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VIRLYNN TINNELL  
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Attorney for Hoole & King  
and Natalie Malonis Clients

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,  
Plaintiff,

vs.

WARREN STEED JEFFS,  
Defendant.

**MEMORANDUM IN OPPOSITION TO  
MOTION FOR DEPOSITION OF  
WITNESSES SAM BROWER AND  
DAN FISCHER**

No. CR-2007-953

Judge Steven F. Conn

By way of special and limited appearance, \_\_\_\_\_, Lamont Barlow,

Richard Jessop Ream, Thomas Samuel Steed, Don Ronald Fischer, Dean Joseph Barlow, Walter Scott Fischer, Richard Gilbert, Brent Jeffs, Johnny Jessop, Wendell Musser and other clients of Hoole & King, L.C. (when referred to collectively, "Clients"), as well as Carolyn Jessop and other clients, including minor FLDS Children, of Natalie Malonis, through counsel, hereby file this Memorandum in Opposition to Warren Jeffs' Motion for Deposition of Witnesses Brower and Dan Fischer (the "Motion").

## INTRODUCTION

Jeffs' Motion seeks to invade the attorney-client privilege and work-product immunity held by the Clients. To do so, Jeffs' makes wild and completely unfounded accusations and inferences regarding Dr. Dan Fischer, the Diversity Foundation, Sam Brower, Hoole & King and its Clients. Repeatedly though out the Motion, Jeffs' criminal defense counsel makes the argument that Hoole & King, the Clients, Dr. Fischer, the Diversity Foundation, and Mr. Brower are "enemies" bent on "harming Jeffs and the FLDS Church." This is nonsense. Even if it were true, it would not justify Jeffs' bootstrapping efforts to destroy the Clients' privileges.

Although no personal vendettas are being pursued, the Clients, their attorneys, representatives and investigator are interested in a common objective: stopping the various systematic and pervasive forms of child abuse within the FLDS and assisting victims of that abuse. That effort has obviously required money and coordination. Fortunately, when incidents of child abuse increased dramatically under Jeffs' leadership of the FLDS Church, Dr. Fischer and the Diversity Foundation were there to undertake much of the burden of assisting FLDS victims and displaced former members. After the commencement in 2004 of civil child abuse and child abandonment cases in Utah, the Diversity Foundation also agreed to assist in the payment of attorney fees and expenses.

The plaintiffs in those original cases each properly designated Dr. Fischer and the Diversity Foundation as their "client representatives" to facilitate confidential communications related to their

representation as they deemed necessary, pursuant to Utah Rule of Evidence 504(a)(4).<sup>1</sup> Those original clients also authorized Hoole & King to engage the services of private investigator Mr. Brower pursuant to Rule 504(a)(3) of the Utah Rules of Evidence.<sup>2</sup> As more individuals sought representation by Hoole & King and payment of their fees by the Diversity Foundation, they also agreed to utilize Dr. Fischer and the Diversity Foundation as their client representatives and private investigator Mr. Brower in connection with their representation in Utah. In doing so the Clients have relied appropriately on the protections afforded to them by the laws of Utah.

Two of the Clients, \_\_\_\_\_, are now also the victim-witnesses in two Arizona criminal cases brought in Mohave County against Jeffs (CR-2007-743 and CR-2007-953). In light of that, Jeffs has discovered through a lengthy interview of Dr. Fischer and the disclosure of Diversity Foundation documents the nature and extent of all financial assistance provided by the Diversity Foundation to them and any other witnesses. Similarly, Jeffs has had ample opportunity to question Dr. Fischer and Mr. Brower regarding any communications they have had with law enforcement in Mohave County.

Despite the fact that both Dr. Fischer and Mr. Brower have *already voluntarily* submitted to hours of interviews by Jeffs' counsel about all manner of topics, including financial assistance, the Motion asks this Court to specifically order the disclosure of privileged communications between them and Hoole & King and the Clients. Such inquiries are simply inappropriate. Jeffs' effort to

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<sup>1</sup> UTAHR. EVID. 504(a)(4) states, in the context of the lawyer-client privilege: "A 'representative of the client' is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client, or one specifically authorized to communicate with the lawyer concerning a legal matter."

<sup>2</sup> UTAHR. EVID. 504(a)(3) states, in the context of the lawyer-client privilege: "A 'representative of the lawyer' is one employed to assist the lawyer in a rendition of professional legal services."

invade the attorney-client privilege is not even about obtaining information for his defense; it is about obtaining protected communications to assist the FLDS Church—a criminal enterprise by any other name—in civil actions brought in Utah, some of which involve clients of Hoole & King.

Finally, Jeffs has failed to point to any specific questions asked during the interviews that would not be covered by the applicable privileges, making it impossible to respond in any detail to his blanket assertions.

#### **RELEVANT FACTS**

1. In September of 2004, Joanne Sudder, a Baltimore, Maryland attorney known for her work in representing clients abused by clergy, retained Hoole & King to act as local counsel in two lawsuits she had filed in Utah on behalf of seven FLDS child abuse victims.

2. The first lawsuit sought relief by six plaintiffs who were among hundreds of young adolescent males abandoned and ostracized by their FLDS families and communities at Jeffs' command. The second sought relief on behalf of one young male who had been sexually molested and raped by Jeffs himself.

3. Ms. Sudder and her clients sought assistance in finding local counsel from Dr. Fischer. Dr. Fischer, a Salt Lake City dentist and entrepreneur, was a former member of the FLDS and was known and respected by Ms. Sudder's clients. As such, Ms. Sudder's clients trusted Dr. Fischer to help them identify local counsel and otherwise assist them with their representation.

4. Years earlier, Dr. Fischer had co-founded the Diversity Foundation, which by 2004 was involved in providing food, housing, clothing, job assistance and education funding to numerous FLDS boys and young men (and some families), who had fled the FLDS or been commanded by

Jeffs to leave, resulting in being put literally on the street without any means of support or subsistence.<sup>3</sup>

5. When the need arose for the seven plaintiffs to find permanent local counsel, Dr. Fischer agreed to assist Ms. Sudder and was referred to Hoole & King by other local lawyers he knew. Dr. Fischer then met with Roger Hoole on behalf of the clients for an initial interview. Ms. Sudder then followed up by interviewing Roger Hoole and eventually Gregory Hoole and negotiating a discounted fee agreement between Hoole & King and her clients with the understanding that the discounted fees would be paid by the Diversity Foundation.

6. Almost immediately after agreeing to act as local counsel, Hoole & King asked Dr. Fischer to serve as a confidential expert consultant on behalf of the firm. Hoole & King knew little of the insular and secretive FLDS culture and needed Dr. Fischer's assistance to help them understand factual background, cultural context, the difficulty of leaving the FLDS, and the various struggles that the displaced former FLDS were facing as they tried to enter mainstream society. Dr. Fischer agreed to serve in this capacity, and shortly thereafter Hoole & King sent him a letter formalizing the agreement. *See* Roger H. Hoole letter of Nov. 4, 2004 to Dan E. Dr. Fischer, a copy of which is attached hereto as Exhibit A.

7. Dr. Fischer also agreed to continue to act as a "client representative" on behalf of the original seven clients to facilitate their representation and communications. The seven clients had grown up in a culture that not only distrusted and avoided outsiders, but also held law enforcement,

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<sup>3</sup> After Jeffs assumed control of the FLDS from his father, Rulon Jeffs, the number of young men being expelled from the community increased dramatically.

the legal system and the courts in contempt. The seven clients and their attorneys naturally looked to Dr. Fischer to fulfil a critical role in facilitating communications and counsel between the clients and the lawyers. *See* Affidavit of Richard Jessop Ream, attached hereto as Exhibit B.

8. Accordingly, Dr. Fischer and the Diversity Foundation were designated client representatives under Utah Law. *See* UTAH R. EVID. 504(a)(4). A copy of Utah R. Evid. 504 in its entirety is attached as Exhibit C.

9. When Hoole & King was engaged it also began to use Mr. Brower, who had originally been retained by Ms. Sudder, as its private investigator to gather evidence and information related to the lawsuits. Hoole & King relied heavily on Mr. Brower, who lived near the FLDS community on the Utah and Arizona boarder, and who was very familiar with the FLDS culture.

10. Not only did Dr. Fischer, the Diversity Foundation, and Mr. Brower play important roles in the two original lawsuits, which were completed in 2007, but they have also played important roles in their respective capacities as expert consultant, client representative, and private investigator in connection with the ongoing representation of the original seven clients in other civil litigation, as well as the representation of other former FLDS clients that Hoole & King has represented in various other matters or litigation in Utah under its governing laws.<sup>4</sup>

11. As various FLDS victims began to contact Hoole & King directly or through others, including former FLDS members, for legal assistance. Hoole & King attempted to connect those in the greatest need of non-legal help with the Diversity Foundation. At times, Hoole & King also

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<sup>4</sup> Mr. Brower has also been engaged as a private investigator by other attorneys representing FLDS or former FLDS clients, including Texas attorney Natalie Malonis.

acted to facilitate assistance from the Diversity Foundation so their clients could buy groceries, pay rent or otherwise meet short-term financial emergencies.

12. Among the clients that Hoole & King helped in obtaining financial assistance from the Diversity Foundation are \_\_\_\_\_ both of whom fled the FLDS after becoming underage brides. Neither of them was referred by Dr. Fischer or the Diversity Foundation to their attorneys, nor did either of them even know Dr. Fischer or anyone employed by the Diversity Foundation before they engaged the services of Hoole & King.

13. After becoming Hoole & King clients, however, both \_\_\_\_\_ designated Dr. Fischer and the Diversity Foundation to serve as her official client representatives because they, like Hoole & King's other former FLDS clients, recognized the benefit of having a person knowledgeable about both FLDS culture, including the unique challenges they would be facing, as well as the legal process assist them as they communicated and consulted with their attorneys. Moreover, the Diversity Foundation's involvement, including financial assistance, became critically necessary when \_\_\_\_\_ decided that they had to enter an informal witness relocation and protection program after agreeing to testify against Jeffs in Utah. See Affidavits of \_\_\_\_\_, attached hereto as Exhibits D and E.

14. To Hoole & King's knowledge, although designated as client representatives, Dr. Fischer and the Diversity Foundation have never instructed its Clients (nor Hoole & King) on how to pursue its Clients' representation and/or lawsuits, but has only facilitated communication and advice between the two. Moreover, as the Clients gained greater trust in Hoole & King as well as greater trust and understanding of the legal process, the client representatives' role has diminished

proportionately. Still, throughout the course of the Clients' representation, attorney-client information has been shared with and through the Diversity Foundation all with the understanding that these communications were strictly protected by Utah law.

15. Similarly, relying on the attorney work-product doctrine, Hoole & King has shared confidential information with Mr. Brower, who has assisted Hoole & King through his various investigative efforts to help prepare for litigation, including with respect to pending civil cases.

16. Despite being subject to strict confidentiality requirements under Utah law, both Dr. Fischer and Mr. Brower, after consulting with Hoole & King, agreed to submit to lengthy witness examinations conducted by Jeffs' attorneys in this case, and in their interviews voluntarily responded to Jeffs' counsel's questions, including disclosing the extent of the financial assistance provided by Dr. Fischer and the Diversity Foundation to the displaced FLDS, including to:

as well as the fees paid to Hoole & King and Mr. Brower.

17. For example, at Jeffs' counsel's request, Mr. Brower agreed to travel to Salt Lake City from St. George, Utah, on March 28, 2009, to submit voluntarily to and participate in an interview by Jeffs' counsel. Having traveled to Salt Lake City on the agreed day, Jeffs' counsel canceled the interview, claiming they had not had enough time to prepare, even though Jeffs' attorneys were present in Salt Lake City, where they proceeded with the voluntary interview of Dr. Fischer.

18. Jeffs' counsel subsequently arranged to conduct Mr. Brower's voluntary interview on April 10, 2009, at the offices of co-counsel, Richard Wright in Las Vegas, Nevada. Mr. Brower again fully cooperated and arranged his schedule to accommodate the interview as requested on the

date requested, at the time requested, and at the location selected by Jeffs' counsel. Once again, however, Jeffs' counsel canceled the interview citing an emergency scheduling conflict of Mr. Wright. On each occasion, Mr. Brower agreed to appear and participate fully.

19. Finally, after two attempts and two cancellations by Jeffs' counsel, Mr. Brower's voluntary interview took place on May 20, 2009. The interview lasted four hours and covered a tremendous range of topics, most of which have absolutely nothing to do with the defense of Warren Jeffs against the present charges.

20. Although the transcript of Mr. Brower's interview indicates some preliminary discussions among attorneys regarding attorney-client privilege and work product, Mr. Brower answered every single question asked by Jeffs' counsel. The transcript of Mr. Brower's interview does not even reveal a single instance where Mr. Brower answered a question to anything less than the satisfaction of the attorneys asking the questions. When follow-up questions were asked, Mr. Brower provided full clarification of his answers to the best of his knowledge.

21. Despite Dr. Fischer's and Mr. Brower's efforts to cooperate fully and appropriately with Jeffs' counsel's requests for voluntary interviews, counsel has now filed companion motions seeking to discover privileged information, not for purposes of Jeffs' defense, which they obtained and could have further obtained months ago at the interviews, but for other purposes outside these cases, which could eviscerate the attorney-client privileges of dozens of people who rightfully relied on Utah substantive law in retaining, communicating with and receiving advice from their legal counsel.

## ARGUMENT

There is no basis to the factual allegations of Jeff's motion nor merit to his legal claims. Jeffs makes numerous broad sweeping allegations, none of which are supported by any competent evidence set forth in the Motion. Jeffs' arguments are similarly unsupported in the law. Moreover, as set forth below, Jeffs has not met his burden under Rule 15.3 of the Arizona Rules of Criminal Procedure to take either deposition.

### I. CONFLICTS OF LAWS PRINCIPLES COMPEL ARIZONA'S RECOGNITION OF UTAH'S ATTORNEY-CLIENT PRIVILEGE.

As persuasively argued in detail by counsel for Dr. Fischer and Diversity, which arguments Hoole & King's clients adopt and incorporate herein, conflict of law principles compel this Court to honor the full extent of the attorney-client privilege as recognized in Utah. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 139 (1988); *Gordon v. Kramer*, 604 P.2d 1153 (Ariz. Ct. App. 1980). The communications at issue here were all made in Utah, by Utah litigants to Utah client representatives to facilitate representation by Utah lawyers in Utah courts. It would be contrary to all conflict of laws principles as well as the Full Faith and Credit Clause of the United States Constitution<sup>5</sup> to disregard a privilege recognized by and relied upon by citizens of the State of Utah in this case.<sup>6</sup> *Id.*

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<sup>5</sup> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. CONST. art. IV, § 1.

<sup>6</sup> Many of Hoole & King's communications with Dr. Fischer are also protected pursuant to the privilege applicable to confidential consultants. The only argument Jeffs raises with respect to this privilege is that Roger Hoole referred to Jeffs as a "testifying expert" in Dr. Fischer's voluntary interview. To the extent the interview was correctly transcribed, Mr. Hoole misspoke. In any event, a consultant does not lose the protections of the privilege if he does not offer through a production of a report, responses to discovery or actual testimony expert opinion elicited by counsel. See *Slade v. Schneider*, 129 P.3d 465, 470 (Ariz. Ct. App. 2006) ("Additionally, a privilege holder may "reinstate the

## **II. COMMUNICATIONS WITH MR. BROWER ARE PROTECTED BY BOTH THE ATTORNEY-WORK PRODUCT DOCTRINE AND THE ATTORNEY-CLIENT PRIVILEGE.**

Jeffs' argument regarding Mr. Brower and the attorney work-product doctrine misses the mark. As an initial matter, Jeffs is incorrect in arguing that the attorney work-product doctrine protects only written material prepared in anticipation of litigation. In reality, "[w]ork product consists of tangible material *or* its intangible equivalent in unwritten or oral form." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 87(1) (2009) (emphasis added). Thus investigative findings and reports relayed to Hoole & King orally would also be encompassed by the doctrine.

Moreover, all other communications made between Hoole & King and Mr. Brower to assist Hoole & King in representing its clients are embraced by the attorney-client privilege. It is virtually universally accepted that the attorney-client privilege embraces communications with agents retained by either the attorney or the client made for the purpose of facilitating the rendition of legal services. *See, e.g., Severson Envtl. Serv. Inc. v. America Ins. Co.*, 64 A.D.3d 1234, 1236 (N.Y. 2009) ("attorney-client privilege extends to communications to 'one serving as an agent either of attorney or client.'"); *Loftin v. Bande*, 258 F.R.D. 31, 34 (D.D.C. 2009) ("[T]he attorney-client privilege may be extended to non-lawyers who are 'employed to assist the lawyer in the rendition of professional legal services.'"); *Heriot v. Byrne*, 257 F.R.D. 645, 665 (N.D. Ill. 2009) ("Similar to the work-product doctrine, the attorney-client privilege applies to third parties who are agents of either the lawyer or the client."); *Hanover Ins. Co. v. Rapo & Jepsen Ins. Services, Inc.*, 870 N.E.2d

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privilege by removing that designation before expert opinion evidence is offered through production of a report, responses to discovery, or expert testimony."). Significantly, Dr. Fischer has not been designated as a testifying expert or offered any expert opinion solicited by the Clients.

1105, 1111 (Mass. 2007) (“The attorney-client privilege not only protects statements made by the client to the attorney in confidence for the purpose of obtaining legal advice in a particular matter, but also protects such statements made to or shared with necessary agents of the attorney or the client . . . .”); *Via v. Com.*, 590 S.E.2d 583, 595 (Va. Ct. App. 2004) (privilege extends to attorney’s agent when necessary to effectively represent client).<sup>7</sup>

Although Utah<sup>8</sup> has not specifically addressed the issue of a private investigator serving as an attorney or client’s agent by that name, it has specifically codified the attorney-client privilege as it relates to lawyer representatives, which would include private investigators. Specifically, Rule 504 states that “[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made” to or by a “lawyer’s representative.” Rule 504(a)(3) defines a lawyer’s representative as “one employed to assist the lawyer in a rendition of professional legal services.” Clearly, a private investigator hired to assist the lawyer in the prosecution of a client’s lawsuit would meet this definition.

Moreover, it is widely acknowledged that a private investigator hired by counsel to assist in litigation is an agent—within the course and scope of that agency—and therefore included within the protections of the attorney-client privilege. *See, e.g., Rubin v. State*, 602 A.2d 677, 683-684 (Md. Ct. App. 1992) (holding communications with private investigator privileged, noting that it is

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<sup>7</sup> These cases also demonstrate further why Hoole & King’s communications with Dr. Fischer should be included in the attorney-client privilege, as Dr. Fischer, if nothing else, was designated by the clients to be their agent. Indeed, Rule 504(a) of the Utah Rules of Evidence does nothing more than codify one type of agency for purposes of the attorney-client privilege.

<sup>8</sup> As set forth above, it is Utah’s law regarding the attorney-client privilege that should be applied in this matter. Nevertheless, research did not reveal any case law in Arizona regarding this issue.

“almost universally accepted” that the scope of the attorney-client privilege embraces agents whose services are needed to assist attorney); *Sanchez v. Matta*, 229 F.R.D. 649, 660 (D.N.M. 2004) (holding attorney-client privilege protected from disclosure any communications between attorney and private investigator); *In re Grand Jury Proceeding*, 79 Fed. Appx. 476, 477 (2<sup>nd</sup> Cir. 2003) (holding “attorney-client privilege may extend to communications with a third party, such as an accountant or private investigator hired to assist in the rendition of legal services.”); *State v. Davis*, 561 A.2d 1062, (N.J. 1989) (noting “[attorney-client] privilege has been held to include confidential communications to private investigators acting on behalf of counsel for [a party].”). As set forth in the fact section above, Hoole & King continued to use Mr. Brower as a private investigator after it was first retained as counsel in these matters. Hoole & King relied heavily on Mr. Brower, who played, and continues to play, a critical role in acquiring evidence for the lawsuits it has prosecuted and is continuing to prosecute on behalf of its clients. Consequently, there is no question that the communications Hoole & King had with Mr. Brower in furtherance of its clients’ legal matters are protected under the attorney-client privilege.<sup>9</sup>

### **III. JEFFS HAS NOT MET HIS BURDEN UNDER RULE 15.3 OF THE ARIZONA RULES OF CRIMINAL PROCEDURE.**

This Court may order a deposition to be taken in a criminal case only in limited circumstances. *See* ARIZ. R. CRIM. P. 15.3. Jeffs has asserted that he is entitled to take both Dr. Fischer’s and Mr. Brower’s depositions because they have not cooperated in granting a personal interview. Nothing could be further from the truth. As set forth above, both Dr. Fischer and Mr.

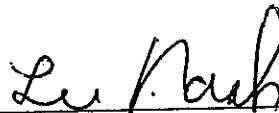
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<sup>9</sup> For these same reasons, the communications Mr. Brower had with other attorneys who engaged him as their agent to assist in client representation, including Ms. Malonis, are similarly protected from disclosure.

Brower voluntarily submitted to lengthy and thorough interviews by Jeffs' counsel at significant personal inconvenience and expense. Both also attempted to answer all the questions posed by Jeffs' counsel. Although Dr. Fischer honored Hoole & King's instruction not to answer a few limited questions implicating the attorney-client privilege, he nonetheless attempted to work with Jeffs' counsel to fashion an agreement that would have allowed him to answer even these limited questions.

In any event, Jeffs has failed to cite to a single question in his Motion that he alleges Dr. Fischer improperly refused to answer. Likewise, Jeffs fails to cite to a single question that he alleges Mr. Brower refused to answer. Indeed, the record reveals that Mr. Brower answered every question posed to him. Significantly, the record also reveals that the witnesses answered all questions posed to them regarding financial support of the Clients, which arguably could be used to show bias. In short, Jeff's motion is replete with unfounded accusation, innuendo and character assassination but completely devoid of any facts or evidence showing either Dr. Fischer or Mr. Brower refused to cooperate in granting a personal interview as required by Arizona law.

DATED this 8<sup>th</sup> day of September, 2009.



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Lee M. Novak  
Attorney for Hoole & King  
and Natalie Malonis Clients

**CERTIFICATION OF MAILING**

Original of the foregoing mailed  
this 8<sup>th</sup> day of September, 2009, to:

Clerk of Mohave County Superior Court  
401 East Spring Street  
Kingman, AZ 86401

Hon. Steven F. Conn  
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Copy of the foregoing emailed  
this 8<sup>th</sup> day of September, 2009, to:

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**EXHIBIT "A"**

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HOOLE & KING L.C.  
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ROGER H. HOOLE  
ATTORNEY AT LAW  
rhh@hooleking.com

November 4, 2004

Dan E. Fischer  
Smiles for Diversity  
505 West 10200 South  
South Jordan, Utah 84095

Re: *Confidential Consultant Agreement*

Dear Dan:

This letter confirms that on or about September 3, 2004, you agreed to serve as an expert consultant for Hoole & King, L.C., regarding the Fundamentalist Church of Jesus Christ of Latter Day Saints, the United Effort Plan Trust, Church leaders and members and other organizations, businesses and people connected with the FLDS Church and its various communities. It is understood that the confidential consultation and work you provide will be used in furtherance of certain civil actions this firm is pursuing or which the firm may pursue, including cases where the firm may play an advisory role only.

This agreement does not affect your right to discuss your factual knowledge with anyone, nor does it affect your obligation, if called upon to testify, to provide truthful factual information. Please understand, however, that all communications you have with us are confidential and should not be disclosed to anyone except those we inform you are similarly assisting us in pursuing these matters. Should opposing counsel or anyone else ask you any questions that might reveal these confidential communications, you should inform them of your confidential expert consulting relationship with Hoole & King, L.C. and decline to answer their questions.

We consider your expertise, knowledge and understanding to be an invaluable resource in our efforts to successfully litigate these cases for our clients and we are grateful for your willingness to assist in this regard. If you have any questions regarding this agreement, please feel free to call me. We look forward to working with you in a combined effort to bring a just resolution to this matter.

Sincerely yours,

HOOLE & KING, L.C.



Roger H. Hoole

RHH:shm

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**EXHIBIT "B"**

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**AFFIDAVIT OF RICHARD JESSOP REAM**

STATE OF UTAH                    )  
  ss  
COUNTY OF SALT LAKE    )

I, RICHARD JESSOP REAM, being first duly sworn, state the following:

1. I have personal knowledge of the facts stated herein.

2. I am the first-named plaintiff in the action captioned Richard Jessop Ream, et al. v. Warren Jeffs, et al., Civil No. 040918237, which was brought in August of 2004 in the Third Judicial District Court for Salt Lake County, State of Utah. This action, known in the media as the "Lost Boys" case, was brought by six plaintiffs, who like hundreds of other boys and young men have been expelled or pushed out of their families, homes and community by Warren Jeffs and other leaders of the Fundamentalist Church of Jesus Christ of Latter Day Saints ("FLDS Church").

3. I am also one of the "Original Interested Individuals" in a probate proceeding pending in the Third Judicial District Court for Salt Lake County, State of Utah captioned In the Matter of the United Effort Plan Trust, (Dated November 9, 1942, amended April 10, 1998), et al., Civil No. 053900848. That proceeding was brought in the spring of 2005 by the Attorneys General of Utah and Arizona because leaders of the FLDS Church refused to defend themselves, the FLDS Church and the United Effort Plant Trust ("UEP") against the child abuse allegations in the Lost Boys' case, had placed the Trust at risk of default judgments, and in order to protect the beneficiary class of that charitable UEP Trust.

4. Attorney Joann Sudder from Baltimore, Maryland, who is well known for handling religious-based child abuse cases, originally represented me and the other Lost Boy plaintiffs when the Lost Boys case was brought, but we also needed local counsel in Utah to handle the day-to-day work on our case.

5. To find local counsel we asked a Salt Lake dentist and business man, Dr. Dan Fischer, who had lived most of his life in the FLDS Church, but had successfully left it years earlier, to help us find attorneys to represent us in Utah. We asked Dr. Fischer because he and the Diversity Foundation with which he is involved had helped scores of boys, young men and even some families who had been expelled or left the FLDS Church start their difficult transition into society.

6. Dr. Fischer assisted us as our representative in the process of selecting local counsel and introduced us in September of 2004 to the Salt Lake City law firm of Hoole & King, L.C., which we soon retained.

7. Hoole & King, however, was unfamiliar with the FLDS Church and the work that Dr. Fischer and the Diversity Foundation was doing to help former FLDS people who had been displaced and who needed financial, medical and educational assistance. Our attorneys needed to be able to consult with Dr. Fischer on our behalf and we agreed. We also agreed to have Hoole & King hire private investigator, Sam Brower, to assist us in relation to the Lost Boys case.

8. As clients of Hoole & King we designated Dr. Fischer and the Diversity Foundation as our client representatives in connection with our representation by Hoole & King, L.C. and gave Dr. Fischer and the Diversity Foundation authority to act on advice provided by Hoole & King in our behalf. We further gave Dr. Fischer and the Diversity Foundation authority to confidentially communicate with Hoole & King regarding the legal matters for which we engaged Hoole & King.

9. When Hoole & King undertook our representation in relation to the UEP Trust probate case, which was brought in 2005, we broadened the authority we had given Dr. Fischer and the Diversity Foundation to include authority to act on advice provided by Hoole & King in our behalf and similarly gave them authority to communicate confidentially with Hoole & King regarding that legal matter.

10. We met in person on occasion with Hoole & King and Dr. Fischer, and from time to time have communicated through Dr. Fischer with Hoole & King and also received information and communications from Hoole & King through Dr. Fischer.


11. In designating Dr. Fischer and the Diversity Foundation as our client representatives and in participating in these communications, we have relied on the laws of Utah which protect the client representative relationship as part of the attorney-client privilege.

DATED this 4 day of September, 2009.

  
RICHARD JESSOP REAM

SUBSCRIBED and SWORN to before me this 4<sup>th</sup> day of September, 2009.



  
NOTARY PUBLIC

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**EXHIBIT "C"**

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## Rule 504. Lawyer-client.

(a) *Definitions.* As used in this rule:

(a)(1) A "client" is a person, including a public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services.

(a)(2) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(a)(3) A "representative of the lawyer" is one employed to assist the lawyer in a rendition of professional legal services.

(a)(4) A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client, or one specifically authorized to communicate with the lawyer concerning a legal matter.

(a)(5) A "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client and the client's representatives to the lawyer or the lawyer's representative incidental to the professional relationship.

(a)(6) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) *General rule of privilege.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client between the client and the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest, and among the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest, in any combination.

(c) *Who may claim the privilege.* The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased

client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication is presumed to have authority to claim the privilege on behalf of the client.

(d) *Exceptions.* No privilege exists under this rule:

(d)(1) *Furtherance of crime or fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(d)(2) *Claimants through same deceased client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(d)(3) *Breach of duty by lawyer or client.* As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer; or

(d)(4) *Document attested by lawyer.* As to a communication relevant to an issue concerning a document to which the lawyer is an attesting witness; or

(d)(5) *Joint clients.* As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

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**EXHIBIT "D"**

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AFFIDAVIT OF:

STATE OF UTAH                    )  
  ss  
COUNTY OF SALT LAKE        )

I, \_\_\_\_\_ being first duly sworn, state the following:

1. I have personal knowledge of the facts stated herein.

2. I am the victim-witness in a criminal proceeding captioned State of Arizona v. Warren Steed Jeffs, Case No. CR-2007-743, which was brought in the Superior Court of the State of Arizona by the Mohave County Attorneys Office. As stated in the public record, this proceeding is based on my underage, "spiritual marriage" to \_\_\_\_\_ as performed by Warren Jeffs when I was part of the Fundamentalist Church of Jesus Christ of Latter Day Saints ("FLDS Church").

3. After I left the FLDS Church, I retained the law firm of Hoole & King, L.C. to assist me in dealing with law enforcement, and later, after I began cooperating with law enforcement, I further engaged Hoole & King to help me and my family enter an informal witness protection program.

4. Hoole & King was already representing other former FLDS people with financial and other assistance from the Diversity Foundation. I wanted my attorneys to be able to consult with the Diversity Foundation and Dr. Dan Fischer about my legal representation, including witness protection, and I authorized them to do so. I also authorized my attorneys to use private investigator Sam Brower to assist them, as needed, in relation to my representation.

5. Accordingly, when I became a client of Hoole & King, I designated Dr. Fischer and the Diversity Foundation as my client representatives in connection with my representation by Hoole & King, L.C. and gave Dr. Fischer and the Diversity Foundation authority to act on advice provided

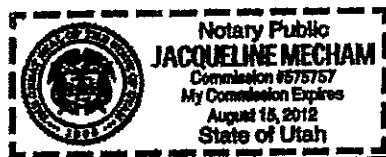
by Hoole & King in my behalf. I further gave Dr. Fischer and the Diversity Foundation authority to communicate confidentially with Hoole & King regarding the legal matters for which I engaged Hoole & King.

6. From time to time I have communicated through Dr. Fischer with Hoole & King and also received information and communications from Hoole & King through Dr. Fischer regarding my representation.

7. In designating Dr. Fischer and the Diversity Foundation as my client representatives, I have relied on the laws of Utah, which protect that relationship as part of the attorney-client privilege.

DATED this 4<sup>th</sup> day of September, 2009:\*

SUBSCRIBED and SWORN to before me this 4<sup>th</sup> day of September, 2009.



*Jacqueline Mecham*  
\_\_\_\_\_  
NOTARY PUBLIC

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**EXHIBIT "E"**

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**AFFIDAVIT OF**

STATE OF UTAH                    )  
  ss  
COUNTY OF SALT LAKE    )

I, \_\_\_\_\_, being first duly sworn, state the following:

1. I have personal knowledge of the facts stated herein.

2. I am the victim-witness in a criminal proceeding captioned State of Arizona v. Warren Steed Jeffs, Case No. CR-2007-953, which was brought in the Superior Court of the State of Arizona by the Mohave County Attorneys Office. As stated in the public record, this proceeding is based on my underage, "spiritual marriage" to \_\_\_\_\_ as performed by Warren Jeffs when I was part of the Fundamentalist Church of Jesus Christ of Latter Day Saints ("FLDS Church").

3. After I left the FLDS Church I began to appreciate that I should be concerned about my safety. I had been an underage spiritual wife who had left the Church and later met with law enforcement. I raised my concern with law enforcement and they suggested that I contact the Hoole & King, L.C. It was my hope that Hoole & King could help me deal with the legal process of cooperating with law enforcement and serving as a witness, while also helping me be part of an informal witness protection program.

4. Hoole & King was already representing other former FLDS people with financial and other assistance from the Diversity Foundation. I wanted my attorneys to be able to consult with the Diversity Foundation and Dr. Dan Fischer about my legal representation, including witness protection, and I authorized them to do so. I also authorized my attorneys to use private investigator, Sam Brower, to assist me, as may be needed, in relation to my representation.

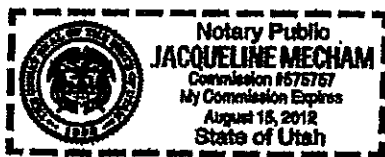
5. Accordingly, when I became a client of Hoole & King, I designated Dr. Fischer and the Diversity Foundation as my client representatives in connection with my representation by Hoole & King, L.C. and gave Dr. Fischer and the Diversity Foundation authority to act on advice provided by Hoole & King in my behalf. I further gave Dr. Fischer and the Diversity Foundation authority to communicate confidentially with Hoole & King regarding the legal matters for which I engaged Hoole & King.

6. From time to time I have communicated through Dr. Fischer with Hoole & King and also received information and communications from Hoole & King through Dr. Fischer regarding my representation.

7. In designating Dr. Fischer and the Diversity Foundation as my client representatives, I have relied on the laws of Utah, which protect that relationship as part of the attorney-client privilege.

DATED this 4 day of September, 2009.

SUBSCRIBED and SWORN to before me this 4<sup>th</sup> day of September, 2009.



*Jacqueline Mecham*  
NOTARY PUBLIC