - DAMAGE

ACTION: CCN 05512
TRIAL
ASST STATE ATTY.: MS VANESSA TOBARES
COURT CASE NO.: 02029068MM10A
POLICE CASE NO.: FH02-05782810

YOU ARE UNDER SUBPOENA UNTIL YOU ARE EXCUSED BY THE COURT OR THE PROSECUTOR. FAILURE TO APPEAR AS ORDERED MAY SUBJECT YOU TO PENALTIES FOR CONTEMPT OF COURT. YOU MUST TURN IN YOUR SUBPOENA COPY TO THE CLERK OF THE COURT EACH DAY IN ORDER TO RECEIVE WITNESS FEES ALLOWED BY THE LAW.



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

PHONE (954) 831-6955

September 8, 2005

Michael A. Mermer, Esq.
10724 Wiles Road
Coral Springs, Florida 33076
Fax (954) 344-2889

RE: State of Florida v. Wayne Oreal, Case Number 02-29143MM10A
Subpoena of Jay Zager

Dear Mr. Mermer:

I am in receipt of your letter faxed to me on September 7, 2005 concerning the mandatory subpoena issued to your client Jay Zager for Friday, September 9, 2005 at 1:15 p.m. before Judge Berman. I am also in receipt of your "Motion to Set Expert Fees or For Protective Order" with a copy of the subpoena he received attached thereto. After reviewing the defendant Oreal's motion and preparing for such, at this time the State intends to call Mr. Zager to testify as a fact witness as to the inspections he performed. Unless stated and agreed upon otherwise, any "expert" opinion he might express will be unsolicited and unresponsive.

Obviously, the State would prefer not to inconvenience your client and would prefer not to have to call your client to testify at all. This is the first of these types of motions to be heard in the County Courts. Depending on how this hearing proceeds, we should be able to better predict how hearings on this particular matter will proceed in the future. Thus, at this time, the State will require your client's attendance at the hearing as per the mandatory subpoena he received.

Thank you for your cooperation in this matter.

Sincerely,

MICHAEL J. SATZ
STATE ATTORNEY



LEE G. COHEN

Assistant State Attorney In Charge
County Court Division
201 S.E. 6th Street, Suite 730
Fort Lauderdale, Florida 33301
(954) 831-8446

cc: Senior Supervising Assistant State Attorney Melissa Steinberg
Supervising Assistant State Attorney Lanie Bandell
Supervising Assistant State Attorney Yael Gamm

TRANSMISSION VERIFICATION REPORT

TIME : 09/08/2005 15:36
 NAME : SAO SUPERVISOR
 FAX : 954-831-6705
 TEL :

DATE, TIME : 09/08 15:36
 FAX NO. /NAME : 99543440411
 DURATION : 00:00:41
 PAGE(S) : 03
 RESULT : OK
 MODE : STANDARD
 ECM



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

FAX

To:	Michael A. Mermer, Esquire	From:	Lee Cohen, ASAIC
Phone:		Phone:	COUNTY COURT DIVISION 954-831-8446
Fax:	954-344-2880 <i>0411</i>	Fax:	954-831-6705
Date:	September 8, 2005	Page(s) 3 (Including cover)	

Re: State of Florida v. Wayne Oreal, Case Number 02-29143MM10A

Michael A. Mermer, P.A.

Attorney and Counselor at Law

Member of the Florida, New York & New Jersey Bar

10724 Wiles Road
Coral Springs, Florida 33076
Tel: 954 344-2889
Fax: 954 344-0411
www.ticket-lawyer.com

VIA FAX

September 8, 2005

To: Lee G. Cohen
From: Michael A. Mermer, Esq.
Re: Jay Zager

Re: Hearing for September 9

Dear Lee:

I received your fax. I plan to appear for Mr. Zager and discuss this matter with Judge Berman tomorrow.

What the State defines as a 'fact witness' is what we believe the statute defines as a "skilled" or expert witness since Jay is to testify as to facts and circumstances surrounding his duties as a Breath Maintenance Technician. Clearly, the State can't argue that Deputy Zager was not "skilled" while performing his craft.

Lee, moreover, these subpoenas have interfered with Mr. Zager's right to earn a living and obligation to support his family. The last subpoena on this case required he be on 'standby' for about 2 weeks. Is the State suggesting that Jay not be allowed to work while he is on continual standby for State cases for which he is no longer employed or being compensated for?

To the contrary- these subpoenas are oppressive, fundamentally unfair and financially burdensome without him being compensated under the circumstances and we therefore are going to ask the Court in this and every other case where his is subpoenaed, for proper fees as a skilled or expert witness per what we believe the statute requires or ask for a protective order.

Jay is in Atlanta right now - I believe testifying on a case for William Head, Esq., as an expert witness and I expect to hear from him shortly or tonight. I am presuming he will appear tomorrow but if not and he is held over in Atlanta, I will ask the Court for a continuance.

If you have any questions on this, feel free to contact me at 954-344-2889.

Best Regards,

MICHAEL A. MERMER, ESQ.

OFFICIAL USE

7001 1940 0002 4757 1984

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To Jay Zager
Street, Apt. No.,
or PO Box No. 4401 NW 95th Ave
City, State, ZIP+4 Coral Springs 33065



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

PHONE (954) 831-6955

December 15, 2005

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

RE: State v. Wayne Oreal, Case No. 02-29143MM10A
State v. Dennis Katrych, et al., Case No. 03-02757MM10A (Tap Water Hearing)

Dear Mr. Zager:


The invoices you have presented for the above mentioned matters have just been forwarded to me for approval. As for the Oreal matter, as you recall, the State had no intention or need to call you as an "expert" witness at the September 9th hearing. After consideration of what you would be testifying about under the facts of that specific case, and in light of the time and effort you were expending in the matter, agreed to compensate you under the statute as a "skilled" witness. Ultimately your testimony was not even necessary but in light of our agreement, the invoice will be satisfied. To be clear, this office did not call you, had no intention of calling you, and is not compensating you as an *expert* witness. Instead, you are being compensated, in this particular matter, as a skilled witness.

As to the Katrych matter, as Supervising Assistant State Attorney Lanie Bandell and I made abundantly clear to both Mr. McGee and Mr. Mermer prior to your attendance at the April 13th hearing, as well as what was mentioned on the record at the hearing, you were not being called as an expert witness at that en masse hearing. You were only being called as a fact witness. In that you were returning from out of town, we did agree to compensate you for the appropriate travel related costs, but have not been provided by you with any documentation in that regard. You would also be entitled to the standard witness fee and we can provide you with a subpoena for that purpose if necessary.

Thank you for your attention to this matter.

Sincerely,

MICHAEL J. SATZ
STATE ATTORNEY



LEE G. COHEN
Assistant State Attorney In Charge
County Court Division
201 S.E. 6th Street, Suite 730
Fort Lauderdale, Florida 33301
(954) 831-8446

cc: Monica Hofheinz, Executive Director
Supervising Assistant State Attorney Lanie Bandell
Alyce Schnetzer, Administration
Michael Mermer, Esquire
Edward McGee, Esquire

ASA

Lee Cohen

DIV *ECT*

DATE

4/29/05

PLEASE SIGN THE ATTACHED BILL IN SPACE PROVIDED AND RETURN IT TO ADMINISTRATION (ROOM 660) AS SOON AS POSSIBLE.

SHOULD YOU WISH TO DISPUTE THE BILL, DO NOT WRITE ANY COMMENTS ON IT. INSTEAD, CONTACT THE PERSON INDICATED BELOW TO DISCUSS YOUR CONCERN.

PAULA GAUCH
Ext. 8043

ALYCE SCHNETZER
Ext. 8042

THANK YOU FOR YOUR ASSISTANCE IN EXPEDITING PAYMENT TO OUR VENDORS

Jay H. Zager
4401 NW 95th Ave
Coral Springs, FL 33065
Tel: (954) 709-0033

Invoice

September 9, 2005

Broward State Attorney Office
Lee Cohen, Chief
County Court Div
201 SE 6 St. Rm. 730
Fort Lauderdale, FL 33301

PAST DUE

Re: St. v. Oreal, Wayne

Motion: September 9th, 2005

Professional Time as follows:

1.00hr. travel to court house from office
0.50hr. Hearing
1.00hr. travel back to office

Total 2.5 hours professional time per court ordered pay schedule for ~~expert~~ ^{skilled} witnesses. ^{LAC}

1 hour @ \$150.00 per hour = \$150.00

1.5 hours @ \$125.00 per hour = \$187.50

Total Due \$ 337.50

Please remit to the above address payable to Jay Zager

**CC: Edward McGee, Esq.
Michael Mermer, Esq.**

"APPROVED FOR PAYMENT"

YASA | INV

As a skilled witness per statute
not expert witness. See letter.

Jay H. Zager
4401 NW 95th Ave
Coral Springs, FL 33065
Tel: (954) 709-0033

Invoice

May 9, 2005

Broward State Attorney Office
Lee Cohen, Chief
County Court Div
201 SE 6 St. Rm. 730

Fort Lauderdale, FL 33301-3360

PAST DUE

Re: St. v. Katrych (Tap Water Issue)

Motion: April 13th, 2005

Professional Time as follows:

12:30-1:30 pm travel to court house from office

1:30-5:30 pm Hearing

5:30-6:30 pm travel back to office

Total 6 hours professional time per court ordered pay schedule for expert witnesses.

1 hour @ \$150.00 per hour = \$150.00

5 hours @ \$125.00 per hour = \$ 125.00

Total Due \$ 775.00

Please remit to the above address payable to Jay Zager

**CC: C. Edward McGee, Esq.
Michael Mermer, Esq.**

Not
~~"APPROVED FOR PAYMENT"~~

See attached letter.

~~ASA INV~~

MTC - Lee Cohen

From: FTU - Vanessa Tobares
Sent: Tuesday, March 21, 2006 4:53 PM
To: MTC - Lee Cohen
Cc: MTC - Taryn Goodman
Subject: RE: Witness Jay Zager

Hey Lee:

He was issued a sub for trial b/c he was the maintenance operator on the case back in either 01 or 02. If he were called, he would have testified to how he maintained the breath machine. I never had any discussions with him and when the case was up I believe Taryn might have spoken with him

-----Original Message-----

From: MTC - Lee Cohen
Sent: Tuesday, March 21, 2006 4:40 PM
To: MTC - Taryn Goodman
Cc: MTC - Melissa Steinberg; FTU - Vanessa Tobares
Subject: Witness Jay Zager

I received an invoice from the above witness for a case before J. Gehl, Jeffrey Forcinito, for a court appearance on March 6, 2006. He attached a subpoena witness with Vanessa's name on it and indicates that he was called as a "skilled" witness. Apparently, his testimony was not needed due to a mistrial. I need to know the exact content of any discussions you would have had with him concerning what capacity he would be testifying as - skilled witness, expert witness, fact witness, lay witness, etc, or any fee discussions you would have had. It is not a big deal either way but I just need to know.

Lee G. Cohen

Assistant State Attorney In Charge
County Court Division
Office of the State Attorney, 17th Judicial Circuit
201 S.E. 6th Street, Room 730
Fort Lauderdale, Florida 33301
(954) 831-8446
Fax (954) 831-6705
Lcohen@sao17.state.fl.us

MTC - Lee Cohen

From: MTC - Lee Cohen
Sent: Tuesday, March 21, 2006 4:40 PM
To: MTC - Taryn Goodman
Cc: MTC - Melissa Steinberg; FTU - Vanessa Tobares
Subject: Witness Jay Zager

I received an invoice from the above witness for a case before J. Gehl, Jeffrey Forcinito, for a court appearance on March 6, 2006. He attached a subpoena witness with Vanessa's name on it and indicates that he was called as a "skilled" witness. Apparently, his testimony was not needed due to a mistrial. I need to know the exact content of any discussions you would have had with him concerning what capacity he would be testifying as - skilled witness, expert witness, fact witness, lay witness, etc, or any fee discussions you would have had. It is not a big deal either way but I just need to know.

Lee G. Cohen

Assistant State Attorney In Charge
County Court Division
Office of the State Attorney, 17th Judicial Circuit
201 S.E. 6th Street, Room 730
Fort Lauderdale, Florida 33301
(954) 831-8446
Fax (954) 831-6705
Lcohen@sao17.state.fl.us

MTC - Lee Cohen

From: MTC - Taryn Goodman
Sent: Tuesday, March 21, 2006 5:18 PM
To: FTU - Vanessa Tobares; MTC - Lee Cohen
Subject: RE: Witness Jay Zager

Hi Lee,

This was regarding the Forcinito case. Mr. Zager was under subpoena from prior ASA's who were handling this case. When the trial was special set, I personally spoke to Mr. Zager, informing him that this was a 2002 DUI case, in which he was the maintenance technician, and that I would need him to testify.

During my discussions with Mr. Zager, there was no mention of him testifying as an expert witness. Furthermore, there was no discussion about any fee or payments for his testimony.

I did speak to SASA, Lanie Bandell, who instructed me to put Mr. Zager under oath, prior to his testimony to the jury, to make clear the fact that he was testifying as a fact witness, not as an expert. However, the case was declared a mistrial prior to Mr. Zager's testimony.

When the jury was excused, and the attorneys were discussing scheduling for the case, Mr. Zager was in the courtroom, and asked me to initial his subpoena indicating that he was present, which I did. At no point did I have any discussions with Mr. Zager about being our expert witness, or there being a fee.

-----Original Message-----

From: FTU - Vanessa Tobares
Sent: Tuesday, March 21, 2006 4:53 PM
To: MTC - Lee Cohen
Cc: MTC - Taryn Goodman
Subject: RE: Witness Jay Zager

Hey Lee:

He was issued a sub for trial b/c he was the maintenance operator on the case back in either 01 or 02. If he were called, he would have testified to how he maintained the breath machine. I never had any discussions with him and when the case was up I believe Taryn might have spoken with him.

-----Original Message-----

From: MTC - Lee Cohen
Sent: Tuesday, March 21, 2006 4:40 PM
To: MTC - Taryn Goodman
Cc: MTC - Melissa Steinberg; FTU - Vanessa Tobares
Subject: Witness Jay Zager

I received an invoice from the above witness for a case before J. Gehl, Jeffrey Forcinito, for a court appearance on March 6, 2006. He attached a subpoena witness with Vanessa's name on it and indicates that he was called as a "skilled" witness. Apparently, his testimony was not needed due to a mistrial. I need to know the exact content of any discussions you would have had with him concerning what capacity he would be testifying as - skilled witness, expert witness, fact witness, lay witness, etc, or any fee discussions you would have had. It is not a big deal either way but I just need to know.

Lee G. Cohen

Assistant State Attorney In Charge
County Court Division
Office of the State Attorney, 17th Judicial Circuit
201 S.E. 6th Street, Room 730
Fort Lauderdale, Florida 33301
(954) 831-8446
Fax (954) 831-6705
Lcohen@sao17.state.fl.us

Select Year:

The 2005 Florida Statutes

[Title VII](#)
EVIDENCE

[Chapter 92](#)
WITNESSES, RECORDS, AND DOCUMENTS

[View Entire Chapter](#)

92.231 Expert witnesses; fee.--

(1) The term "expert witness" as used herein shall apply to any witness who offers himself or herself in the trial of any action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is permitted by the court to qualify and testify as such, upon any matter pending before any court.

¹(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in an amount agreed to by the parties, and the same shall be taxed as costs. In instances where services are provided for the state, including for state-paid private court-appointed counsel, payment from state funds shall be in accordance with standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board.

¹(3) In a criminal case in which the state or an indigent defendant requires the services of an expert witness whose opinion is relevant to the issues of the case, the expert witness shall be compensated in accordance with standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board.

History.--ss. 1, 2, ch. 25090, 1949; s. 19, ch. 29737, 1955; s. 1, ch. 59-201; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 512, ch. 95-147; s. 78, ch. 2003-402; s. 37, ch. 2005-236.

¹**Note.**--Section 37, ch. 2005-236, amended subsections (2) and (3), effective July 1, 2006, to read:

(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in an amount agreed to by the parties, and the same shall be taxed as costs. In instances where services are provided for the state, including for state-paid private court-appointed counsel, payment from state funds shall be in accordance with standards adopted by the Legislature.

(3) In a criminal case in which the state or an indigent defendant requires the services of an expert witness whose opinion is relevant to the issues of the case, the expert witness shall be compensated in accordance with standards adopted by the Legislature.

Note.--Former s. 90.231.

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Michael A. Mermer, P.A.

Attorney and Counselor at Law
Member of the Florida, New York & New Jersey Bar

10724 Wiles Road
Coral Springs, Florida 33076
Tel: 954 344-2889
Fax: 954 344-0411
www.ticket-lawyer.com

VIA FAX TO LEE COHEN, ESQ. AT 954 831 6705

September 7, 2005

To: Lee Cohen, Esq.
From: Michael A. Mermer, Esq.
Re: Jay Zager

Dear Lee:

Enclosed please find the attached Motion with regard to setting Expert Witness Fees for Jay Zager.

I will be appearing on Friday to ask Judge Berman to set expert fees in the referenced matter.

Jay does not want any further misunderstandings about expert fees as there appeared to be for his time on the tap-water hearings for which he still insists he is owed expert witness appearance fees.

If you have any questions on this, feel free to contact me anytime at 954-344-2889.

Best Regards,

MICHAEL A. MERMER, ESQ.

STATE ATTORNEY COPY

**IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA

CASE NO. 02029143MM10A
MISDEMEANOR DIVISION
JUDGE BERMAN

vs.

WAYNE H. OREAL

Defendant.

MOTION TO SET EXPERT FEES OR FOR PROTECTIVE ORDER

COMES NOW, JAY ZAGER, by and through his undersigned counsel and files with this Honorable Court a Motion to Set Expert Fees pursuant to Florida Statute §92.231, for his appearance at hearing on a Motion to Suppress in the above entitled cause as an expert witness, and as grounds herein would state the following:

1. Jay Zager was subpoenaed by the State Attorney to give testimony at a hearing in the above entitled cause (see Exhibit 1).
2. The hearing is set for September 9, 2005 and it is expected that Jay Zager's testimony in this matter be given in his capacity as an expert or skilled witness.
3. Jay Zager is no longer employed by the Broward Sheriff's Office. Since leaving BSO, Jay Zager has been employed as an Expert Witness and is nationally recognized as a Forensic Expert on Breath Alcohol Testing and DUI Procedures used by police.
4. Jay Zager has been previously qualified as an Expert Witness in this Court and the State has previously paid Mr. Zager as an expert witness for time spent giving sworn testimony in a similar or related matter.
5. No provision has been made by the State Attorney to compensate Jay Zager for his time involved in this matter.

6. Florida Evidence Code, (Fla. Statute 92.231) provides in part:

"...In an criminal case in which the state or an indigent defendant requires the services of an expert witness whose opinion is relevant to the issues of the case, the expert witness shall be compensated in accordance with standards adopted by the Legislature after receiving recommendations from the Article V Indigent Services Advisory Board." (Emphasis added)

7. An unpaid appearance for an expert witness such as Mr. Zager would cause undue financial hardship upon him and the State could call witnesses other than Jay Zager such as Patricia Nanz as they have done in the past to provide testimony in this cause.

8. The State Attorney should therefore compensate Mr. Zager for his time as an Expert Witness as set forth by the Legislative guidelines in this matter, or this Court should set such fees in accordance with the Statute.

WHEREFORE, the undersigned moves this Court to enter an order setting expert witness fees to be taxed/paid by the State Attorney in this matter, or in the alternative, issue a protective order and quash the subpoena issued by the State Attorney to Mr. Zager in this cause, and for such other and further relief as this Court deems just, proper and equitable under the circumstances.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Hand Delivery this 7th day of September, 2005, to the Office of the State Attorney, Broward Court, Misdemeanor Division, 201 SE 6th Street, Ft. Lauderdale, Florida 33301 and Lawrence Charles Roberts, 200 SE 6TH St Ste 207, Fort Lauderdale Florida 33301.

MICHAEL A. MERMER, ESQUIRE
Florida Bar No: 782297

MICHAEL A. MERMER, P.A.
Attorney for Witness Jay Zager
10724 Wiles Road
Coral Springs, FL 33076
(954) 344-2889

PLEASE PLACE ON DASH SO IT IS VISIBLE WITNESS PARKING

STATE OF FLORIDA VS OREAL, WAYNE H:
COURT CASE NUMBER: 02029143MM10A
JUDGE: FRED BERMAN (D)

VALID

SEPTEMBER 09 2005

Subpoena

IN THE COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA
STATE OF FLORIDA VS: OREAL, WAYNE H:

TO:

ZAGER, JAY H
4401 NW 95TH AVE
CORAL SPRG FL33065

MTC MM 1 D23 0732 02029143MM10

IMPORTANT: SEE REVERSE SIDE FOR EXPLANATION OF MANDATORY/STANDBY STATUS AND IMPORTANT PARKING INFORMATION

MANDATORY - MUST APPEAR ON DATE AND TIME BELOW. CALL NUMBERS INDICATED BELOW.

STANDBY - CALL NUMBERS INDICATED BELOW FOR EXACT TIME YOU WILL BE NEEDED.

954-831-6203

CALL WITNESS LIAISON AT 954-831-8457
CALL STATE ATTORNEY'S OFFICE AT
MONDAY THROUGH FRIDAY BETWEEN 8:30 A.M. AND 5:00 P.M.

WITNESS HOWARD C. FORMAN, CLERK OF SAID COURT AND THE SEAL OF SAID COURT, AT FT LAUDERDALE, BROWARD COUNTY, FLORIDA, THIS THE 31 DAY OF AUGUST 2005

Howard C. Forman
HOWARD C. FORMAN, CLERK



TO THE SHERIFFS OF THE STATE OF FLORIDA:
WE COMMAND YOU TO SUMMON THE WITNESS NAMED
HERRIN TO APPEAR AT THE: BROWARD COUNTY CTHSE
201 SE SIXTH STREET
FORT LAUDERDALE, FL 33301
ON: SEPTEMBER 09 2005

AT: 01:15PM IN ROOM: 0354

CCN 05512
ACTION: MOTION TO SUPPRESS
ASST STATE ATTY.: MR. FRANK TOWNSEND
COURT CASE NO.: 02029143MM10A
POLICE CASE NO.: B802-01206303

JUDGE: FRED BERMAN (D)
MAIN CHARGES: 1ST DEGREE MISDEMEANOR
D.U.I./U.B.A.L. - DAMAGE

YOU ARE UNDER SUBPOENA UNTIL YOU ARE EXCUSED BY THE COURT OR THE PROSECUTOR. FAILURE TO APPEAR AS ORDERED MAY SUBJECT YOU TO PENALTIES FOR CONTEMPT OF COURT. YOU MUST TURN IN YOUR SUBPOENA COPY TO THE CLERK OF THE COURT EACH DAY IN ORDER TO RECEIVE WITNESS FEES ALLOWED BY THE LAW.

Jay H. Zager
4401 NW 95th Ave
Coral Springs, FL 33065
Tel: (954) 709-0033

May 14, 2006

Broward State Attorney Office
Lee Cohen, Chief
County Court Div.
201 SE 6 St. Rm. 730
Fort Lauderdale, FL 33301

Dear Lee:

Attached please find tow invoices. One of which is from March. Could you please pass these along for payment.

Also, per our agreement, I'm making myself available for trial when requested by your assistants. If you could please remind them that I need a case to be special set as my schedule takes me out of town from time to time.

Thanks again and I hope all is well with you and your family.

Jay