DISTRICT JUDICIAL NOMINATION COMMISSION AND OFFICE OF THE GOVERNOR JOINT JUDICIAL APPLICATION

Please complete this application by placing your responses in normal type, immediately beneath each request for information. Requested documents should be attached at the end of the application or in separate PDF files, clearly identifying the numbered request to which each document is responsive. Completed applications are public records. If you cannot fully respond to a question without disclosing information that is confidential under state or federal law, please submit that portion of your answer separately, along with your legal basis for considering the information confidential. Do not submit opinions or other writing samples containing confidential information unless you are able to appropriately redact the document to avoid disclosing the identity of the parties or other confidential information.

PERSONAL INFORMATION

1. State your full name.

JOHN MANDEL SANDY

2. State your current occupation or title. (Lawyers: identify name of firm, organization, or government agency; judicial officers: identify title and judicial election district.)

I am a partner at Sandy Law Firm, P.C. and a Minnesota Assistant Public Defender.

3. State your date of birth (to determine statutory eligibility).

July 28, 1984.

4. State your current city and county of residence.

Spirit Lake, Dickinson County, Iowa.

PROFESSIONAL AND EDUCATIONAL HISTORY

5. List in reverse chronological order each college and law school you attended including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.

University St. Thomas School of Law—Minneapolis, Minnesota
Juris Doctorate, 2007- 2010
Dean's Honors

University of St. Thomas —St. Paul, Minnesota
Bachelor of Arts, 2003-2007, Majors: Philosophy and Catholic Studies
Cum Laude

Pontificia Universitas Angelicus —Vatican City State
2005-2006, Latin

6. Describe in reverse chronological order all of your work experience since graduating from college, including:

a. Your position, dates (beginning and end) of your employment, addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the name of your supervisor or a knowledgeable colleague if possible.

Sandy Law Firm, P.C.—Spirit Lake, Iowa
Partner (2014-present)
- Personal Injury, Criminal Defense, Family Law, and Litigation

304 18th Street
Spirit Lake, IA 51360

Minnesota Public Defender's Office—Jackson, Minnesota
Assistant Public Defender (2014-present)
- Felony Criminal Defense

12 Civic Center Plaza #2070
Mankato, MN 56001
507-389-5138
Scott Cutcher-Managing Attorney

Sandy Law Firm, P.C.—Spirit Lake, Iowa
Associate Attorney (2010-2014)
- Personal Injury, Criminal Defense, Family Law, Juvenile Law (CINA) and Litigation

Colich & Associates—Minneapolis, Minnesota
Law Clerk (2009-2010)
- Private criminal defense firm specializing in federal, felony, and white-collar crimes

10 S 5th St. #420
Minneapolis, MN 55402
612-333-7007
Michael Colich-Owner

United States Federal Defender's Office – Minneapolis, Minnesota
Law Clerk (2007-2009)
- Draft memoranda, sentencing guidelines and departures, cyber crimes
- Draft appellant briefs and post-conviction petitions to be filed in 8th Circuit Court of Appeals

300 S 4th St., #107
Minneapolis, MN 55415
Katherine Menendez (now Federal Judge Kate Menendez) – Manager
612-664-5140 (Judge Menendez Chamber #)
menendez_chambers@mnd.uscourts.gov

Dry Dock Bar & Lounge – Arnolds Park, Iowa
Waiter/Bartender
(May 2004 – August 2007) *
US 71, Arnolds Park, Iowa
712-332-9449
Jill Mitchell – Former Owner/Operator
*Summers only

b. Your periods of military service, if any, including active duty, reserves or other status. Give the date, branch of service, your rank or rating, and present status or discharge status.

NA

7. List the dates you were admitted to the bar of any state and any lapses or terminations of membership. Please explain the reason for any lapse or termination of membership.

State of Iowa – September 20, 2010 – Present;
State of Minnesota – February 8, 2011 – Present;
State of South Dakota – September 2020 – Present;
Northern District of Iowa (Federal) October 26, 2010 – Present;
Southern District of Iowa (Federal) September 24, 2014 – Present;
Western District of Wisconsin (Federal) August 27, 2017 – Present; and
Minnesota (Federal) October 7, 2019 – Present.

8. Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:

a. A description of your typical clients and the areas of the law in which you have focused, including the approximate percentage of time spent in each area of practice.

Initially I took a number of juvenile court (CINA) and delinquency appointment as well as custody disputes and dissolution of marriage actions. In addition, I defended numerous misdemeanor and low-level felony criminal offenses both privately and, on a court-appointed basis. My geographic practice area was very large including Kossuth, Palo Alto,

Emmet, Dickinson, Lyon, Clay, Buena Vista, O'Brien, and Osceola counties. Because this was the start of my legal career, I was not selective in the cases I took. *(2010-2012)*

As my practice grew so did my interests and ability to be more selective in case selection. I stopped taking CINA appointments and focused more on defending high level felony matters (homicides, large drug distribution schemes, sexual assaults, etc.) and state and federal litigation (i.e., plaintiff personal injury, institutional negligence, and §1983 claims). I maintain a limited family law practice (dissolution of marriages) and tend to gravitate toward dissolutions relating to equitable division of closely held business/farm assets as joint marital property. I often serve as a mediator in family law and custody cases and I strongly believe in that process, especially in family law. I participate as a collaborative law attorney as well. I still maintain some juvenile appointments but only work with delinquency cases. I find that work rewarding as I enjoy working with junior high and high school aged youth. *(2013-Present)*

In 2012 I started privately representing clients in Minnesota in criminal defense and family law matters (dissolution of marriages). In January of 2014 I accepted an offer of employment as a part-time Public Defender for the 5th District of Minnesota. I am assigned to Jackson County Minnesota with occasional appearances in Nobles, Martin, Faribault, Cottonwood, Watonwan, and Murray counties. In 2017 the nature of my cases changed inasmuch as I now handle only high-level felonies in these respective counties. In approximately 2015, I stopped taking court appointments in the State of Iowa unless they are a Class B felony or higher.

Since approximately 2015 my Iowa personal injury practice has grown significantly. In addition, I have started to add a Minnesota and South Dakota civil practice. At any given time, I would estimate representation of over a dozen personal injury plaintiffs in ongoing litigation. My personal injury clientele ranges from lower-level soft tissue cases to wrongful death suits involving high dollar damages.

My clients are as varied as my practice diverse—from representing an indigent defendant in a criminal matter, to a business executive in a white-collar offense and individuals and corporations in civil disputes. In my experience, my personal injury plaintiffs are an equal mix of blue collar and upper class. Often times my part-time Minnesota public defender role brings me in contact with a number of people of color and other ethnic backgrounds from lower socio-economic environments.

Although I have not analyzed the gender breakdown of my clientele, I perceive my representation of women and men to be about equal with perhaps more male clients on criminal defense matters, especially crimes of violence.

I enjoy having a diverse practice as it keeps the monotony out of my practice: every day is different. I believe it has also equipped me well to serve as a District Court judge of general jurisdiction.

b. The approximate percentage of your practice that has been in areas other than appearance before courts or other tribunals and a description of the nature of that practice.

Although the subject matter and focus of my practice has changed over the years, I would estimate that since the start of my practice in 2010 I have appeared in a courtroom at least one day every week. Since approximately 2014 I would estimate that I am in a courtroom at least three days per week. I would estimate that I have been averaging, at a minimum, a trial (jury or bench/civil or criminal) every month if not twice per month. With confidence I can assert that the number of days I am in a courtroom far outnumber my "desk days". Because I regularly appear in eight to nine counties in two states, I very often will meet with clients before the law office opens at 8 a.m. or stay well past 5 p.m. so as to accommodate my court calendar and unavailability during regular daytime hours. Given the current COVID-19 pandemic the above numbers have come to an absolute halt. Although I conduct numerous Zoom or remote hearings, jury trials have been put on hold over the last year.

c. The approximate percentage of your practice that involved litigation in court or other tribunals.

100% of my practice is devoted to litigation in all jurisdictions described above. On occasion I will assist a friend or family member draft a simple will or form a business entity. I have also provided legal counsel to non-profit organizations.

Federal Courts—10% (these cases tend to take more time than my state cases and therefore, by necessity, are not as frequent);

State Courts—85%

Administrative—5% (these cases tend to be DL Revocation hearings, professional licensing matters, and DHS appeals)

d. The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.

Civil—50%

Criminal—45%

Administrative—5%

e. The approximate number of cases or contested matters you tried (rather than settled) in the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel, and whether the matter was tried to a jury or directly to the court or other tribunal. If desired, you may also provide separate data for experience beyond the last 10 years.

My office does not keep precise records of the information requested. However, I would estimate that in the last ten years I have tried over 20 jury trials to verdict and more than

200 contested matters. I have served as lead counsel on almost all cases. I have been chief/sole legal counsel in every jury trial I have tried. There have been a few cases that involved voluminous discovery, complex facts, multiple parties, and novel legal issues whereby I have worked with another attorney.

f. The approximate number of appeals in which you participated within the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel. If desired, you may also provide separate data for experience beyond the last 10 years.

I would estimate I have appealed approximately 20 cases in the past 10 years. Of those 20 I would estimate that I have served as chief counsel in 7 cases.

Some of my published cases are as follows:

State v. Louwrens, 792 N.W.2d 649 (Iowa 2010);
State v. Lowery, 876 N.W.2d 814 (Iowa Ct. App. 2015);
State v. Dahl, 874 N.W.2d 348 (Iowa 2016);
State v. Morse, 878 N.W.2d 499 (Minnesota 2016);
Ney v. Ney, 891 N.W.2d 446 (Iowa 2017);
State v. Russell, 897 N.W.2d 717 (Iowa 2017);
Reed v. Palmer, 906 F.3d 540 (7th Cir. 2018)

9. Describe your pro bono work over at least the past 10 years, including:

a. Approximate number of pro bono cases you've handled.
b. Average number of hours of pro bono service per year.
c. Types of pro bono cases.

I would estimate that I have handled approximately 50 pro bono cases over the last 10 years (approximately 5/year). I tend to select those cases on the subject matter and my "read of the situation". I often will take on cases if I feel that an individual is being taken advantage of without sufficient financial resources to hire counsel. Depending on the case, I would estimate I spend approximately 30 hours on each case for a total of 150 hours per year. The types of cases tend to be private TPR cases (parental abandonment), adoptions, guardianships/conservatorships, nonprofit organization, wills, and lower-level criminal cases.

10. If you have ever held judicial office or served in a quasi-judicial position: NA

a. Describe the details, including the title of the position, the courts or other tribunals involved, the method of selection, the periods of service, and a description of the jurisdiction of each of court or tribunal.
b. List any cases in which your decision was reversed by a court or other reviewing entity. For each case, include a citation for your reversed opinion and the reviewing entity's or court's opinion and attach a copy of each opinion.

c. List any case in which you wrote a significant opinion on federal or state constitutional issues. For each case, include a citation for your opinion and any reviewing entity's or court's opinion and attach a copy of each opinion.

11. If you have been subject to the reporting requirements of Court Rule 22.10: NA

a. State the number of times you have failed to file timely rule 22.10 reports.
b. State the number of matters, along with an explanation of the delay, that you have taken under advisement for longer than:

i. 120 days.
ii. 180 days.
iii. 240 days.
iv. One year.

12. Describe at least three of the most significant legal matters in which you have participated as an attorney or presided over as a judge or other impartial decision maker. If they were litigated matters, give the citation if available. For each matter please state the following:
a. Title of the case and venue,
b. A brief summary of the substance of each matter,
c. A succinct statement of what you believe to be the significance of it,
d. The name of the party you represented, if applicable,
e. The nature of your participation in the case,
f. Dates of your involvement,
g. The outcome of the case,
h. Name(s) and address(es) [city, state] of co-counsel (if any),
i. Name(s) of counsel for opposing parties in the case, and
j. Name of the judge before whom you tried the case, if applicable.

(1)

Sagez, et. al. v. Global Agriculture Investments, L.L.C., et. al., 3:11-CV-03059-DEO

Sagez, et. al. v. Global Agriculture Investments, et. al., was a complex multi-million-dollar civil fraud (ponzi scheme) case that was filed in Federal Court in the Northern District of Iowa. I represented thirty-six (36) plaintiffs and sued nine (9) defendants. The lawsuit was filed on November 8, 2011 in a seventy-seven (77) page twelve (12) count complaint.

In early summer of 2011, a number of local farmers and businessmen approached me with concerns relating to their significant financial investments in a Brazilian farming operation (Global Agriculture Investments, LLC). Upon further inquiry and retention of a financial forensic investigative firm, it became apparent that fraud and misappropriation of investor monies had occurred.

I drafted the complaint and eventually brought co-counsel, Thomas Reavely, to assist in my representation of the plaintiffs given the large-scale nature of the litigation. After years of protracted discovery and litigation, a confidential settlement was reached in April of 2017 and the matter was dismissed. The matter was significant in not only the scope of the fraud but the number of people effected. Moreover, the complexity of the case was, to this day, one of the most difficult cases I have been involved with.

Originally the case was assigned to Federal Judge Donald O'Brien. However, during the course of the litigation Judge O'Brien passed away. Judge Mark W. Bennett was then assigned to preside over the matter.

Attorneys representing the defendants were as follows:

Robert O'Boyle, Strasburger and Price LLP, 720 Brazos Street, Suite 700, Austin, Texas and Scott Long of Scott Long, P.C. 1922 Ingersoll Avenue, Suite 104, Des Moines, Iowa for Global Agricultural Investments LLC and BOL, LLC;

Jeff W. Wright, Heidman Law Firm, LLC, 1128 Historic 4th Street, Sioux City, Iowa for Art. Hall and Artah Holdings, LLC;

Ethan Cohen, Ballard Spahr, LLP, 999 Peachtree Street, Suite 100, Atlanta, Georgia and Sean Moore, Brown Winick Graves Gross Baskerville Schoenebaum, 666 Grand Avenue, Suite 2000, Des Moines, Iowa for Tyler Bruch and Bruchside Inc.; and

Andrew Johnson, Bradshaw, Fowler, Proctor & Fairgrave, P.C., 801 Grand Avenue, Suite 3700, Des Moines, Iowa for Popular Securities Inc.

(2)

Laera Reed v. John Ourada, et. al., 3:17-CV-00590-BBC

Laera Reed came to me as an Emmet County court appointed juvenile delinquency in the late Spring of 2015. Ms. Reed had been terminated from Forest Ridge shelter placement due to her assaultive behaviors. Prior to including this case in this application, I contacted Ms. Reed and requested her permission to include her story and its details in my application. She graciously agreed. District Associate Judge Gales had contacted me as Laera's previous attorney could no longer represent her. To be sure, Laera could be difficult at times. By the time I was appointed to represent Laera she was 16 years old.

Laera wanted to return to Clarinda Academy in southern Iowa. She had previously attended Clarinda and was successfully discharged from the program. The State objected and requested that she needed a higher level of care than what Clarinda Academy could

provide and needed the most restrictive juvenile placement possible: the girls state training school. However, the Iowa girls state training school in Toledo, Iowa had been shut down years earlier for, among other things, excessive use of isolation of youth. Thus, the State of Iowa had contracted with the State of Wisconsin (for $301 per girl per day) to "fill-in" as the state training school and provide that level of locked residential placement for Iowa's most troubled girls. I was all too familiar with the Iowa girls home in Toledo, Iowa as I had represented a past youth at the facility against the State for excessive use of isolation (*see Jessica Turner v. Charles Palmer, et. al.,* 1:14-CV-0024-JEG-HCA).

Over Laera's objections, in June of 2015, she was sent to Copper Lake girls state training school located in Irma, Wisconsin. During the course of the next year it became apparent that Copper Lake was in fact, worse than Toledo, Iowa. I traveled to Copper Lake and conducted an investigation as Laera's Guardian ad Litem and furnished a report to the court. I include my GAL report to the Court as one of my writing samples. Additionally, I provide such report with the permission of Ms. Reed. Eventually Laera was released from Copper Lake and soon thereafter I filed a federal lawsuit against both the State of Iowa and State of Wisconsin in the United States District Court for the Western District of Wisconsin. Dozens of depositions were taken; thousands of documents in discovery sought, received, and reviewed; a motion for summary judgement which was appealed to the 7th Circuit Court of Appeals (and successfully won); and eventually, a settlement with both the State of Wisconsin and the State of Iowa in excess of $4.2 million dollars. To be clear, when using the term "isolation", 16-year-old Laera Reed spent anywhere from 22-23 hours per day in a concrete jail cell for months at a time with little to no interaction with any other humans.

I believe the case to be significant in that it was and still is the highest settlement both the State of Iowa and the State of Wisconsin has ever made for excessive use of juvenile isolation. The monetary amount of settlement is a reflection of the degree of egregiousness of the facilities' conduct. The lawsuit provided accountability for the abuses that had occurred at the facility and was but one of many catalysts that led to a number of reforms in juvenile care and justice (i.e. trauma informed care and compliance with national standards) on a statewide level. From a more practical perspective, the client was able to purchase a home through an established trust which provided permanency and stability in her life—something she had not had up to that point and desperately needed. Most poignantly, while being abused at Copper Lake Ms. Reed was left unheard and unattended. By the time the litigation ended Ms. Reed certainly was heard.

Counsel for the State of Wisconsin was Samuel C. Hall, Jr. with Crivello Carson located at 710 North Plankinton Avenue, Suite 500, Milwaukee, Wisconsin. Counsel for the State of Iowa was Gretchen Witte Kraemer, Hoover State Office Bldg., 2nd Floor, Des Moines, Iowa. The Judge assigned to the case was Senior U.S. District Court Judge Barbra Crabb.

(3)

A Termination of Parental Rights Matter

In my resume I have referenced published cases heard by the Supreme Courts of Iowa, Minnesota, and the federal 7th Circuit Court of Appeals. However, I would like to include this matter as one of my three cases not because it necessarily had great jurisprudential import or resolved an issue of first impression, but because of the impact the case had on me personally.

I represented a single mother of five children. Not only did I lose, but I lost in almost every way imaginable. Although numerous appellate decisions were published in the matter describing in detail the same information I will provide here, I would nevertheless prefer to not disclose the specific names or case caption. If further details with a case caption are needed, I would be happy to provide such in a confidential fashion to the commission.

The case originated in O'Brien County and was at the onset of my legal practice. Out of the hundreds of cases I have handled since, this case, to this day, stands as one of the most difficult cases (and resolutions) I have had to stomach. When I think of the case I am filled with sorrow. This has been all the more true as I have had children of my own and watched them develop; experiencing the abiding bond, love, and affection they have for me and I them.

In June of 2010 a young mother came to the attention of the Iowa Department of Human Services due to an allegation of lack of appropriate supervision of her five children. The mother was living by herself in Iowa. Five of the children were of very young ages ranging from newborn to age seven. The children were all boys and were very active and precocious.

At only the age of thirteen the mother had been in a serious motor vehicle accident and had suffered a traumatic brain injury as a result. Her affection/bond with her children was strong. Although she desired to do well and tried hard, she simply did not have the mental capacity to care for all of the children by herself. As was found out over the pendency of the case she was incapable of integrating the skills necessary to safely supervise all of the children at the same time because of her closed head injury. She had no family in the area that was willing or able to help. She had no support. The children's father lived in western Nebraska and for various reasons did not come to Iowa to help her.

Tragically, after two appeals to the Iowa Court of Appeals and five different multi-day contested evidentiary hearings, her parental rights were terminated to four of the oldest boys (occurring in late 2012). The termination of parental rights trial itself lasted five full days. The newborn was allowed to remain with her after a number of contested hearings. Over the State and GAL's objections, the court found that with just one child she could

adequately provide a safe environment for the youngest child. The case had been pending for so long that by the time case closure had occurred the newborn was preschool age.

This case had a profound impact on me. It taught me patience in my interactions with clients. I would provide advice and instruction to the mother but because of her limitations she would either not remember or misunderstand most of it. Most of all, I learned firsthand that no amount of skill or empathy could achieve for this mother what I wanted most: to avoid the unbreakable pain of not only losing one child, but four.

I fought the State at every stage of the litigation but despite my best efforts in the courtroom, I could not create facts that did not exist. I would like to say that the boys ended up in loving foster homes and are now thriving. But, upon information and belief, this is not the case. My understanding is since the mother's termination of rights the boys have been moved repeatedly and have been separated. It has been said that there is no word in the English lexicon to describe a parent's loss of a child because it is unnatural and an abomination. Although the boys are alive; they are indeed dead to their natural mother. She has no connection to them whatsoever. I try not to dwell too much on whether or not the outcome could have been different if the facts were different. I do take heart in the fact that I steadfastly believe I worked as hard as I could have worked on her case. To date, I do not believe I have ever poured so much of myself into a case.

I personally observed and experienced this mother's grief. I grieved with her. As an advocate I did not have to make the decision the judge had to make. If given the honor to sit on the bench, this case has taught me that even when the law and facts plainly justify a certain result: the decision ordering the result is no less easy. The mother taught me that a lawyer should not be numb, they should feel as much as they think. Rendering judgements that dramatically affect people's lives is a responsibility that should be taken with great sobriety, humility, and compassion.

13. Describe how your non-litigation legal experience, if any, would enhance your ability to serve as a judge.

My entire practice has been centered around litigation. However, I firmly believe that mediation and alternative dispute resolution in family law cases (child custody most especially) is vital. While litigation may solve some problems, healing a family after its rupture tends to not be one area well suited to traditional litigation. Children have love and affection for both parents. Parenting time disputes and preparing a family to effectively co-parent is not well achieved by cross examining a parent about how often he/she helped clean the kitchen after dinner. Or, who did a better job bathing and putting pjs on the kids. Certainly, court intervention in family law disputes is needed for various reasons. However, on a whole, I very much believe that a creative and wholistic approach to resolving child custody matters is not only more practical, but less traumatic for the family. My experience as a mediator and collaborative law attorney would serve me well if appointed inasmuch as I not only understand how mediation works; but, would encourage its use as is appropriate to help resolve cases.

14. If you have ever held public office or have you ever been a candidate for public office, describe the public office held or sought, the location of the public office, and the dates of service. NA

15. If you are currently an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization other than a law practice, provide the following information about your position(s) and title(s):

a. Name of business / organization.
b. Your title.
c. Your duties.
d. Dates of involvement.

I am a partner at Sandy Law Firm, P.C. I serve as Vice President on the Board of Directors of "Sandy Sells Okoboji Inc." Sandy Sells Okoboji is a "s" corporation that my wife has set up relating to her real estate business.

Recently, the citizens of Dickinson County elected me to the Avera Lakes Regional Hospital Board of Trustees. I also serve on the board of directors for the Avera Lakes Regional Healthcare Foundation. Rural delivery of healthcare is something that I have a passion for—especially for young underprivileged children.

Other than the above, I have not served as an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization.

16. List all bar associations and legal- or judicial-related committees or groups of which you are or have been a member and give the titles and dates of any offices that you held in those groups.

Iowa Supreme Court Grievance Commission
Member (2020-present)

Iowa State Bar Association—Criminal Law Section
Chairman/President (2017-2020)
◆ Coordinate hundreds of criminal law attorneys (prosecutors and defense) in the State of Iowa in platforming legislative positions, continuing legal education programming, and providing guidance to the Board of Governors in matters relating to criminal law.

Iowa State Bar Association—Criminal Law Section
Appointed Board Member (2015-2017)

International Academy of Collaborative Professionals (IACP)
Member (2014-present)

Minnesota Association of Criminal Defense Lawyers (MACDL)
Member (2011-present)

DUI Defense Lawyers Association (DUIDLA)

Founding Member (2014-present)

National College of DUI Defense
Member (2014-present)

National Association of Criminal Defense Lawyers (NACDL)
Member (2016-present)

Iowa Association for Justice (IAJ) (formerly the trial lawyers association)
Member (2018-present)

Public Employment Relations Board (PERB)
Mediator (2011-present)

Iowa State Bar Association
Member of Litigation and Criminal Sections (2010-present)

Dickinson County Bar Association
President (2017-present)
Member (2010-present)

South Dakota State Bar Association
Member (2020-present)

Minnesota State Bar Association
Member (2011-present)

17. List all other professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed above, to which you have participated, since graduation from law school. Provide dates of membership or participation and indicate any office you held. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings.

Avera Lakes Regional Hospital—Spirit Lake, Iowa
Board of Trustees (2021-present)

Lakes Regional Healthcare Foundation—Spirit Lake, Iowa
Member of the Board of Directors (2014-present)

St. Mary's Catholic Church—Spirit Lake, Iowa
Instructor (2010-present)
- 10th Grade Confirmation

Meals on Wheels—Spirit Lake, Iowa
Volunteer (2010-present)
- Delivery of meals to local homebound elderly and or infirm

Wills for Heroes—Southwest Minnesota
Volunteer (2010-present)
- Assist law enforcement and first responders in the drafting of their wills pro bono http://www.willsforheroes.org/

Wounded Warrior Project (WWP)—Twin Cities Metro, Minnesota
President and Coordinator of the Minneapolis Chapter (2009-2010)

Knights of Columbus—Spirit Lake, Iowa
1st Degree Member (2003-2006)
2nd and 3rd Degree Member (2006-2010)
Legal Advocate and 3rd Degree Member (2010-present)

St. Phillip's After School Program—North Minneapolis, Minnesota
*Volunteer (*2003-2007)
- Mentor to inner city male minorities

The Federalist Society
Member (2007-2010 and 2019-Present)

The Society of St. Thomas More
Member (2007-Present)

Noon Kiwanis—Spirit Lake, Iowa
Member (2010-2015)

St. Thomas School of Law Judiciary Committee—Minneapolis, Minnesota
Member (2008-2010)
- One of three students selected to hear and decide student ethical violations

St. Thomas School of Law Criminal Law Association—Minneapolis, Minnesota
President (2009-2010)
- Plan, promote, and organize meetings and events

University of St. Thomas Delta Epsilon Sigma —St. Paul, Minnesota
Member (2003-2007)
- National Scholastic Honor Society

University of St. Thomas Tommies for Life —St. Paul, Minnesota
President (2006-2007); *Member* (2003-2006)
- Student campus pro-life organization

18. If you have held judicial office, list at least three opinions that best reflect your approach to writing and deciding cases. For each case, include a brief explanation as to why you selected the opinion and a citation for your opinion and any reviewing entity's or court's opinion. If either opinion is not publicly available (i.e., available on Westlaw or a public website other than the court's electronic filing system), please attach a copy of the opinion.

NA.

19. If you have not held judicial office or served in a quasi-judicial position, provide at least three writing samples (brief, article, book, etc.) that reflect your work.

(1) *C.A. vs. Sibley-Ocheyedan CSD, et. al.*; LACV020030
(2) *In Interest of L.D.R.*, JVJV002369
(3) *Brockshus v. Brockshus*, CDCD000870
(4) *State of Iowa v. Jason Watson*, FECR011292

OTHER INFORMATION

20. If any member of the District Judicial Nominating Commission is your spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister, state the Commissioner's name and his or her familial relationship with you.

NA

21. If any member of the District Judicial Nominating Commission is a current law partner or business partner, state the Commissioner's name and describe his or her professional relationship with you.

NA

22. List the titles, publishers, and dates of books, articles, blog posts, letters to the editor, editorial pieces, or other published material you have written or edited.

Conservative Social Justice and the Limits of the Free Market, 3 U. ST. THOMAS J.L. & PUB. POL'Y 110 (2009).

An Interview with Senator Grassley, 5(2) U. ST. THOMAS J.L. & PUB. POL'Y 89 (2011).

23. List all speeches, talks, or other public presentations that you have delivered for at least the last ten years, including the title of the presentation or a brief summary of the subject matter of the presentation, the group to whom the presentation was delivered, and the date of the presentation.

Indiana CLE Foundation (ICLEF)-Indianapolis, Indiana
Presenter (2021)
- Impaired Driving 101 Seminar
- *"Cross Examination of SFST Officer and DWI Pre-trial Discovery"*

Iowa State Bar Association Annual Criminal Law CLE-Webinar
Presenter (2019)
- *"Plowing your field with their expert"* – Effective use of Forensic Experts

Iowa State Bar Association Annual Criminal Law CLE-Des Moines, Iowa
Presenter (2018)
- Incompetency and Conflicts of Interest

Minnesota Public Defender Annual CLE-Mankato, Minnesota
Presenter (2017)
- Addressing Implicit Bias in Jury Selection

Iowa State Bar Association Annual Criminal Law CLE- Des Moines, Iowa
Presenter (2017)
- Introduction to Forensic Metrology

93rd Annual Lawyers Chautauqua Conference-Okoboji, Iowa
Presenter (2016)
- Enforcement of Mediation Agreements

Iowa State Bar Association Annual Criminal Law CLE-Des Moines, Iowa
Presenter (2016)
- Effective use of a Private Investigator

Minnesota Family Law Institute Annual CLE-St. Paul, Minnesota
Presenter (2012)
- Cross Jurisdictional Family Law Disputes

24. List all the social media applications (e.g., Facebook, Twitter, Snapchat, Instagram, LinkedIn) that you have used in the past five years and your account name or other identifying information (excluding passwords) for each account.

Facebook with the name "John Mandel Sandy".

25. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.

2020 Iowa Great Plains Rising Star (top 2.5% of attorneys under 40) *Super Lawyers Magazine*

2020 National Trial Lawyers Top 100 (top 100 civil plaintiff's attorney in the State of Iowa)

2010 University of St. Thomas Mission Award: Scholarly Engagement & Societal Reform
https://www.stthomas.edu/law/about/missionawards/

I received the above award for my work as Editor-in-Chief of the Journal of Law and Public Policy as it related to the Journal publication on the Armenian Genocide and the related symposium. In addition, the Journal published a volume on Intelligent Design and the Constitution. While Editor-in-Chief, I personally helped secure over $30,000 in funding and published three volumes (more than any previous Editor-in-Chief) in one year.

While in law school, I received Dean's Honors for finishing in the top 10% of my class. Additionally, I received the top Evidence score in my law school class and was selected to be the Editor-in-Chief of the University of St. Thomas Journal of Law and Public Policy by both my peers and professors.

I graduated *cum laude* from the University of St. Thomas and received Bachelor of Arts degrees in Philosophy and Catholic Studies.

26. Provide the names and telephone numbers of at least five people who would be able to comment on your qualifications to serve in judicial office. Briefly state the nature of your relationship with each person.

(1) **Amy Sievers** is employed at the Iowa DOT. Among other things, she is in charge of the Iowa DOT's educational programming to warn area teens about the disastrous effects of drinking and driving and distracted driving. I have worked with her for the past 11 years in helping to organize and implement the program "Power of Choice" at local area schools. In addition to participating in the program every year for the past 11 years, I assist in sponsorship and fundraising efforts so as to sustain the program.
712-261-0218

(2) **Justice Gordon Moore, III** serves as a Minnesota Supreme Court Justice. Previously he served as a District Court judge sitting in Nobles County Minnesota (Worthington). I appeared in front of Justice Moore regularly.
651-297-7811

(3) **The Honorable Alan T. Heavens** is a District Court Judge in the 1st judicial district. Judge Heavens and I were close friends and classmates while attending law school. We served together on the Journal of Law and Public Policy and attended each other's weddings. To this day I consider Judge Heavens a close personal friend.
563-245-2204

(4) **The Honorable Darci Bentz** is a judge I appear in front of *at least* once per week in Jackson, Minnesota.
507-847-4400

(5) **The Honorable John Flynn** is a newly appointed District Court Judge in the 2nd judicial district. Judge Flynn and I shared similar practice areas and would often collaborate on various matters.
515-433-0561

(6) **The Honorable Carl J. Petersen** is a District Court Judge in 3A and a judge whom I regularly appear in front of. He is familiar with my work.
712-336-1138

(7) **The Honorable Charles Borth** is a District Court Judge in 3A and a judge whom I regularly appear in front of. He is familiar with my work.
712-262-4335

(8) **The Honorable Coleman J. McAllister** is a District Court Judge in 5C. Prior to Judge McAllister's appointment to the bench I had a number of cases against him; both as the former Sioux County Attorney as well as the Assistant Attorney General assigned to the violent crimes trial team. He is someone who is familiar with my practice and work.
515-286-3772

(9) **Reverend Brian C. Hughes** is a Catholic priest who has baptized my children and married my wife and I. He was a former vocations director for the Diocese of Sioux City, Iowa and served in such role while I was in seminary formation. Further, he was a parish priest at St. Mary's Catholic Church in Spirit Lake (my lifelong parish) for a number of years.
712-251-9473

(10) **Douglas Hansen** is a now retired Emmet County Attorney with whom I have had a number of cases against.
712-209-0829

(11) **Kevin Stoos** is a litigation attorney from Sioux City who often defends insurance companies in personal injury litigation. Kevin has been my adversary in a number of cases. He is very familiar with my work.
(712) 389-1595

(12) **Scott Cutcher** is the managing attorney for the Minnesota Public Defender's Office for the entire 5th District and serves as the Chief Public Defender for the 5th District. He is my supervisor and very familiar with my work.
507-389-5138

(13) **Jon Martin** is a now retired Dickinson County Attorney with whom I have had a number of cases against.
712) 330-2607

(14) **Neven Mulholland** is a plaintiff personal injury attorney from Ft. Dodge, Iowa who has served as a mediator in a number of personal injury lawsuits I have handled. He is familiar with my work.
515-573-2181

27. Explain why you are seeking this judicial position.

I love Northwest Iowa. I love the law. It would be the privilege of my life to serve Northwest Iowans as a judge.

Northwest Iowa has provided much to me. It has provided me with an excellent education, a spiritual backbone, and a manner of integrity and humility that I try to take with me wherever I go. Servant leadership is important and has been instilled in me at a young age. While the ceiling of my income and flexibility in schedule may be significantly impacted by obtaining a judicial appointment, the fulfillment from the sense of service to my community would be immeasurable. I believe that my talents and experience have prepared me to serve in this role, and I would be honored to be given that opportunity.

28. Explain how your appointment would enhance the court.

First, I *work* tremendously hard in my law practice and I would bring that same tenacity to my work as a judge. I like to work. I always have and I believe that it shows in my work product and breadth of experience. A favorite educator of mine's favorite mantra was "organization is the key to success". I am an organized person and pride myself on such, especially in the courtroom. I timely return phone calls and emails. I am responsive to the court, opposing counsel, and my clientele. If an attorney cannot return a phone call in a timely manner how are we expected to trust them with anything else? Sometimes it is the small things that matter most and I get the small things right. If I am selected, District 3A would gain a judge who can hit the ground running.

Second, I believe that I have the *temperament* to treat all people with respect, patience, and compassion who would come before me. While I may not always agree with everyone, I have the ability to maintain civility in my interactions. It has been said that "the mark of an educated mind is the ability to entertain a thought without accepting it." I possess that ability. Next to the sanctuary of a church, the courtroom is the most sacred place in civil society. If given the honor to sit on the bench I would ensure that I would be courteous and respectful to all who would come before me while ensuring myself and others maintain proper respect for the courtroom.

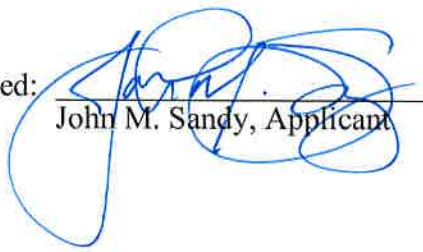
Third, I have spent the entirety of my professional life protecting the Constitution in the courtroom. My life as a judge would be no different. Ultimately, I would answer to the citizens of the great State of Iowa. It is the Iowa citizenry who give meaning to the words in their Constitution. It is "We the People" who have entered into a contract with the government to be governed. It is with this solemn understanding that I will be a judge not to impose my personal will but to do what the law requires based on the facts before me.

29. Provide any additional information that you believe the Commission or the Governor should know in considering your application.

I believe the legal profession suffers from a severe lack of humility. While I certainly am not always humble, it would be my sincere goal to try to bring a sense of humility to the bench. Service to others has always been very important to me. I think the legal profession needs more servant leaders as judges.

I have been married for more than twelve years to my wife, Elizabeth, a former Ames, Iowa resident. We have three sons (ages 6, 4, and 2) and one newborn daughter (7 months). My community is where my children will be educated and formed as responsible citizens. I believe that my service on the bench will leave my community in a better place than if I weren't on it. Doing the work of a judge is something I want to do. I desire it. And it would be the honor of a lifetime to be selected.

Date: 2-2-2021

Signed: 
John M. Sandy, Applicant

IN THE IOWA DISTRICT COURT IN AND FOR OSCEOLA COUNTY

C.A., by and through his mother, J.A., and J.A. individually **Plaintiff,** **vs.** **SIBLEY-OCHEYEDAN COMMUNITY SCHOOL DISTRICT; MEDIAPOLIS COMMUNITY SCHOOL DISTRICT; and SIOUX CITY COMMUNITY SCHOOL DISTRICT,** **Defendants.**	**CASE NO. LACV020030** **PLAINTIFFS FIRST AMENDED PETITION AND JURY DEMAND**

COMES NOW, the Plaintiff, J.A. individually and on behalf of C.A., and for their cause of action against Defendants, state as follows:

1. Plaintiff C.A. is a minor having no legally appointed guardian or conservator, and brings this action by J.A., Plaintiff's parent and next friend.
2. Defendant Sibley-Ocheyedan County Community School District (hereinafter "SOCSD") is a school district organized under the laws of the State of Iowa and located in Osceola County, Iowa.
3. Defendant Mediapolis Community School District (hereinafter "MCSD") is a school district organized under the laws of the State of Iowa and located in Des Moines County, Iowa.
4. Defendant Sioux City Community School District (hereinafter "SCCSD") is a school district organized under the laws of the State of Iowa and located in Woodbury County, Iowa.
5. All acts set forth in this petition at law occurred in Osceola, Woodbury, and Des Moines County, Iowa.

6. Plaintiff's damages satisfy the jurisdictional requirements necessary for maintaining an action in the Iowa District Court for Osceola County, Iowa.

STATEMENT OF FACTS

Plaintiff repleads the allegations asserted in paragraphs 1 through 6 as if fully set forth herein.

7. During the early morning hours or about Saturday October 3, 2015, ten-year-old SOCSD student, C.A., was found sleeping on a blow-up mattress with Mr. Kyle Ewinger ("Ewinger"), a SOCSD teacher and head varsity football coach, in Ewinger's classroom at SOCSD.
8. Also found in Ewinger's room on October 3, 2015 was a bottle of KY lubricant jelly, Viagra prescription pills prescribed to "Kyle Ewinger", and Vaseline lotion.
9. Upon further investigation, it was discovered C.A. had slept with Ewinger Thursday night October 1, 2015 and Friday night October 2, 2015 in Ewinger's SOCSD high school classroom on the aforementioned blow-up mattress.
10. C.A. also showered with Ewinger at the school on the morning of October 2, 2015.
11. While on SOCSD's property, C.A. was sexually assaulted by Mr. Ewinger.
12. Through Ewinger's position in the community and at the school he had been grooming C.A. for some time prior to October 3, 2015.
13. At a summer football camp in July of 2015, SOCSD Principal Cory Jenness, witnessed Ewinger pulling his mattress into the dorm room of two young boys. Mr. Jenness did not report such observation nor conduct any follow up with the same.

14. SOCSD special education teacher, Farrah Pohlen, reported that during the school year she had witnessed Ewinger have C.A. sit on his lap in the classroom.
15. Upon information and belief, Ms. Pohlen had significant boundary concerns between C.A. and Ewinger.
16. Ms. Pohlen also observed, what she would describe as a "hickey" on C.A.'s neck in the fall of 2015.
17. Ms. Pohlen observations were independently corroborated by another SOCSD employee.
18. Ms. Pohlen did not report such observations nor conduct any follow up with the same.
19. Upon information and belief, Ewinger, prior to coming to SOCSD, had similar conduct reported at the Mediapolis Community School District which was the basis of his departure from the Mediapolis Community School District.
20. While a teacher at the Mediapolis Community School District in 2004, Ewinger was found to be "humping" a minor Mediapolis Community School District student while the minor child sleeping.
21. Upon Mediapolis Community School Administration discovering such incident Ewinger was suspended and a "Settlement Agreement and Release Between Mediapolis Community School District and Kyle Ewinger" was executed by Ewinger and MCSD on the 30th of November 2004.
22. As part of the aforementioned agreement and release Ewinger would not commence litigation against MCSD in exchange for the MCSD providing a "neutral, non-negative letter that Ewinger may present to prospective employers". Further, Ewinger would "not be eligible to be rehired in any capacity with the District nor shall the District be required

to accept an application for employment from Ewinger". Finally, the MCSD agreed to "not file a claim with the Board of Educational Examiners".

23. It was also reported that while at the MCSD Ewinger would have young children sit on his lap and Ewinger had to be reprimanded for such occurrences.
24. Upon information and belief, Ewinger, prior to coming to SOCSD, had similar conduct while teaching at the Riverside Elementary School in Sioux City, Iowa.
25. In April of 2010 an incident occurred with a nine-year-old student at Riverside Elementary School wherein the young boy disclosed to his therapist that Ewinger had put a pill in his ice cream and told him it would help him sleep.
26. After digesting the pill in the ice cream Ewinger would lay with the boy while he slept and the young boy would report various hallucinations. (hereinafter "the ice cream incident")
27. The aforementioned occurrence was reported to the SCCSD.
28. The aforementioned occurrence was investigated by the Iowa DHS and the Sioux City and or Woodbury County law enforcement.
29. That same month, April of 2010, the SCCSD sent a letter to Kyle Ewinger informing him that due to "numerous budget challenges this year…" Mr. Ewinger would be displaced for the next school year.
30. One month later, May of 2010, Mr. Ewinger received a letter indicating that he would be transferred away from where the young boy was being educated, Riverside Elementary School, to Crescent Park Elementary School for the 2010-2011 school year.
31. Kyle Ewinger's SCCSD employment file made no mention of the "ice cream incident".

32. Kyle Ewinger's SCCSD employment file made no mention of any DHS/police investigation.
33. SCCSD never reported "the ice cream incident" or DHS/police investigation to the Iowa Board of Education.
34. SCCSD never reported "the ice cream incident" or DHS/police investigation to any of Kyle Ewinger's subsequent employers.
35. Mr. Ewinger is currently facing felony criminal charges Osceola County FECR006273 for the above referenced conduct. Mr. Ewinger is charged with 2nd Degree Sexual Assault, a Class B Felony, in violation of Iowa Code §709.3(1)(B).
36. Mr. Ewinger is currently facing a 1st Degree Felony Sexual Assault on Child charge in Douglas County, Nebraska.

CLAIMS AGAINST SOCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

37. On or about October 3, 2015, SOCSD was negligent and such negligence included, but was not limited to:
    a. failing to prevent C.A. from being sexually assaulted by one of its employees on school property; and
    b. failing to properly supervise employees and their activities; and
    c. failing to maintain a safe environment for students.

38. SOCSD was also negligent in failing to ensure that the employees in charge of and supervising and protecting the students were properly trained and adequately experienced.

39. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of C.A., who might be expected to be injured by such conduct.

40. SOCSD's negligence was a proximate cause of the injuries and damages sustained by C.A.

41. As a result of SOCSD's negligence, C.A. and J.A. has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

42. Accordingly, C.A. and J.A. are entitled to an award of all damages including but not limited to exemplary damages because of SOCSD's conduct.

WHEREFORE, C.A. and J.A. pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained, exemplary damages and interest as provided by law and the costs of this action.

COUNT II—NEGLIGENT HIRING

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

43. SOCSD was negligent in that it:

    a. was an employer of Ewinger; and

    b. knew, or in the exercise of ordinary care, should have known that Ewinger was unfit and posed a safety risk for the children that would be entrusted to him at the time of his hiring; and

c. that through the negligent hiring of Ewinger his unfitness and dangerous characteristics proximately caused C.A.'s and J.A.'s resulting injuries.

44. As a result of SOCSD's negligence, C.A. and J.A. have, and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

45. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of C.A. who might be expected to be injured by such conduct.

46. Accordingly, C.A. and J.A. are entitled to an award of all damages including but not limited to exemplary damages because of SOCSD's conduct.

WHEREFORE, C.A. and J.A. pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained, exemplary damages and interest as provided by law and the costs of this action.

COUNT III—NEGLIGENT RETENTION AND SUPERVISION

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

47. SOCSD was negligent in that it:

a. was an employer of Ewinger; and

b. knew, or in the exercise of ordinary care should have known, of Ewinger's unfitness and dangerous characteristics at the time he engaged in wrongful or tortious conduct; and

c. through the negligent supervision of Ewinger, his unfitness and dangerous characteristics proximately caused injuries to C.A.; and

48. As a result of SOCSD's negligence, C.A. and J.A. have and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.
49. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of C.A. who might be expected to be injured by such conduct.
50. Accordingly, C.A. and J.A. are entitled to an award of all damages including but not limited to exemplary damages because of SOCSD's conduct.

WHEREFORE, C.A. and J.A. pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained, exemplary damages and interest as provided by law and the costs of this action.

COUNT IV—FAILURE TO PROTECT FROM THIRD PARTY

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

51. On October 3, 2015, C.A. was injured and damaged by an employee of SOCSD by being sexually assaulted.
52. At that time, there existed between SOCSD and C.A., a special relationship that imposed on SOCSD a duty to control the conduct of their employees and agents.
53. SOCSD was negligent in failing to control the conduct of their employee who sexually assaulted C.A.
54. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of others who might be expected to be injured by such conduct.

55. Defendant's negligence was a proximate cause of C.A.'s and J.A.'s injuries and damages.

56. As a result of SOCSD's negligence, C.A. and J.A. have and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

57. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of C.A. who might be expected to be injured by such conduct.

58. Accordingly, C.A. and J.A. are entitled to an award of all damages including but not limited to exemplary damages because of SOCSD's conduct.

WHEREFORE, C.A. and J.A. pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained, exemplary damages and interest as provided by law and the costs of this action.

CLAIMS AGAINST MCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

59. On or about November 30, 2004, MCSD was negligent and such negligence included, but was not limited to:

    a) failing to prevent C.A. from being sexually assaulted by one of its former employees;

    b) failing to properly investigate and report any incidents regarding alleged improper behavior by Ewinger with students;

c) failing to notify future employers of Ewinger regarding his prior inappropriate behavior with students and;

d) failing to maintain a safe environment for students.

60. MCSD knowingly and willingly failed to perform measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of C.A., who might be expected to be injured by such conduct.

61. MCSD's negligence was a proximate cause of the injuries and damages sustained by C.A.

62. As a result of MCSD's negligence, C.A. and J.A. has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

63. Accordingly, C.A. and J.A. is entitled to an award of all damages including but not limited to exemplary damages because of MCSD's conduct.

WHEREFORE, C.A. and J.A. pray for judgment against MCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained, exemplary damages and interest as provided by law and the costs of this action.

CLAIMS AGAINST SCCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

64. On or about May 19, 2010, SCCSD was negligent and such negligence included, but was not limited to:

a) failing to prevent C.A. from being sexually assaulted by one of its former employees;

b) failing to properly investigate and report any incidents regarding alleged improper behavior by Ewinger with students;

c) failing to notify future employers of Ewinger regarding his prior inappropriate behavior with students and;

d) failing to maintain a safe environment for students.

65. SCCSD knowingly and willingly failed to perform measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of C.A., who might be expected to be injured by such conduct.

66. SCCSD's negligence was a proximate cause of the injuries and damages sustained by C.A.

67. As a result of SCCSD's negligence, C.A. and J.A. has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

68. Accordingly, C.A. and J.A. is entitled to an award of all damages including but not limited to exemplary damages because of SCCSD's conduct.

WHEREFORE, C.A. and J.A. pray for judgment against SCCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained, exemplary damages and interest as provided by law and the costs of this action.

JURY DEMAND

Plaintiffs hereby requests trial by jury for all claims and issues asserted herein.

Respectfully Submitted:

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Email: msease@kempsease.com

By: 
Matthew G. Sease AT0010484

ATTORNEYS FOR PLAINTIFF

IN THE IOWA JUVENILE DISTRICT COURT FOR EMMET COUNTY

* * * * *

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IN THE INTEREST OF: No. JVJV002369, JVJV002645
LAERA DENISE REED, :

A Child. : REPORT AND RECOMMENDATIONS

:

:

* * * * *

COMES NOW, John M. Sandy, Attorney for Laera Denise Reed, and presents the following report to the Court in regard to the hearing scheduled for February 18, 2016.

1. Communication with Persons of Interest:

DATE	PERSON AND PLACE in-person (P); telephone (T); email (E) or letter (L)
01/11/16	Laera Reed (T)
01/12/16	Dean Strang (Wisconsin Defense Attorney) (T)
01/12/16	Beth Rydberg (Disability Rights Iowa Investigator) (T)
01/13/16	Lori McAllister (Copper Lake Corrections Unit Supervisor) (T)
01/13/16	Christopher Liegel (Assistant Wisconsin AG) (T)
01/14/16	Nathan Kirsten (Disability Rights Iowa Attorney) (T)
01/14/16	Kathy Miller (Iowa Chief Juvenile PD-Des Moines) (T)
01/14/16	Hope Swanson (Disability Rights Wisconsin Intake Specialist) (T)
01/14/16	Christopher Liegel (Assistant Wisconsin AG) (L)
01/15/16	Phyllis Greenburger (Disability Rights Wisconsin Advocate) (T)
01/15/16	Brent Pattison (Drake Youth Law Center Director and Attorney) (E)
01/21/16	Nathan Kirsten (Disability Rights Iowa Attorney) (T)
02/03/16	Rochelle Scott (Mother of Juvenile) (P)
02/05/16	Wendy Peterson (Copper Lake School Deputy Superintendent) (P)
02/05/16	Lori McAllister (Copper Lake Corrections Unit Supervisor) (P)

02/05/16 Nathan Kirsten (Disability Rights Iowa Attorney) (P)

02/05/16 Phyllis Greenburger (Disability Rights Wisconsin Advocate (P)

02/05/16 Laera Reed (P)

02/08/16 Kristina DeBlanc (Juvenile's Copper Lake Mental Health Therapist) (T)

02/09/16 Julio Beron (Chief Legal Counsel for the Wisconsin Dept. of Corrections) (T)

02/09/16 Christopher Liegel (Assistant Wisconsin AG) (L)

02/09/16 Dr. Richard Nightengale, M.D. (Juvenile Psychiatrist at Orchard Place) (T)

02/09/16 Amy White (Orchard Place Admissions) (T)

02/09/16 Kristina DeBlanc (Juvenile's Copper Lake Mental Health Therapist) (T)

02/10/16 Shawn Olsen (Juvenile's JCO) (T)

02/10/16 Lori McAllister (Copper Lake Corrections Unit Supervisor) (T)

2. Documents Reviewed:

a. All Copper Lake DJC Conduct Reports;

b. All Copper Lake Progress Reports;

c. All Psychotropic Review Reports;

d. All Psychiatric Reports;

e. Photographs of Isolation Cells in Wells Safety Unit;

f. State of Iowa Contract Declaration with the State of Wisconsin;

g. Performance Based Standards (PbS)[1];

h. Wisconsin DOC Code §373-376, and §379[2];

i. Iowa Administrative Code §441 Chapters 115 and 103;

j. Daily Seclusion Log Report;

k. Clarinda Academy Denial Letter;

l. Internal Incident Complaint for Supervisor Hoff's Use of Force;

3. Procedural Posture

On the 2nd of April, 2015 the undersigned was substituted as attorney and guardian ad litem for Laera Reed (hereinafter "Reed"). On the 4th of June 2015 an uncontested adjudicatory

[1] http://pbstandards.org/about-us
[2] http://docs.legis.wisconsin.gov/code/admin_code/doc

hearing and contested dispositional hearing was held in JVJV002645. Reed desired a less restrictive placement at the Clarinda Academy where she had previously been successfully discharged. Clarinda Academy had indicated that they would accept her into their programming. Further, Reed argued that too little was known about the Wisconsin Girls State Training School (hereinafter, "Copper Lake") in Irma, Wisconsin and that sending her to such facility would be like playing "Russian Roulette"[3] with her placement. The State's position was that, given the severity of Reed's recent assault and significant residential placement history, Reed needed a "more restrictive" placement and the Girls State Training School was the most appropriate placement for Reed.[4] On January 14, 2014 the Iowa Girls State Training School (the Iowa Juvenile Home) in Toledo, Iowa closed its doors due to, among other things, abuse of isolation cells. Consequently, for $301 per day per girl, the State of Iowa contracted with the State of Wisconsin for use of Copper Lake. *See* Exhibit 1.

On the 4th of June 2015 the Juvenile Court adjudicated Reed a Child Delinquent for two counts of Assault with Injury, serious misdemeanors, in violation of Iowa Code Section 708.2(2). A second day was needed for the contested dispositional hearing and the same occurred on the 18th of June 2015. The Court ruled from the bench on the 18th of June 2015 and ordered Reed to be placed at Copper Lake in Irma, Wisconsin.

On the 18th of December 2015 a Review Hearing was held. Reed's position was that she should be released from Copper Lake as her mental health and behavior had actually worsened

[3] Russian roulette is a lethal game of chance in which a player places a single round in a revolver, spins the cylinder, places the muzzle against their head, and pulls the trigger. Because only one chamber is loaded, the player has a one in *x* chance of hitting the loaded chamber, where *x* is the number of chambers in the cylinder.

[4] The State further asserted that it was not the job of the State to give the court an exegesis into the programming and appropriateness of Copper Lake as that was the facility the State of Iowa (via Iowa DHS) has chosen to contract with.

since arriving at the facility in July of 2015. Given the lack of appropriate alternatives[5] the Court ordered Reed back to Copper Lake and on January 4, 2016 issued a Review Order with very specific findings and requests (including this report) to be provided to the Court by the next review hearing, February 18, 2016.

4. History of Copper Lake

Prior to 1994 the Wisconsin state juvenile institution for girls was located at in Delafield, Wisconsin and Lincoln Hills was a facility for juvenile boys. Governor Scott Walker assumed office on January 3, 2011. Shortly thereafter, June 1, 2011, Governor Walker's campaign promise to "cut costs" was manifested in that the students at the state juvenile institution for girls, Ethan Allen and Southern Oaks, were consolidated with Lincoln Hills. The girls were then fenced off from the rest of the campus and such enclosure is now "Copper Lake."[6] The girls at Copper Lake share administrators with Lincoln Hills as well as the educational facilities. The Lincoln Hills guards are cross trained to fill in at Copper Lake if needed. Copper Lake is considered a "type 1 secured juvenile correctional facility". Staff at Copper Lake made known to the undersigned that since the merger tensions have existed at the Lincoln Hills/Copper Lake campus.

Famously, Governor Walker also eradicated state employee's ability to collectively bargain. The de-unionization of state employees included the Wisconsin Juvenile DOC employees. According to attorneys who regularly work in and with the Wisconsin criminal justice system, including Dean Strang, the act of de-unionization catalyzed an exodus by well-

[5] Prior to arriving at Copper Lake Ms. Reed was not suicidal. Ironically, denial of admittance to Clarinda Academy had occurred because of Ms. Reed's new found mental health issues while at Copper Lake.
[6] Johnson, Mike. "Millions spent on improvements to Ethan Allen School." *Milwaukee Journal-Sentinel*. March 6, 2011. Retrieved on February 6, 2016.

trained and long employed juvenile correction employees. Since said exodus, Copper Lake has had a very high turn over rate of employees, which has had an ancillary effect of over worked and untrained staff: staff charged with the supervision and interaction with girls who have highly specialized behavioral and mental health needs; staff charged with making on the spot stressful decisions regarding use of force decisions and techniques; staff charged with having the maturity and training to know how and when to use appropriate verbal and non verbal behavioral modification interactions with immature and often explosive teenage girls.

Adding to the above complications is an obvious, but often times overlooked reality: Irma Wisconsin is very rural. Given the rural location of the school, Copper Lake generally draws its staff from a similar rural population in close geographic proximity to the school. The majority of the population at both Lincoln Hills and Copper Lake are minorities[7] who, almost exclusively, come from a lower socio-economic background. There exists a clash of cultures between the employees who staff the school and the juveniles placed at the school. Such clash certainly effects how the two groups communicate and understand each other. Good communication and understanding is vital to the effective delivery of trauma informed care. All of the above factors created an atmosphere and climate which led to the thunderstorm that descended upon Copper Lake on December 5th, 2015.

5. State and Federal Investigation

On December 5, 2015 at 6 a.m. in the morning two dozen state investigators abruptly arrived at the Lincoln Hills/Copper Lake School as part of a criminal probe into abuse of minors by staff and attempts to cover it up. The third shift was just coming off duty at the time

[7] A large number of juveniles at the school are from the Chicago and Milwaukee areas. For example, 18 of the 36 girls held at Copper Lake are from Milwaukee.

investigators arrived. Some workers were held at the facility for hours until they were interviewed. Staff from the first shift coming on duty were also interviewed. The staff that were on duty at the time were denied access to the Internet and their email and cell phone lines. Two investigators interviewed each staff member. The staffers were told they could refuse to talk to investigators but would be subpoenaed if they did not agree to the interviews at the facility. Forensic experts also downloaded video from the school's cameras around the facility.

The next day investigators interviewed the juveniles. There were and currently are 36 females at Copper Lake. Reed was one of the girls interviewed not once, but twice. During Reed's interview a narrative report was produced and photographs of both her lip and fingers were taken. Assistant Wisconsin Attorney General, Christopher Liegel is leading the investigation and John Doe criminal proceeding in Lincoln County Wisconsin.[8] The undersigned communicated with Mr. Liegel. Mr. Liegel confirmed that he in fact did have an investigative report of Ms. Reed. However, despite my formal request for the reports and photographs, Mr. Liegel indicated that he was prohibited from disseminating my client's investigative reports and photographs of her injuries. Upon information and belief it could be another year before the investigation is finally complete and indictments brought.

John Ourada, the school's superintendent, and Paul Westerhaus, the administrator of juvenile corrections for the state, left their jobs only days earlier. State officials made it clear their departures were related to the probe but declined to say more. Aside from the neglect and abuse itself, the undersigned is most troubled and concerned with the allegation that staff had

[8] The investigation is being conducted under the state's John Doe law, which allows prosecutors to compel people to testify and produce documents. The proceeding is being overseen by Lincoln County Circuit Judge Robert Russell. The John Doe probe in Lincoln County was launched October 22, 2015, one day before Governor Walker signed legislation limiting the use of those types of investigations. As far as the undersigned can understand, the John Doe proceeding operates much like a Grand Jury investigation.

actively concealed activities involving neglect and willfully destroyed or failed to file reports that would have brought these actions to the attention of management.

On January 15, 2016, Milwaukee County Chief Circuit Judge Maxine White visited the Copper Lake facility. After her visit she indicated that she "was unable to sleep for days". She indicated that the treatment of the youth at Copper Lake is "inhumane" and that "we have subjected them to harm." She is working with the Milwaukee district attorney's office to find alternative local placement for the youth "as fast as we responsibly can". Consequently, on February 4, 2016 the County of Milwaukee Wisconsin declared a state of emergency and passed a measure to release $500,000 in funding for alternative placement for its youth. Milwaukee County alone has over 140 boys at Lincoln Hills and 18 girls at Copper Lake. One girl from the State of Iowa was/is set to leave Copper Lake on the 9th of February 2016. There are currently four girls from the State of Iowa at Copper Lake: one being Ms. Reed.

6. Deputy Superintendent Wendy Peterson and Lori McAllister

On February 5, 2016 the undersigned travelled to Copper Lake School to meet with Ms. Reed, tour the Copper Lake facility, and meet with various school administrators and staff. Upon arrival the undersigned attempted to bring a cell phone into the facility, as I wanted to take photographs of the isolation cell Ms. Reed was confined to. Unfortunately, I was told that it was against the policies and procedures of the facility and that I would need to return to my vehicle and leave my cell phone. When I inquired if I could bring a tablet into the facility I was told "no electronic devices of any kind". The Deputy Superintendant of the school, Wendy Peterson, advised me that it was for "safety purposes". Prior to my departure I advised Ms. McAllister that

I would like photographs of the facility and, more specifically, a photograph of the isolation cell that I had the unfortunate opportunity to observe.

Wendy Peterson is now the Deputy Superintendent of the Lincoln Hills/Copper Lake school. Prior to that appointment, she served as the education director for the campus. I had arranged my visit with Ms. Lori McAllister, Copper Lake Corrections Unit Supervisor. Prior to my arrival I was assured of not only Ms. Peterson and Ms. McAllister's presence, but that of the acting superintendent, Wayne S. Olson. Unfortunately, Superintendent Olson was not present and "was in Madison for the day". Ms. McAllister was unsure why he was not present to meet with me.

I met with Ms. Peterson in her office for approximately forty-five minutes in the administrative building on campus. The discussion started very broad. I wanted to know what type of data collection capabilities the facility had. I was informed the facility uses a very out dated .dos operating system. So for example, the facility does not have the ability to provide large-scale aggregated analytical data such as what percentage of the youth are kept in isolation during a calendar year; how many actual hours of education are those in isolation receiving in a given quarter; etc. A frank conversation was then had about Performance-based Standards (hereinafter, "PbS").

PbS is a data-driven improvement model grounded in research that holds juvenile justice agencies, facilities and residential care providers to the highest standards for operations, programs and services. To be very clear, PbS is not just aspirational. PbS is, without a doubt, the universally accepted "gold standard" for how a juvenile correction facility should operate. It challenges facilities like Copper Lake to provide the most safe and healthy cultures and effective services that help young offenders return to the community and lead successful law-abiding

lives. PbS' national standards set expectations for the highest quality juvenile justice facility conditions, services and operations. However, for a facility to provide this type of optimal treatment it must be able to prove and be held accountable for what it does. Consequently, a data-driven improvement model provides facilities like Copper Lake a continuous process to identify, monitor, and improve outcomes for youths.[9]

The PbS data-driven improvement model is designed for juvenile correction, detention, and assessment. PbS offers each facility unique reports that allow for comparison with like facilities. However, in order to utilize a data-driven improvement model, you need: data. It became clear in my conference with Ms. Peterson, Copper Lake has no data.

Ms. Peterson tried to assuage my concerns and indicated that they are working really hard to meet PbS. She however indicated that given "the setback" things have really slowed them down from achieving their goals. Ms. Peterson clarified that the "setback" is the pending federal and state investigation. In essence, she indicated that they are doing all they can right now just to assure operational functionality. I inquired as to whether or not they even have the ability to tell me how many hours my client has spent in actual isolation. Two conflicting answers were given. Ms. Peterson told me not without actually pulling the daily log sheets and counting each sheet and each hour individually. Ms. McAllister clarified that she would be able to use a computer

[9] The PbS program for correction facilities provides more than 100 outcome measures. The outcome measures show how a facility's services and performance meet the PbS standards in safety, order, security, programming (education), health/mental health services, justice, reintegration and connection to family and social supports. The outcomes are derived from information collected from surveys:

- One administrative form to collect general information about the facility, population, procedures and staff;
- All incident reports filed during each of the data collection months to provide the facility with the ability to analyze the frequency and kinds of incidents that are occurring;
- A minimum random sample of 30 youth records to capture information about youths' experiences and services received during their time at the facility;
- A minimum random sample of 30 surveys of youths and staff to gather feedback about facility conditions, quality of life, staff-youth relationships and services;
- Surveys of all families of all youths leaving the facility to learn about the families' experiences with the facility, relationships with staff and ability to stay connected to their child; and
- Exit interviews of all youths released to provide a youth's perspective on his or her experience while at the facility, programming, staff and preparedness for leaving.

system to figure it out. Eventually Ms. McAllister did provide a summary and log of the amount of time Ms. Reed has spent in isolation which will be discussed further below.

The second general concern discussed during the conference with Ms. Peterson was the lack of appropriate documentation that I had received. I brought to her attention that on July 22, 2015 I had requested, via email, a number of materials including Copper Lake's written policies as it related to use of seclusion and deliberate self-injury treatment plan. *See* Exhibit 2. I indicated to Ms. Peterson that I received a phone call some time later in which I was told no such documents existed. At that time I inquired as to whether I could join in the sporadic treatment team meetings of my client via telephone. Originally I was told "attorneys were not allowed to participate". Eventually the matter was cleared up and I was able to participate.

The undersigned voiced frustration to Ms. Peterson that the two "progress reports" I had received were very scattered and difficult to decipher rudimentary details such as, "how many exact days did my client spend in an isolation cell this reporting period" and "how many hours per day was she allowed out of the isolation cell?" From the documentation itself, these answers were impossible to accurately obtain. More specific then that, I asked whether the facility even had a daily log of my client while in isolation to document when she was let out and let back in. I was assured by Ms. McAllister that such logs existed. I then asked to obtain a copy of the logs if they existed. Ms. McAllister confirmed that Ms. Reed, while in an isolation cell, per Copper Lake policy, was only let out for two hours per day. To be clear, that is 22 out of 24 hours per day Ms. Reed, while serving a "safety unit" sentence, was in *complete* isolation.

The undersigned then brought to attention the recent mention of use of body cams in the documentation I was receiving. Ms. Peterson confirmed that after the criminal investigation was launched on the facility, as of January 1, 2016, body cameras are now being utilized. The

undersigned requested to obtain a copy of any and all body cam footage involving my client, Ms. Reed. Again, I was told I would have to make a formal "records request" and then the request would be routed through Copper Lake's legal department.

Given my lack of ability to take photographs, I eventually asked Ms. McAllister if I could receive photographs of the facility including the isolation cells. I was told that I would have to make a formal "records request" and then the request would be routed through Copper Lake's legal department.[10] Upon my departure from the facility the undersigned sent an email to Ms. McAllister and then to Ms. Peterson requesting all of the above information as well as some other items that I will discuss in detail below. *See* Exhibit 3. I made clear that this Court would like to have that information prior to the February 18th review hearing and to please make best efforts to ensure its production prior to the hearing. To date I do not have the body camera documentation of the incidents involving Ms. Reed.

The third and most grievous concern I had discussed with Ms. Peterson was the use of isolation at the facility. I will write more about the use of isolation below and only describe the specifics of my conversation about the cells with Ms. Peterson. Originally, Ms. Peterson assured the undersigned that use of isolation is only implemented for "very serious" occurrences and again that they are looking to the PbS to help guide how they use isolation. She even went so far so as to reference President Obama's most recent ban on using solitary confinement in federal juvenile facilities. The President asserted that use of juvenile isolation cells leads to "devastating,

[10] In all my years of practice as a guardian ad litem for juveniles ordered to a residential facility, I have never been told that a simple request for documentation as to the whereabouts of my client be first routed through the legal department before they are produced. Again, given the allegations that documents were either willfully destroyed or staff failed to file reports, if my requested documentation is not received prior to the filing of this report or the court hearing, I would request a court order directing the documents production. I direct the Court to Section 1.3.1.8 of Exhibit 1 for its authority to issue such an order.

lasting psychological consequences."[11] Ms. Peterson specifically acknowledged what President Obama had said, that use of juvenile solitary confinement "has been linked to depression, alienation, withdrawal, a reduced ability to interact with others and the potential for violent behavior. Some studies indicate that it can worsen existing mental illnesses and even trigger new ones."[12]

Ms. Peterson was asked what she considered "very serious" and she responded "physical fighting". The undersigned asked if any girls would be put in isolation for self harm behaviors. Ms. Peterson indicated "no". However, Ms. McAllister later confided that girls are in fact put in isolation for self harm behaviors and indicated that Ms. Peterson mostly likely was not aware of this. The undersigned inquired as to how long one would spend in isolation when sentenced to an isolation cell. Ms. Peterson could not provide me specifics. However, Ms. Peterson acknowledged PbS protocol which indicates that any amount of time beyond 15 minutes is to be considered "isolation". She further acknowledged the voluminous academic literature relating to the devastating effect isolation can have on a youth's mental health. Although not named specifically, we both were referencing a September 2012 report produced by PbS entitled "Reducing Isolation and Room Confinement". *See* Exhibit 4. The report states:

> PbS standards are clear: isolating or confining a youth to her room should be used only to protect the youth from harming herself or others **and if used, should be brief and supervised.** Any time a youth is alone for 15 minutes or more is a reportable PbS event and is documented. PbS reports isolation, room confinement and segregation/special management unit data together to draw attention to practices that are inappropriate, ineffective and can have deadly consequences.[13]

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[11] On January 25, 2016, President Obama outlined his decision in an op-ed article published by The Washington Post adding the weight of the federal government to a growing movement among state prison administrators, who have begun sharply limiting or ending the use of solitary confinement.

[12] http://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html?_r=0

[13] As reported in the "Juvenile Suicide in Confinement: A National Survey" by Lindsay Hayes, half of the youths who committed suicide were confined in their rooms for punishment; more than half had a history of room confinement.

(emphasis added). The undersigned confronted Ms. Peterson with Ms. Reed's progress reports. Specifically, I informed her that from August 2015 to October 2015, by my count from the confusing and inadequate first progress report, Ms. Reed spent at least 34 days in isolation. The undersigned then confronted Ms. Peterson with the second progress report. Specifically, I informed her that from November 2015 to the present Ms. Reed spent an additional 30-40 days in isolation. Coincidentally, the day I arrived, February 5, 2016, just so happened to be the day they released Ms. Reed from her "isolation sentence". In response Ms. Peterson was quick to clarify that the "15 minute mark" is aspirational and something the facility is working its way to. She ensured that the Iowa attorney realize that the Wisconsin Statutes allow for more liberal use of isolation and confinement.

The undersigned responded that 15 minutes versus 22 hours per day is "not even in the ball park" of acceptable use of isolation. I ensured that Ms. Peterson understood that prior to Ms. Reed's arrival at Copper Lake she had not been exhibiting any suicidal ideations. The undersigned clearly communicated that use of isolation cells has created a condition in Ms. Reed and is making it worse. Inquiry was made as to whether or not Copper Lake punishes self-harm behaviors with a sentence of isolation. Ms. Peterson indicated that they do not. The undersigned again confronted Ms. Peterson with documentation of Ms. Reed which cites to "self-harm and disfigurement" as a basis for a sentence of isolation. Ms. Peterson did not have a response other then indicating that she did not know what Ms. Reed's specific reports say as she oversee lots of youth. The undersigned informed Ms. Peterson that only 1 out of the many isolation sentences Ms. Reed has received related to a physical altercation with another juvenile. All the other incidents that lead to her isolation were: self-harm behaviors, disobeying orders, property

damage, disruptive conduct, and creating an unsanitary condition (urinating herself). Ms. Peterson had no response.

The meeting ended and Ms. McAllister provided a tour of the school. The undersigned was then taken to the Copper Lake enclosure, which consisted of two "cottages". *See* Exhibit 5. The undersigned would like to make known that Ms. McAllister was very forthright with her answers and incredibly hospitable. The undersigned found her to be warm and very pleasant to interact with.

7. Education and Daily Routine When Not in Isolation

The undersigned found the school itself to be appropriate. The athletic facilities were updated, classrooms large and clean and, in all other ways, the school appeared to look like any other school. The boys and girls do not comingle or interact. There exists a hall within school where the girls attend class. When in general population, Ms. Reed attends four forty-five minute classes Monday through Friday. Core curriculum is provided including physical education. The undersigned read an article specifically mentioning Ms. Peterson as education director.[14] Former educators at the facility have indicated that Ms. Peterson and Sue Holt (teacher supervisor) told teachers to focus on "quantity (classroom time) over quality". They allegedly advised showing "Hollywood movies in class" according to one former teacher. Given the significant lack of education Reed has received because of the time she has served in isolation, the undersigned does not have sufficient information of the sufficiency of education Reed is receiving when she happens to be in general population. Again, coincidentally, when the undersigned was visiting

[14] http://www.jsonline.com/news/statepolitics/some-lincoln-hill-juveniles-suffered-broken-arms-wrists-b99632019z1-361464821.html

the campus on Friday, school was not in session. When I asked Ms. McAllister why, she did not know. No meals are served at the school for the girls or boys. They eat their meals in their respective cottages (breakfast, lunch, and dinner).

The "King" cottage is where Ms. Reed would normally be housed when in general population. It consists of two wings and a common area in the middle where the cafeteria, surveillance/security pod, and restrooms/showers are located. The undersigned found the cells where the juveniles slept to be very small. The undersigned found the commons area to be very small. Only one female may use the bathroom at a time. One of the more disturbing concerns I had was the doorless opening from the security pod to the restroom/showers. Men work in the cottage. While I was visiting I counted four staff members in the pod. Three of the four staff members were men. To confirm information I had been provided I peered into the restrooms. I could clearly see a wall mirror hanging in the bathroom corner visible to the men in the pod. The mirror revealed inside the urinals and shower. While I am uncertain as to the legal procedures relating to men having the ability to observe naked teenage girls, I feel it inappropriate.

It was confirmed through Ms. McAllister that, at times, the youth may only communicate with legal counsel through written letters which are then scanned, presumably read, and then electronically sent to legal counsel. Further, information was provided that phone calls to legal counsel could not be made outside the presence of a staff member. Following the undersigned's visit with Ms. Reed I was asked "what we talked about". Again, given the allegation of document manipulation/destruction and lack of overall transparency, the undersigned finds these types of incidences disturbing.

The undersigned insisted on seeing Reed's cell when she is in general population. I observed there to be two or three James Patterson books in her cell. I commented on how much I

enjoy his books and was impressed that she could read at that level. I was disturbed that the cells the youth are in while in King common population are equipped with a steel electronically locked prison cell door. If a youth wants out they are to "buzz" to be released. Further, the youth are only allowed to use the restroom once every two hours. This is a concern of mine as I know from personal experience that there are many times this is simply not possible. Further, Ms. Reed has had numerous conduct violations for urinating in her room (both in and out of isolation) thus creating "unsanitary conditions". Based on the undersigned's review of the reports it is obvious that staff views Ms. Reeds self urination as attention seeking conduct. I am not convinced of the same.

The schedule in the King Unit when school is not in session is that the juveniles are to remained locked in their cells for one hour, then out for one hour, then in for one hour, then out for one hour, etc. According to PbS, this is a form of reportable isolation. According to Copper Lake, this is just part of the schedule, not punishment. While on the King Unit there was no school and the girls in general population were locked in their rooms. The undersigned has concerns that while this schedule may be labeled "structured activity" it is really a reflection of either lazy correctional officers or a low-staffed facility. Either way, the undersigned finds it inappropriate if the goal of the facility is truly to provide trauma informed care. The same could be said for the two-hour bathroom rule and the frequency and duration with which isolation is used.

8. "Safety Unit" – Isolation Cells

The use of isolation on Ms. Reed is one of the most tragic occurrences the undersigned has observed. A common house dog is kept in better conditions then Ms. Reed. The second cottage in Copper Lake, designed like the King Cottage, is the "Wells" Cottage. One wing of the

Wells cottage operates as a general population wing similar to the two wings in the King cottage. However, the other wing in the Wells cottage is a series of approximately 9 rooms. The rooms are no bigger then 7'x 10'. Only two of the rooms have toilets in them. Ms. Reed has not had the distinct "pleasure" of staying in one of the two rooms with toilets. The floors of the rooms are concrete and one thin plastic mat is on the concrete floor to lie on. One blanket is provided. The room I observed had yellow urine stains on the floor/wall. In the bottom corner of the small room I observed, next to the thin mat on the concrete floor, were scratches on the wall with what appeared to be tally marks. There is one window. However, the thick cage that covers the window makes whatever light might shine through minimal. That is it. There is nothing else in the cell.

The undersigned was informed that Ms. Reed is allowed to bring one book into the cell. Ms. Reed has lost count as to how many exact days she has been in isolation however; she knows she has received at least three sentences of 17 days or more and confirmed she has been in isolation, in the aggregate, for over two months. I requested photographs of the isolation cells used in the Wells Unit. I was provided a photograph with a larger window and note that the mat is on a cot. *See* Exhibit 6. The cell I had observed had a much smaller window with less light and the thin plastic mat was placed directly on the concrete floor, there was no cot.

Because the documentation has been so poor even the undersigned is exactly sure how many total days or hours Ms. Reed has spent in isolation. While one would hope you could simply refer to the conduct or progress reports which sometimes will reflect the "sentence" of isolation of for misconduct, there is the ruse of "due process" within the facility. Essentially there is a procedure by which a juvenile offender has the ability to contest the "charges" brought against her and a hearing officer reads the written report, talks to the juvenile, and then

determines the length of time they are to spend in isolation if a finding of violation has occurred. As part of the undersigned's records request Ms. McAllister produced her summary of the time Ms. Reed spent in isolation and her summary of the hours released during the same. *See* Exhibit 7. These summaries were created after my records request. Ms. McAllister reviewed a number of documents to try and piece together the timeline Ms. Reed was in isolation and the exact number of hours she was let out. Ms. McAllister's summary reflects that Ms. Reed has spent approximately 25% of her time at Copper Lake in isolation.

Self-harm or disfigurement is considered a violation for which isolation is a sentence. Creating an unsanitary condition by urinating on oneself is considered a violation for which isolation is sentence. Being "disruptive" (which can mean yelling, not complying with orders, back talk, etc.) is a violation for which isolation is a sentence. Although there are alterative sentences, at least in Ms. Reed and the three other Iowa girls' cases, they do not seem to be as preferable as isolation. Because of the aforementioned lack of data and updated software, the facility cannot provide any analytical information relating to the large scale use and frequency of isolation. Ms. McAllister did concede that the use of isolation as a sentence for self harming behaviors is probably not the best idea.

Previously unknown to me, one does not have a "hearing" in an expeditious time frame. By Wisconsin statute (DOC 374.05(3)) you have a right to a hearing within 7 days. The undersigned is uncertain what the internal consequences would be for violating one of these artificial time frames. Until the youth's hearing, the youth is placed in isolation. Any time that the youth might have accrued prior to the hearing does not count against the youth's sentence. So if the youth is given a 22 day isolation sentence (like Ms. Reed has) but waited 7 days for the hearing to occur, the youth would actually sit 29 days in isolation. These unaccrued days are not

accounted for in any of juvenile's progress reports. If at the youth's hearing it is determined the youth did nothing wrong, the youth just sat in isolation for no reason. This happened at least once to Ms. Reed when she was accused of "making a weapon". She sat for 3 days in isolation until her hearing at which time she was released as the violation was unfounded.

In the undersigned's meeting with Ms. Peterson and Ms. McAllister Ms. McAllister asserted that Ms. Reed was let out of isolation for 2 hours per day. Ms. Reed vehemently denies such. Ms. Reed has indicated she is out for 1 hour per day and no more. The undersigned finds Ms. Reed's account credible. Why? Because, at best, this facility will not do what is right or advisable per PbS or proper trauma informed care; but rather, do what it can within the bounds of Wisconsin law because it is easier and more cost effective. At worst, as we found out on the 5th of December, criminal indictments are forthcoming.

Further, Wisconsin DOC Code Section 374.03(4) defines "close confinement" as "restriction of a youth to the youth's assigned room with a minimum of **one hour** of out-of-room time per day." (emphasis added) That is consistent with the amount of time Ms. Reed has indicated she is allowed out. Regardless of whether she is let out one hour or two hours per day, that period of isolation is certainly not brief even for one day, let alone consecutive days. That extensive period of isolation is <u>inexcusable</u> and in any other context would be considered child abuse. By using general, vague and catch all terms like "disturbance", "combative", and "disobeying orders" Ms. Reed's liberty is subject to the whims of any correctional officer's fancy. Ms. Reed's mental and emotional health is subject to the whims of any correctional officer's fancy. Ms. Reed's human dignity is subject to the whims of any correctional officer's fancy.

For the first part of the one hour "out time" Ms. Reed receives she must clean the room

she has sat in for the previous 23 hours. She then may shower. However, by Wisconsin statute she is to receive a minimum of 3 showers per week (DOC 374.10). Thus, she does not necessarily get a shower every day. Ms. Reed may have 15 minutes to exercise; she may have 10-15 minutes to write a letter and she may use the restroom. At all possible times during her one hour out she is to be shacked around the waist, hands, and feet. Any time that is remaining she is to sit in a chair in the common area by her self and stare out the window. She is not to speak and if she is to need anything she is raise her hand while looking out the window. Ms. Reed is not released from isolation for meals as she is to eat her breakfast, lunch, and dinner, in her locked isolation cell.

Ms. Reed has an IEP. However, while in isolation she is provided 30 minutes of "education" that does not utilize her IEP. Her "education" while in isolation consists of one teacher coming to the Wells Unit and providing a 30-minute lesson on history to whatever girls happen to be in the isolation block at that time. History. No science. No English. No literature. On one occasion Ms. Reed received a math lesson instead of history. More astonishing, this thirty-minute history lesson is *optional* for the youth to take part in. In other words, if the youth declines the lesson, they receive no education. Upon information Ms. Reed indicates she almost always takes part in her 30-minute history lesson while in isolation because it is a desperately needed escape from her hellish hourly countdowns.

The effect of Ms. Reed's inadequate education goes beyond a lack of an interdisciplinary shortcoming. As one could imagine, after Ms. Reed's extended periods of isolation it is virtually impossible for her to re-integrate and transition back into an educational environment that would be anything less then useless. Ms. Reed's classmates have already moved forward with

curriculum. Practically, Ms. Reed is receiving no education at Copper Lake outside of the imaginative world created from the books she reads in her piss stained cold concrete cell.

By Wisconsin statute Ms. Reed is allowed two telephone calls per month however, if she is in isolation, even those calls may be taken. (DOC 379.21(4)(d)). As discussed with Ms. Peterson, there is a distinction to be made between what is legal per Wisconsin statute and what is ethical.[15] When PbS was developed in 1995, it was common for a juvenile agency to have inherited policies that permitted isolation sanctions to be ordered in number of days, some as many as up to 30 days. PbS set out to change that mindset and count isolation and room confinement in hours. Currently, very few state agency policies permit extended isolation time for youths and the majority limit time to as little as three hours and a maximum of up to five days.[16] Unfortunately for Ms. Reed, Wisconsin is not one of those States.

The American Academy of Child and Adolescent Psychiatry defines Solitary confinement as the placement of an incarcerated individual in a locked room or cell with minimal or no contact with people other than staff of the correctional facility. It is used as a form of discipline or punishment. The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions.

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[15] A review of the Contract between Iowa and Wisconsin creates a question as to what state law would be applicable to the Iowa girls' time at Copper Lake. The undersigned cannot but help compare the State of Iowa sending girls to Copper Lake as a juvenile Guantanamo Bay. So long as the isolation is not occurring within the borders of the State of Iowa (where it would be against Iowa law; §441 Chapter 115), all is well. *See e.g.* Exhibit 1 Sections: 1.3.1.6 ("The Contractor shall provide the Agency's Juveniles with a secure environment that complies with State and Federal rules and regulations relating to secure correctional Facilities); 1.3.1.7 ("The Contractor shall provide services to the Agency's Juveniles of the type of services customarily provided by the Contractor pursuant to its program responsibilities created by the Wisconsin Statutes and shall be provided consistent with the established policies, practices and procedures of the Contractor and the Agency"); 1.3.1.8 ("The laws of Iowa shall govern Juvenile delinquency dispositions and sentences ordered for this adjudicated delinquent Juveniles and adult sentenced minors transferred to the facility.")

[16] *CJCA Yearbook 2012: A National Perspective of Juvenile Corrections and CJCA Yearbook 2010: A National Perspective. Braintree, MA. Council of Juvenile Correctional Administrators.*

Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.[17]

One cannot help but read the overwhelming amount of academic literature as to the effects of isolation on juveniles and think of Ms. Reed. For example, once instance occurred on the evening of November 24, 2015 at 10:10 p.m. in the midst of Ms. Reed serving a 17-day isolation sentence.

While conducting "lock downs" for the evening a correctional officer peered into Ms. Reed's cell and found her gown tied tight around her neck. Ms. Reed was unresponsive. Once inside the cell corrections officers un-tightened the gown from Ms. Reed's neck and upon gasping for air Ms. Reed begged them to simply let her die. The correction officers eventually cut loose the gown with a pocketknife and Ms. Reed became upset that they would not let her die. She then began resisting their attempts to restrain her as she was attempting to escape her isolation cell and run away. Supervisor Huff then grabbed Ms. Reed and slammed her against her cell wall causing bruising and lacerations to her mouth and head. When the multiple guards finally regained control of her they threw her back in the cell completely naked and quickly shut the door. She remained in her video recorded cell naked for some time. The next morning, November 25, 2015, Ms. Reed's therapist, Kristina LeBlanc, arrived to check the status of Ms. Reed given the seriousness of the above incident. Upon Ms. LeBlanc's arrival corrections staffed informed her that Ms. Reed was still in her isolation cell completely naked. Ms. LeBlanc demanded clothing be put on Ms. Reed immediately.

[17] Grassian, Stuart. "Psychiatric Effects of Solitary Confinement." Journal of Law and Policy. (2006): 325-383; Mitchell, Jeff, M.D. & Varley, Christopher, M.D. "Isolation and Restraint in Juvenile Correctional Facilities." J.Am. Acad. Child Adolesc. Psychiatry, 29:2, March 1990.

Upon information, Supervisor Hoff would not let Ms. Reed make a report about his use of force until she started "behaving herself". It is unknown whether a formal report was ever actually submitted by Ms. Reed for the above incident.

Of course Ms. Reed received a conduct report violation for the incident and had more isolation time added to her sentence because, after all, trying to kill oneself if is a violation of the DOC 373.57. Ms. Reed's December 21, 2015 psychiatric note narrated by Dr. Gabriella Hangiandreou, M.D. states "Laera was just released from the Restrictive Housing Unit after a 22-day stay. She reports an increase in depressed and suicidal thoughts while in the security unit and also describes frequently hopeless thoughts. She is having great difficulty getting to sleep…"

A number of Ms. Reed's isolation sentences have been from "self harm" and "disruptive" behaviors. When examining the conduct reports the disruptive behavior referenced is banging on the door and yelling. Is it any surprise that this type of behavior would occur when locking a teenage girl for 1,256 hours in a 7' x 10' cell? Not only would that type of behavior be expected, it shows the sad desperation Ms. Reed must feel in wanting to communicate, receive attention, and escape.

It should be noted that at least three staff members who interacted with Ms. Reed (either on the King Unit or Wills Seclusion Unit) have either quit or been put on administrative leave since the criminal probe into Copper Lake. Those individuals are: Dr. Wilson Fowle, Mr. Tinker, and Mr. White.

Since 2008, the average time a youth spends in isolation has declined in all PbS facilities. Corrections facilities more than cut in half the average time a youth spent in isolation and room confinement from October 2008 to April 2012, the most recent PbS data collection period. The all time high in October 2008 was an average time of almost 32 hours. In April 2012, the average

time was about 14 hours. By comparison, in just *one* of the numerous isolation sentences Ms. Reed has had to serve, she spent 484 hours in isolation (22 days at, arguendo, 22 hours per day).

The federal circuits have been recognizing use of isolation in state-run juvenile correctional facilities as unconstitutional. For example, in *R.G. v. Koller*, 415 F. Supp. 2d 1129 (D. Haw. 2006) three juveniles were detained at a state-run juvenile correction facility and brought claims under § 1983 for violations of their constitutional rights after being placed in isolation cells for extended periods of time. *Id*. at 1133. After examining expert opinions on the effect of isolation cells on juveniles, the court held that the defendants' conduct was not within the range of acceptable professional practices and constituted punishment in violation of the plaintiffs' due process rights. *Id*. at 1154-55.

The *Koller* Court stated, "[t]he expert evidence before the court uniformly indicates that long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices." *Id*. at 1155. The court went on to cite a number of other courts that also found the use of isolation cells on juveniles to be in violation of due process. *Id*. (citing H.C. by *Hewett v. Jarrard*, 786 F.2d 1080, 1088 (11th Cir. 1986); *Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983); *Milonas v. Williams*, 691 F.2d 931, 942-43 (10th Cir. 1982); *D.B. v. Tewksbury*, 545 F. Supp. 896, 905 (D. Or. 1982); *Feliciano v. Barcelo*, 497 F. Supp. 14, 35 (D. P.R. 1979); *Lollis v. N.Y. State Dep't of Soc. Servs*., 322 F. Supp. 473, 480 (S.D.N.Y. 1970)).

In addition to *Koller*, other district courts have found placing juveniles in isolation cells violates due process and the Eighth Amendment. *See Nelson v. Heyne*, 355 F. Supp. 451, 456 (N.D. Ind. 1972) (holding extended periods of solitary confinement of juveniles at the Indiana Boys School was cruel and unusual punishment and a violation of procedural due process); *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354, 1372 (D. R.I. 1972) (finding the

isolation of juveniles in cold, dark isolation cells containing only a toilet and a mattress constituted cruel and unusual punishment and violated the Due Process Clause).

It became clear to the undersigned that Copper Lake operates under the auspices of the Wisconsin DOC. Unfortunately it is the undersigned's opinion that many procedures and policies in place at Copper Lake carry over from adult corrections. Not only does this ignore the PbS, trauma informed care, a plethora of juvenile psychiatric studies, and established Iowa statutes, but the constitutional differences afforded to that of a juvenile versus adult offender.

Traditionally, juvenile detainees are afforded greater constitutional protection. *See, e.g.*, *A.J. by L.B v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995) (noting that as a general matter, juvenile detainees are afforded more liberal due process protections than those applied to adult detainees). This is all the more true with the recent Iowa and United States Supreme Court's recognition on the significant and meaningful lack of full neurocognitive development in adolescents.

The siren song[18]may be to consider that if only Ms. Reed would behave herself she would not be put in isolation like she has. As mentioned above, it is the undersigned's opinion that even the structure and use of the general population cells, although not as extreme and psychologically damaging as the "safety unit" isolation cells, is impermissible juvenile solitary confinement. Thus, whatever one's opinion may be about the use of Copper Lake's "safety unit" isolation cells for punishment, the use of isolation at Copper Lake is much more systematic and pervasive then should ever be allowed for even the most well behaved juvenile.

[18] In Greek mythology, the Sirens were dangerous yet beautiful creatures, who lured nearby sailors with their enchanting music and voices to shipwreck on the rocky coast of their island.

9. Four Incidences of Possible Excessive Force

Without interviewing the various correctional officers involved and reviewing any video of the incidents, the undersigned is not prepared to conclude any one incident an example of excessive force. Much more investigation would be needed and the undersigned is not a "use of force" expert, which is a niche unto itself. However, the undersigned is concerned about four incidents that have occurred and will attempt to briefly summarize them. All but one of the incidents involved the same correctional officer: Supervisor Hoff.

The Finger Incident

At some point during one of Ms. Reed's stay in isolation Supervisor Hoff was walking her back into her isolation cell. Ms. Reed put her hands through the food tray in the door and was having difficulty as the pressure on her hands (from the cuffs) were hurting her. She pulled her hands back so as to relieve the awkward position and pressure caused by the cuffs when Supervisor Huff snatched back her hands and in so doing Ms. Reed's fingers were deeply lacerated by the sharp top of the steel food try slit of her cell door. She bled from the incident. Upon my interaction with her on February 5, 2015 I could observe the scars on her fingers. I would like the Court to examine her fingers when present on February 18, 2016. Because I could not bring my cellular phone with me I could take no pictures. When federal and state investigators interviewed Ms. Reed they took photographs of her fingers. The undersigned would request that at Ms. Reed's February 18, 2016 the Court ask Ms. Reed to approach the bench and observe the scarring on her fingers that were the result of this incident.

The Mace Incident

Ms. Reed has been maced twice. Shockingly, the Wisconsin statutes allow for such chemical agent to be used (DOC 376.08). The first mace incident occurred when Ms. Reed was

in isolation for a physical altercation with another youth. While in the midst of her stay in isolation Ms. Reed was, admittedly, attempting to tear down the speaker in her isolation cell. However, when Ms. Reed realized that a corrections officer with mace was about to enter her cell and spray her, she advised that she would stop and that there was no need to spray her. The agent allegedly told her that it was "too late" and commanded Ms. Reed to open her cell door immediately. She did as instructed and quickly turned her back to the agent so that the majority of the mace did not get in her eyes.

The Bed Frame Incident

This incident occurred on November 25 at approximately 11:00 a.m. Ms. Reed was in an isolation cell. During this stay Ms. Reed happened to have a low lying cot in her cell and proceeded to put her head underneath it in an attempt for privacy. Corrections agents entered. With the corrections agents was Ms. Reed's therapist, Ms. Kristina DeBlanc. Apparently Ms. DeBlanc was attempting to get down to Ms. Reed's eye level to speak with her about why she was doing what she was doing and deescalate the situation when Supervisor Hoff ordered "everyone out" (luckily a command Ms. DeBlanc ignored) and proceeded to stand on top of the cot frame so that the frame came down tighter on Ms. Reed's neck/head. Upon information Ms. DeBlanc was so upset and disturbed by the incident she had authored an internal incident report against Supervisor Hoff. I have requested this document and have not received it. *See* Exhibit 4. However, the undersigned spoke with Kristina DeBlanc, mental health therapist to Reed. Ms. DeBlanc confirmed the above to me and was very concerned about Hoff's conduct towards Reed. Ms. McAllister produced a copy of Ms. DeBlanc's report. *See* Exhibit 8. Ms. McAllister indicated she was shocked when she read the above report and immediately took it the now acting Superintendent. At the time of the writing of this report the undersigned has been advised that the administrators at Copper Lake are taking immediate corrective disciplinary measures

against Hoff. Why this is occurring months after the incident after the undersigned requested a copy of the report is unknown. Astoundingly, as reflected in Exhibit 8, on December 10, 2015, the "actions taken as a result of the incident" were that some agent unknown to the undersigned, met with and spoke with Ms. DeBlanc and *Ms. DeBlanc* was "professionally spoken to about the totality of the circumstances surrounding the incident". The undersigned has no idea what that means or what "totality of the circumstances" would ever justify such conduct.

Lip/Head Incident

The lip/head incident occurred while Ms. Reed was in an isolation cell and attempting self harm behavior. Supervisor Huff, in an apparent attempt to restrain Ms. Reed, slammed her up against her cell wall. Ms. Reed had a contusion on her head and a lacerated lip. Federal and state investigators who interviewed Ms. Reed took photograph documentation of her lip as it was still swollen and red from the incident at the time of their interview on December 6, 2015. Ms. Reed confided in Ms. DeBlanc about the above incident. Ms. DeBlanc advised her to make a formal report. After conversation with Ms. Deblanc it became apparent that Ms. Reed's attempt to use the phone to make such a report was denied by Huff. Ms. DeBlanc was concerned that he seemed to withhold Ms. Reed from making such report. The undersigned has confirmed that Ms. DeBlanc will be available to testify by telephone on February 18, 2016 to confirm the above information.

10. Conclusion

It is my opinion that, in many ways, the girls at the Copper Lake facility have been dehumanized. While I understand the need to keep society safe, and Ms. Reed's poor track record for respecting physical boundaries relating to that end, Ms. Reed's human dignity will always be greater then the sum total of her bad acts. This certainly is not an easy case with many

complicating factors. However, regardless of what Ms. Reed's behaviors were prior to entering Copper Lake and what they are now, Copper Lake's current of use of isolation cells in the manner they are being used violates Ms. Reed's State and Federal due process rights and right against cruel and unusual punishment.

Moreover, use of isolation cells as currently employed by Copper Lake is causing irrevocable damage to Ms. Reed. Based on my review of Ms. Reed's psychotropic records I call into question the professional standards that her treating mental health providers are using and how they are communicating the appropriateness of extended use isolation to the administration within the facility. I do not know how, given the overwhelming literature on the topic, any mental health professional could condone the manner in which Ms. Reed is isolated.

Further, these isolation techniques are not unique to Ms. Reed. So as to confirm Ms. Reed's credibility the undersigned consulted with Mr. Kirsten, an attorney of Disability Rights Iowa. Mr. Kirsten interviewed the other three Iowa girls at Copper Lake. Mr. Kirsten confirmed that the type of treatment Ms. Reed is receiving is shared by the other three Iowa girls at Copper Lake (while not giving specifics). It is clear to me in reviewing the materials I had in my possession prior to Ms. Reed arriving at Copper Lake that her mental health and behaviors have been significantly worsened since her arrival at Copper Lake.

While I am not a licensed mental health professional, given what is known about the effect long term isolation has on still developing adolescents, I cannot help but draw inferences between the cause and effect relationship of her worsening condition and prevalent insidious isolation use. Copper Lake is at the very least is significantly exacerbating Ms. Reed's behaviors by isolation use and the cause of her suicidal ideations and depression. Ms. Reed had no suicidal ideation prior to entering Copper Lake. The State of Iowa is paying $13 dollars per hour to the

State of Wisconsin to warehouse Ms. Reed in her own piss. Copper Lake is anything but a trauma informed care facility and operates more as a dog kennel for pound puppies.

While I cannot un-see what I saw while on the "Security" Unit (what Copper Lake calls the wing of isolation cells in Wells) I can do my best to change the circumstances Ms. Reed now finds herself in. It is Ms. Reed's position that juvenile court jurisdiction ***not*** be dismissed. Ms. Reed would request that she remain at Copper Lake as they have indicated her discharge may only be a few months away. Mr. Shawn Olsen has confirmed that if Ms. Reed does not "age out" under juvenile court jurisdiction she would not be eligible for all of the funding and programming that she so desperately needs. Programming such as Iowa Aftercare.[19] Iowa Aftercare is a service to help youth successfully transfer from a correctional setting to adult living. Ms. Reed would be assigned an advocate to assist in guidance and counseling. The advocate would help coordinate and facilitate ongoing mental health care and any other needs the youth may have. Iowa Aftercare would include: the PAL (preparation for adult living) which is monthly stipend to assist with living expenses; the educational training voucher (up to $5,000 per year for college expenses).

There is a possibility that if Ms. Reed has to transfer from detention to a SALS (supervised independent living) program in Des Moines prior to her 18th birthday, she will be denied entry into the program because of the nature of her placement in detention. Thus, Copper Lake may be more advantageous of a placement if SALS is a goal of Ms. Reed's. Ms. Reed desires nothing more then to be placed into the SALS program as soon as possible.

[19] http://www.iowaaftercare.org/ (Exit State Training School (STS) or court-ordered detention at age 18 or older, or left STS or court-ordered detention between 17 ½ and 18 and have been in care for at least 6 months immediately prior to exiting care (and after May 1, 2014)).

The undersigned is looking into admittance into Orchard Place in Des Moines. However, there is a waiting list at Orchard Place and the chance that she would be admitted prior her discharge from Copper Lake is unlikely.

Given all of the above I believe it to be in Ms. Reed's best interest to leave Copper Lake **as soon as possible** so that a responsible transition may occur as is mandated by state and federal law. Simply terminating court jurisdiction as the State would recommend, although expeditious, is not responsible and not in the community or Ms. Reed's best interests. Ms. Reed desires to live close to her sister who lives in the Des Moines area. She wants to further her education, independent housing, and employment opportunities. Sadly, completion of CST (cognitive skills training) program from Copper Lake may be the most expeditious way to achieve these funding and programming opportunities from the State of Iowa. At what further cost to Ms. Reed's mental health, the undersigned is unsure.

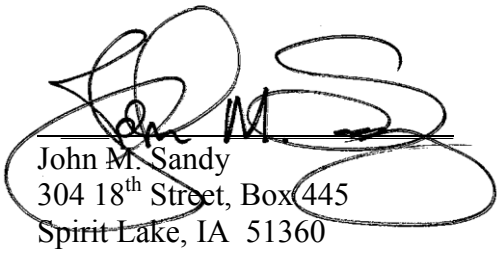
RECOMMENDATIONS

Based on the foregoing information Ms. Reed desires the following:

1. That Juvenile Court Jurisdiction of Ms. Reed *not* be terminated;
2. That Ms. Reed be discharged from Copper Lake as her CST training is complete;
3. That Laera Reed be placed in a SALS program upon discharge from Copper Lake;
4. That intensive mental health services be provided to her so as to assist in any trauma the use of Copper Lake's isolation cells may have had on her; and
5. That all best efforts be made to accommodate Laera Reed's educational needs so as to prepare her to enter into the workforce and become successful.

Respectfully Submitted,

SANDY LAW FIRM, P.C.



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ATTORNEY FOR THE JUVENILE

IN THE IOWA DISTRICT COURT IN AND FOR OSCELOA COUNTY

UPON THE PETITION OF	:	**EQUITY NO. CDCD000870**
JASON M. BROCKSHUS,	:	**RESPONDENT'S TRIAL BRIEF**
PETITIONER,	:	
AND CONCERNING	:	
SHANISE L. BROCKSHUS,	:	
RESPONDENT.	:	

COMES NOW, Shanise Brockshus, the Respondent, and sets forth the following in response to Petitioner Jason Brockshus's Petition for Modification:

I. STATEMENTS OF FACT

On October 1, 2015, the Court entered a Decree directing the Petitioner to pay the Respondent $700.00 per month in spousal support. At the time of the Decree, the Petitioner had an annual salary of $72,500.00 as an employee of Brockshus Dairy, LLC ("the Company"). Shortly following the Decree, the Petitioner remarried and began providing financial support to his new spouse's numerous children.

On May 17, 2017, the Petitioner filed his Petition for Modification of Decree ("the Petition"), seeking to completely eliminate the spousal support payments the Court ordered him to pay only a year-and-a-half prior. At the time of filing the Petition, the Petitioner's annual salary was $67,500.00, only $5,000 less than the salary he received at the time of the Decree. In support of the Petition, the Petitioner claims that "there have been material and substantial changes in circumstances which warrant a modification."

As explained below, the Petitioner's modification request is meritless. The Petitioner's decision to voluntarily take on additional financial responsibilities does not absolve him of complying with court-ordered spousal support payments. Moreover, the temporary decline in the dairy market does not amount to a permanent or continuous change of circumstances that Iowa courts recognize as a basis to modify spousal support, especially considering that the Petitioner's annual salary is unrelated to the price of dairy products and the Petitioner was aware of the fluctuating dairy market at the time the Court entered the Decree. Finally, the Petitioner's $5,000 annual salary reduction does not constitute a substantial change in circumstances necessary to modify the Decree.

II. LEGAL ANALYSIS

To modify a decree for spousal support, a petitioner must show, by a preponderance of the evidence, that a substantial change in circumstances has occurred justifying modification. *In re Marriage of Michael*, 839 N.W.2d 630, 636 (Iowa 2013). Moreover, a petitioner must establish that the substantial change is "permanent or continuous rather than temporary in nature." *Id*. Iowa courts have long recognized that the alleged substantial change must not have been in contemplation when the court entered the spousal support decree. *Id*. Therefore, courts will presume the decree is entered with a "view to reasonable and ordinary changes that may be likely to occur." *Id*. (quoting *In re Marriage of Wessels*, 542 N.W.2d 486, 490 (Iowa 1995)).

A. Petitioner's Additional Financial Responsibilities Supporting His New Spouse's Children Does Not Constitute a Substantial Change of Circumstances Under Iowa Law.

When a petitioner's inability to pay spousal support is "self-inflicted or voluntary," it does not constitute a basis for modification or a reduction of future payments. *Ellis v. Ellis*, 262 N.W.2d 265, 268 (Iowa 1978); *see also Hutcheson v. Hutcheson*, 197 N.W.2d 594 (Iowa 1972). Spousal support is determined on the basis of earning capacity, not the amount of voluntarily reduced income or increased voluntary expenditures. *Ellis*, 262 N.W.2d at 267-68. As explained by the Iowa Supreme Court, after a decree for spousal support is entered, a petitioner "is not free to plan his future without regard to his obligation to his first wife." *Id*.

Despite less than a 7% decrease in his annual income over the last year-and-a-half, the Petitioner contends that he is unable to make monthly payments of $700.00 to the Respondent because of "material and substantial" change in circumstances. Although the Petitioner's expenditures have increased since the Court entered the Decree (specifically, providing financial support to his new spouse and her children), that is not a basis for modification. First, the Petitioner's "new" expenditures are completely voluntary. Second, the Petitioner's financial support of his new wife's children is irrelevant to his earning capacity or his annual income. Finally, at the time the Court entered the Decree, the Petitioner was in a relationship with his current wife. The Petitioner cannot contend that he did not contemplate marrying his then paramour—which is certainly a "reasonable and ordinary change" that may likely occur in a romantic relationship. *In re Marriage of Michael*, 839 N.W.2d at 636 (quoting *In re Marriage of Wessels*, 542 N.W.2d at 490).

Based on the foregoing, the Court should deny the Petition and enter an order upholding the Decree and award the Respondent the costs related to this action, including the Respondent's attorney fees.

B. Petitioner's Earning Capacity and Annual Salary Is Unrelated to the Company's Recent Loss of Revenues and the Decline in Dairy Prices.

There is no correlation between the decline in milk prices and the Petitioner's income. In 2015, the Petitioner received an annual salary of $72,500.00, irrespective of the Company's revenue that year. According to CPA Gary Vegte ("CPA Vegte"), the Company suffered a "very large loss… due to poor milk prices" in 2016. Despite the substantial loss, the Petitioner still received an annual salary of $72,000.00. CPA Vegte forecasted that the Company's 2017 revenues would "be more consistent to the results of 2015"—the same year the Company paid the Petitioner $72,500.00. Notwithstanding this prediction, however, the Petitioner currently receives an annual salary of $67,500.00.

In short, the Petitioner's annual salary is discretionary and wholly unrelated to the price of milk and the Company's revenues.

C. The Company's Recent Loss of Revenues and Fluctuation of the Dairy Market Does Not Constitute a Material Change in Circumstances Necessary to Modify the Decree.

Even assuming that the Petitioner's annual salary is directly related to the price of dairy products (which it is not), the Petitioner's alleged change in circumstances is not material under Iowa law. To succeed in a modification action for spousal support, the Petitioner must show that the alleged change of circumstances is both material and substantial. *In re Marriage of Sisson*, 843 N.W.2d 866, 870-71 (Iowa 2014). A change is material if it is permanent and not within the contemplation of the obligor party at the time the court enters a decree for spousal support. *See Id*. Here, the Petitioner cannot establish any of the aforementioned elements.

The Petitioner cannot prove that the Company's revenues and price of milk will permanently decline. The Respondent's expert witness will testify to the same. Furthermore, and as previously mentioned, the Company experienced a significant loss in 2016 "due to poor milk prices." Despite the loss, CPA Vegte opined that "losses are not projected to be this large going forward… [and they] should be more consistent to the results of 2015." CPA Vegte failed to opine, however, that milk prices will permanently decrease each year after 2017. If he did so, then the natural conclusion would be that milk would eventually be a worthless and free commodity. Like any farm product, price of crops and other commodities fluctuate based on a number of factors. Fluctuations in

milk prices, however, does not equate to a permanent and continuous decline of the dairy industry. Therefore, even assuming that dairy prices decline in the next few years, the Petitioner cannot show that he has sustained a permanent decrease in his earning capacity or annual income from the time the Court entered the Decree.

The Petitioner argues that there has been a material and substantial change in circumstances that the parties did not anticipate when the Court entered the Decree. The facts clearly suggest otherwise. At the time the Court entered the Decree on October 1, 2015, the price of milk was $17.40 per cwt. On August 31, 2017, approximately two-and-a-half months ***after*** the Petitioner filed the Petition, ***the price of milk increased*** to $18.00 per cwt. Assuming the Petitioner argues that the price of milk directly relates to his earning capacity and annual income, then both would have increased by approximately 3.5% since the date of the Decree.

Furthermore, the Petitioner certainly contemplated the fluctuating prices of milk at the time the Court entered the October 1, 2015 Decree. According to CPA Vegte, the Company enjoyed "record highs for milk prices" in 2014. In 2015, however, milk prices declined. Given that the Petitioner had more than nine months of experience and knowledge related to the post-2014 decline in milk prices, it is illogical to assume that the Petitioner did not anticipate a continued fluctuating dairy market on October 1, 2015. In fact, and as explained above, ***the price of milk has actually increased since the Court entered the Decree***. Therefore, the Petitioner cannot establish that he suffered a material change of circumstances.

D. Petitioner's $5,000 Annual Salary Reduction Does Not Constitute a Substantial Change in Circumstances Necessary to Modify the Decree.

Finally, the Petitioner cannot prove that a $5,000 annual salary reduction is a substantial change in circumstances. The reduction amounts to ***less than a 7% decline*** in his annual income. Moreover, the reduction occurred only within a year-and-half, during which time the cost of living and inflation rate changed very little (if any at all). Consequently, the Petitioner is unable to show that his relatively minor reduction in income constitutes a substantial change that warrants the modification of the spousal support Decree.

III. CONCLUSION

Based on the foregoing, the Petitioner cannot establish the evidence necessary to justify a modification of the Decree. The Respondent respectfully requests that the Court deny the Petition, uphold the Decree, and award the Respondent her costs for responding to the Petitioner's action, including the Respondent's attorney fees.

Respectfully Submitted,

/s/ John M. Sandy
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ATTORNEY FOR RESPONDENT

IN THE IOWA DISTRICT COURT IN AND FOR CARROLL COUNTY

STATE OF IOWA,	:	CRIMINAL NO. FECR011292
	:	
Plaintiff,	:	
	:	
vs.	:	**DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO CHANGE VENUE**
	:	
JASON MICHAEL WATSON,	:	
	:	
Defendant.	:	

COMES NOW, Jason Watson, by and through the undersigned attorney and for his motion states the following:

1. *Iowa Code* §803.2(2) states that:

> The court, may on its own motion or on the motion of any of the parties to the proceeding reconsider and grant a pretrial motion for change of venue whenever it appears during jury selection that sufficient grounds would exist for granting the motion under the provisions of rule of criminal procedure 2.11.

2. The procedural mechanism for changes of venue appears in *Iowa R.Cr.P.* 2.11(10), and *shall* be utilized where "the court is satisfied from a motion for a change of venue and the evidence introduced in support of the motion that such degree of prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county." *Id*.

3. While the government bears the burden of proving proper venue by a preponderance of the evidence, the failure of the defendant to object to venue and to secure an evidentiary hearing and a ruling prior to trial constitutes a waiver of objection. *State v. Dicks*, 473 N.W.2d 210 (Iowa Ct. App. 1991); *State v. Brown*, 400 N.W.2d 74 (Iowa Ct. App. 1986); *State v. Allen*, 293 N.W.2d 16 (Iowa 1980).

4. *State v. Robinson* involved the brutal beating of a local schoolteacher and her 3-year-old son by a 17-year-old Albia youth. *State v. Robinson*, 389 N.W.2d 401 (Iowa 1986). Robinson was charged with and convicted of two counts of attempted murder. Defense counsel moved prior to trial for a change of venue, alleging "the atmosphere in Albia and in Monroe County is

so thoroughly charged with prejudice" because of extensive publicity "that it will be impossible for [defendant] to get a fair trial in Monroe County." *Id.*

5. The district court denied defendant's motion for change of venue and on appeal the Iowa Supreme Court stated "where there has been extensive pretrial publicity a trial court should be more willing than in prior years to look favorably upon such a motion." *Robinson,* 389 N.W.2d 403.

6. In the instant case it is not so much the volume of pretrial publicity that is worrisome but, rather, the nature of the pretrial publicity. The Defendant, in his motion, attached a three page article published on the front page of the Carroll County Daily Times Herald from June 25, 2015.

7. In bold and large font the article was entitled "A PRISON MATE A BURGLARY A FATAL CRASH".

8. On the 2nd of June, 2015 Judge McMinimee severed the OWI Homicide and Burglary charges stating:

> In this Court's view, the offenses charged do not arise out of the same transaction or occurrence…there is little likelihood of having to draw on the burglary charge to explain the homicide charge. Nor are these separate offenses products of a single or continuing motive.

9. The Court further found that:

> if this Court is in error and these offenses are appropriately charged in a single trial information, this Court would agree with the defendant's contention that his interest in receiving a fair trial uninfluenced by the prejudicial effects which would result from a joint trial outweighs the judicial economy of a single trial…In this Court's view a jury would be unable to compartmentalize the emotional impact of the evidence establishing the homicide case when considering the evidence offered to prove the burglary charge.

10. The title alone improperly ties the OWI Homicide charge with the Burglary charge. Nevertheless, the public bell has been intentionally rang and has been "heard" by the citizens of Carroll County in the exact manner that Judge McMinimee's Order was attempting to avoid.

11. The expose salaciously asserts that Mr. Watson had previously been imprisoned. This

fact alone creates serious prejudicial effect as such information is prohibited from being introduced as evidence at trial.

12. The inflammatory article goes on to declaratorily assert prejudicial and or factually inaccurate specifics such as:

- It took six shots of adrenaline and 17 minutes of CPR to restart Eastman's heart, according to a St. Anthony report. But her pulse was faint and waned. Her hands grew cold and blue…
- Jason Watson was driving 73 mph and drunk—fleeing from a burglary with his girlfriend passed out in his sport utility vehicle…
- "Baby!" Watson allegedly shouted repeatedly to Eastman from inside the vehicle after it finally stopped.
- But Watson dragged himself from the crumpled vehicle and limped and crawled toward Eastman, who lay face-down and didn't move in the middle of the pavement. She was barely breathing. Her right arm was broken. Her body was covered in cuts and bruises. Her head bled.
- A doctor took a sample of his blood to determine whether he was intoxicated by alcohol at the time of the crash.
- Watson first told a witness that he was the driver. Then he said Eastman drove. Then he blamed Lyle Olesen.
- Earlier that day, Watson, 32, of Carroll, went to Kerp's Tavern in town about 5:30 p.m.
- A test of her [Eastman] blood would later reveal that her blood-alcohol concentration was more than three times the legal limit in Iowa to drive.
- Snell said Watson "drove like a maniac…"

- Watson “wasn’t stopping for stop signs and drove like 80 mph through the town of Dedham.”
- Watson was “pretty tanked” when he strode into the Coon Rapids bar about 6:00 p.m.
- The two had shared an Iowa prison cell in 2011—Olesen was there for drunken driving, and Watson for burglary.
- Olesen assumed Watson was either drunk or high at the bar. The man was belligerent.
- He saw Watson with slurred speech who yelled to stay away from the woman on the road. It was strange. Watson walked and crawled to the woman as if he couldn’t feel the pain of his injuries.
- Test results a month later showed that Watson’s blood alcohol concentration was .165 percent—double the limit to drive.

13. The undersigned is perplexed as to how the media could obtain such specific information. The Minutes of Testimony is a document not available to the public. Further, it is law enforcement policy that no public information request disseminations occur while a case is pending.

14. The publication of the aforementioned article has poisoned the well such that a fair trial in Carroll County is impossible. The publication of the aforementioned article has created the existence of community prejudice concerning the case.

15. Defendant readily understands that district court decisions in this area are generally not disturbed where publicity is nonprejudicial in nature. *State v. Nebinger*, 412 N.W.2d 180 (Iowa Ct. App. 1987); *State v. Wilson*, 406 N.W.2d 442 (Iowa 1987); *State v. Johnson*, 318 N.W.2d 417 (Iowa 1982).

16. The central question is whether a substantial number of prospective jurors in the

community are influenced by publicity to the extent that the defendant would be unable to receive a fair trial. *State v. Harris*, 436 N.W.2d 364 (Iowa 1989); *State v. Hickman*, 337 N.W.2d 512 (Iowa 1983).

17. In this case the aforementioned article is so inflammatory that prejudice to the defendant must be presumed. *State v. Siemer*, 454 N.W.2d 857 (Iowa 1990); *State v. Spargo*, 364 N.W.2d 203 (Iowa 1985). (Defendant seeking reversal of conviction on basis of denial of motion for change of venue must show either actual prejudice on the part of the jury or must show that the publicity attending the case was so pervasive and inflammatory that prejudice must be presumed.)

WHEREFORE, the undersigned prays that this Court enter an order granting the Defendant's Motion for Change of Venue as the publication of the aforementioned article is so inflammatory that prejudice must be presumed.

Respectfully Submitted,

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