

To: CLERK OF COURT

SCOTT S. HARRIS

SUPREME COURT

WASHINGTON, D. C. 20543

NO. 18-8800

NOTICE OF MOTION

PETITION FOR REHEARING

THE PETITIONER STEPHEN R. WINN, IS AMENDING HIS ATTACHED EXHIBIT TO THE PETITION CASE NO. 18-8800 WITH THIS HONORABLE COURT'S PERMISSION TO INCLUDE THE NECESSARY EXHIBITS FOR THE COURT TO REVIEW EVIDENCE AS THE MERITS OF THE PETITIONER CASE FOR REHEARING

IF THERE ARE ANY OTHER DEFICIENCIES OR CORRECTIONS REQUIRED, PLEASE NOTIFY ME IMMEDIATELY AS I AM LIMITED AND CONSTRAINED BY THE RESPONDENTS TO ACCESS TO A LAW LIBRARY AND OTHER FACILITIES.

DATED: 7-16-2019

Stephen R. Winn

STEPHEN R. WINN SBI#177957

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JUL 23 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE MOVANT ASSERTS THAT THE LOWER COURT ABUSED IT'S DISCRETION, DENYING THE MOVANT'S WRIT OF MANDAMUS ON THE GROUND THAT THE MOVANT CANNOT ESTABLISH THE TRIAL COUNSEL HAS A NONDISCRETIONARY DUTY TO PROVIDE EVIDENCE TO HIM.

On August 4, 2014, the movant filed in the Superior Court of the State of Delaware a Motion to Compel, seeking the court authority to have the movant's trial counsel, Mr. Edinger to turn over document in his possession to the movant. The Court denied the movant's Motion to Compel stating, since the movant does not have an active case in court there is no proceeding to establish cause to the Mr. Edinger to turn over his document. The Court also stated in its letter opinion, "The Court has copied Mr. Edinger on this letter in case he does have the document you are requesting and wants to voluntarily forward them to you". [See Exhibit 1]

On September 8, 2014, the movant received a letter from Mr. Edinger stating that he destroyed the notes, the evidence that the movant had requested. [See Exhibit 2]

On July 28, 2015, the movant filed for a Writ of Mandamus in the Superior Court. The Supreme Court affirmed the judgment of the Superior Court, stating that "Winn cannot establish that Edinger has a nondiscretionary duty to provide the notes to him. Moreover, because Winn acknowledge that Edinger no longer has the notes, Winn cannot establish that Edinger arbitrarily refused to give him a copy". [See Supreme Court's Opinion at Pg. 3, in back of the petition]

The Movant asserts that the Lower Court abused its discretion when it denied the movant's Writ of Mandamus, when it failed to consider the basic duties a lawyer has towards his client; the importance of the evidence requested and the fact that the movant had requested for his evidence before trial and after trial (notes) on (4) previous occasion. [See Exhibit 3-4, 5, 6, 7]

First, the movant wants to explain to the court the evidence requested, its value and the purpose for it. Ms. Emily Cunningham was a Key state witness in the movant's trial. Ms. Cunningham worked/ran the "Victim Advocacy Program" in Family court. Ms. Cunningham also filled in at the "Batter Woman's Shelter" where she became involved in this case. Ms. Cunningham testified under the title of a Domestic Violence Specialist, an Expert. [See Exhibit 101, 102, 103, 104, Pg. 8]

Ms. Cunningham testified that her testimony was solely based on her notes that she took from the interview she had between her and the alleged victim, Ms. Cleckley. [See Exhibit 121, 122, 123, 124, Pg. 9]

1) Ms. Cunningham testified that the alleged victim had cuts and bruise from being tied up by the movant. [See Exhibit 111 Ln. 1-8 Pg. 10]

2) Ms. Cunningham testified that the alleged victim had stitches above her eye. [See Exhibit 128 Ln. 15-23 Pg. 11]

3) Ms. Cunningham testified that alleged victim had been physically and sexually assaulted. [See Exhibit 105 Ln. 3-7 Pg. 12]

The alleged victim testified that she never told anyone that she had been raped. [See Exhibit 110 Ln. 1-4 Pg. 13 and Exhibit 53 Ln. 11-14 Pg. 14] and Exhibit 61 Ln. 5-21 Pg. 15] also Exhibit 84 Ln. 15-18 Pg. 16]

Even the comment out of the prosecution mouth in his closing argument said to the jurors, "You saw Donna Cleckley testify, she still to this day has not accepted the fact that she was raped. That's why she didn't tell anyone. The first time she heard that she was a victim of rape was when someone at the hospital told her. So, dah, you're not going to have evidence because too much time had passed and there's no sexual assault nurse examiner at the ST. France Hospital. The police don't even take rape victim there". [See Exhibit 13 Ln. 12-20 Pg. 17]

The prosecutor told the jurors that the alleged victim never told anyone she had been raped. Even the Medical Report showed there was no examination performed on the alleged victim for raped. [See Exhibit 21, 22, 23, 24 Pg. 18]

The alleged victim testified that she was treated at the hospital for eye injury only. The Medical Report also showed that the alleged victim never received stitches for her eye. The alleged victim read the Medical Report into evidence. It said, "You have a break in one of the small blood vessels in the white part of the eye. It may also happen from the strain of coughing or vomiting. It often happens for no known reason, by itself this is a Harmless Condition. It is like a minor bruise of the skin, but it looks worst because the blood can be seen directly through the membranes. No Treatment is Necessary. [See Exhibit 57 Ln. 16-23 Pg. 19]

Again, the alleged victim never testified she received stitches she was treated for an eye injury. The alleged victim never testified she had cuts and bruises to her hand or wrist. [See Exhibit 110 Ln. 15-20 Pg. 13]

The alleged victim never testified that she received treatment for her knee, neither did the alleged victim tell anyone she had been raped as Ms. Cunningham had testified too. So the question that still remains until day is, why is Ms. Cunningham's testimony so different, so opposite of the testimony of the alleged victim? Her testimony was not corroborated by alleged victim or by medical evidence.

In this case, it was the defendant's counsel who raised the issues on cross-examination was the first time the defense was made aware of the notes Ms. Cunningham had taken from her interview with the alleged victim. The defense was also made aware that Ms. Cunningham notes where not present in trial during her testimony.

Mr. Edinger made the court aware of his concerns in his difficulty to cross-examine Ms. Cunningham without her notes present in court. The Court on (2) two separate occasions addressed Ms. Cunningham concerning her notes stating that she needs to produce these notes in the trial. [See Exhibit 123 Ln. 1-23 Pg. 20] [See: Exhibit 124 Ln. 9-12 Pg. 9]

he movant also assert that the remaining trial testimony of state main witness was conflicting and equally weighed on this issue. The cross-examination on this point was as follow. By Defense counsel.

Q) your aware that she didn't-when she went to St. Francis . She did not them that she was sexually assaulted ?

A) I didn't ask her. What I sent her to the hospital for was for head injuries. "Not about anything Else.
See: Exhibit 125 Ln 9-14 Pg. 11

The Question that could not be resolved was how Ms. Cunningham's reached the conclusion based her analysis or reasoning on that cause her to reach that conclusion the Ms. Cleckley was raped and had cuts and bruise on both wrist, stitches above her eye. there was no way find out how she had reach these conclusion without her notes present in courtroom. See: Fensterer vs. State, Del, Supr, 493 A.2d 959, 963 (1985)

Based upon the facts stated by Ms. Cunningham's testified about

Q) you spoke to Ms. Cleckley when she came to the shelter, is that right ?

A) yes

Q) or at least of the hotline ?

A) yes

Q) you encouraged her to go get treatment ?

A) I encouraged her to go the Emergency room so she could be checked, yes, and I was no specific in check for, you know, for being raped or sexually assaulted.

Q) you weren't specific ?

A) I was not specific with that No. See: Exhibit 127 Ln. 11-23 Pg. 11

Ms. Cunningham's testified that she let me know that she had been Physically and sexually assaulted. See: Exhibit 105 Ln. 3-7 Pg. 12

The alleged victim never testified she had cuts and bruise to hands or wrist. A) my hands, my legs, my my knee. I got the impression that they were checking for broken bones. The took x-ray of my wrist. they gave me an eye examination for my eye. her testimony was not coproborated by Medical Evidence. the nature of St. Francis Hospital Repost.

Q) there was an x-ray

A) yes

Q) of the forearm

Q) that was the extent of the x-ray

The Defendant's contends that no Doctor's Repost entered into evidence regarding hand, wrists knees, sexually assaulted. See: Exhibit 21, 22, 23, 24 Pg. 18

Trial Judge allowed Ms. Cunningham to complete her testimony without her notes under the agreement that she will have her notes faxed into the court. Later after Ms. Cunningham had finished testifying the prosecution informed the court that Ms. Cunningham did fax her notes to him and he gave a copy of her notes to the defense. [See Exhibit 169 Ln. 1-6 pg. 21]

The Movant also asserts that any remaining integrity, fairness and credibility that the movant had received a fair trial was destroyed when the trial Judge misled the jurors. The jurors during deliberation request, to the court, permission to see Ms. Cunningham's notes and a copy of the alleged victim testimony. [See Exhibit 94 Ln. 5-16 Pg. 22]

The Court responded by saying, "if you are referring to the notes that the court asked her to provide, Ms. Cunningham did provide those notes and it did not cause either side to call her as a witness," The court denied the juror request to see Ms. Cunningham's notes along with the alleged victim testimony. [See Exhibit 96 Ln. 13-23 pg. 22]

For the Juror's request to review Ms. Cunningham's notes, which her testimony was based on, and a copy of the alleged victim's testimony, causes any reasonable mind to believe the juror's had some questions or concerns in the difference in Ms. Cunningham testimony verses the alleged victim's testimony. When the Trial Court stated, "Ms. Cunningham did fax in her notes, but it did not cause either side to call her as a witness." Gave off the appearance that Ms. Cunningham's notes must have confirmed her testimony, there making it true. The Court's actions was misleading and it demonstrated that the court had abandon any further remedy in correcting this error.

The true is, the Trial Court could not legally allow the juror's to review Ms. Cunningham's notes, due to the fact that Ms. Cunningham's notes never became a part of this trial. The Prosecution never introduced Ms. Cunningham's notes into evidence in order to make them a part of the trial. Which was the prosecution's duty to do so, seeing without Ms. Cunningham's notes being introduced as evidence in this trial. Ms. Cunningham testimony would become HEARSAY EVIDENCE. The Trial Court could not allow the juror to review evidence that was not a part of the trial.

The Movant ask the following questions for this court's determination if the movant needed these notes from his counsel, Mr. John S. Edinger.

- 1) Did Ms. Cunningham testify as an expert witness without her notes?
- 2) What is the court's position when it come to an expert witness based there testimony on notes taken during an interview, but those notes never become a part of the trial?
- 3) Was the court aware that Ms. Cunningham was testing without her notes? And what remedy should the court had provided? If any, was that remedy satisfactory under the law?
- 4) When the court found out that the prosecution had received Ms. Cunningham's notes, was the court in error when it did not inform the prosecution to introduce Ms. Cunningham's notes

into evidence? Seeing the court informed Ms. Cunningham that she needed to produce these notes for trial. [See 124 Ln. 9-12 Pg. 9]

5) Was the juror's denied a Fair determination of the facts when they were denied the right to review Ms. Cunningham's notes, comparing them side by side to the testimony of the alleged victim? During these deliberation.

6) Is Ms. Cunningham's testimony admissible evidence if her notes were never introduced as evidence, seeing she based her testimony on her notes?

The Movant asserts that he is not attempting to reargue his claim. The Movant, to the best of his ability is trying to formulate his claim in order to obtain a proper review from this court. Martinez V. Ryan, cited as: 556 U.S. ____ (2012)

The court has already established in Superior Court Rule 802 that HEARSAY EVIDENCE, is not admissible evidence. The Court has also Rule in Fensterer V. State, Del. Supr. 595 A.2d 1106. That an expert witness who testifies without the presence of their notes which they are basing their testimony on, is inadmissible evidence, because their testimony becomes hearsay evidence if their notes are not present at trial. State V. Reeder, 2005, Del. Supr. Lexis 182. Along with Fensterer. The Court in Atkinson V. State, Del. Supr. 778 A.2d 1058 (2001) has Ruled that the non-disclosure or that late disclosure of the notes of a State Witness who has testified to the contents of these notes, infringes on a Defendant's 6th Amendment Right to Effective Cross-Examination. Thereby creating Reversible Error.

Furthermore, The Delaware Judges Code of Judicial Conduct has established rules and guidelines to correct or to avoid any impropriety of a setting Judge. "Impropriety" includes conduct that violates the law court rules, or provisions of this code, and conduct that undermines a Judge's independence, integrity, or impartiality.

Canon 1 of this code states: "A Judge should uphold the integrity, independence and impartiality of the judiciary.

Rule 1.1 compliance with the law. The "Law" encompasses court rules as well as statutes, Constitutional provisions, and decisional law. The Trial Court did not comply with the court's decision held in Fensterer, Del. Supr. 595 A.2d 1106, Reeder, Del Supr. Lexis 182 and Atkinson, Del. Supr. 778 A.2d 1058 (2001),

When it allowed Ms. Cunningham's testimony to stand as admissible evidence. While knowing Ms. Cunningham's testimony is not admissible if she testifies without the presence of her notes.

Canon 2 of The Delaware Judges Code of Judicial Conduct states, "A Judge should perform the duties of judicial office impartially, competently and diligently". Rule 2.15 Responding to Judicial and Lawyer Misconduct also adds "A Judge should imitate appropriate action when the Judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a

judge or Lawyer". **Rule 2.2 Impartiality and Fairness.** A Judge should be faithful to the law and maintain professional competence in it.

Principles of Professionalism for Delaware Judge also adds, **at Number 7.** "To the extent possible, a judge should give all issues in controversy deliberate, informed, and impartial and studied analysis and consideration and explain, when necessary, the reasons for the decision of the court".

The trial Court had a duty to take action when it realized that the prosecution had obtain Ms. Cunningham's notes and had decided for some reason not to enter them into evidence; Seeing the court had order Ms. Cunningham to produce these notes for this trial.

Of equal importance, when the Jurors in its deliberation requested to review Ms. Cunningham's notes. The Court **did not** give any reasonable decision to the juror why Ms. Cunningham's notes were not made a part of this trial. This was no slight impropriety. The trial court's actions was a clear act of closing its eyes, to the established laws of this land and the constitutional rights of the movant. This error is plain upon the face of the record.

Again, Ms. Cunningham testified as a "Domestic violence Specialist". She based her testimony on notes she said she took during an interview with alleged victim. She testified without these notes. The Court order Ms. Cunningham to produce these notes for this trial.

Ms. Cunningham's notes was never introduced as evidence in this trial. Furthermore, the fact the jurors in the deliberation was denied the right to view Ms. Cunningham's notes, to compare her testimony side by side to the alleged victim's testimony made this error incurable, Seeing Ms. Cunningham's testimony was so different from the alleged victim testimony. This error was plain upon the face of the record.

It is the movant's understanding, if a claim is plain upon the face of the record a viewing court can view that claim even if that claim was not raised. An a viewing court is allowed to overturn a court's decision if there is an Error in the Ruling and a substantial right if the accused is affected, quoting **Rule 103.**

Superior Court Rule 103 Ruling on Evidence, (d) plain Error: "Nothing in this Rule precludes taking notice of Plain Error affecting substantial right although they were not brought to the attention of the court. (Amend, Effective Dec. 10, 2001) **Discretion:** "Ruling concerning the admissibility of evidence implicate the sound discretion of the trial court; the Supreme Court will overturn the findings of the trial court only if there is an Error in the Ruling and a substantial right of the party is affected **Laws V. Webb,** 658 A.2d 1000 (Del. 1995)

This bring the movant to the issue and strength of his claim. The movant does not understand why the previous court have not viewed his claim, Seeing its Plain upon the Face of the Record that the movant was denied his 5th and 14th Amendment Right to Due Process of Law in the state's late disclosure of Ms. Cunningham notes and

The movant was denied his 6th Amendment Right to Effective Cross-Examination. Seeing Ms. Cunningham testified to the context of her notes without them being present in trial. See: Fensterer V. State, Del. Supr. 595 A.2d 1106. Instead the previous courts have insisted that the movant has not supported his claim with the facts.

Again, the movant asserts that he is not arguing ineffective assistance as the lower court has ruled. The movant's claim is Ms. Cunningham. The state witness testified as a "Domestic Violence Specialist", an expert. She based her testimony on notes taken from her interview with the alleged victim. Ms. Cunningham's testimony was totally different from the alleged victim's testimony. As Ms. Cunningham tried to explain away the difference between her testimony and the alleged victim's testimony through the cloak of her experience in dealing with women who suffer through domestic violence and their reactions in living with it. Ms. Cunningham's testimony was so compelling that the prosecution's closing argument was 90% centered around domestic violence, not on the Elements of the charges that movant was being tried for. [See Exhibit 13, 14, 15, 16 Pg. 17] but Ms. Cunningham testified without her notes, Violating Several Rule of the Court which Violated Several Constitutional Rights of the movant.

The movant claim is, the context of Ms. Cunningham's notes will confirm his claim, that Ms. Cunningham's testimony in trial will be different from the context of her notes. The notes will reveal that the alleged victim never told Ms. Cunningham that she had been raped by the movant. The notes will also reveal that the alleged victim never did receive stitches above her eye, neither did she have injuries to her hands or wrist as Ms. Cunningham testified too. This is the movant's claim. Ms. Cunningham should never have been allowed to testify without her notes present in court. The previous court have insisted that the movant has not support this claim with the facts. Which can only come through Ms. Cunningham's notes.

The movant does believe that this court has the authority to Rule upon his claim, due to the fact it is so plain upon the face of the record; but the purpose for this petition is for this court to make a determination if the movant has a legal right to compel his trial counsel to turn over this evidence, Ms. Cunningham's notes to him.

The movant offers the following facts to support his claims. The Lower Court stated in denying the movant's Mandamus. "Winn's petitions fails for multiple reasons. First, even if Edinger still had a copy of the notes, Winn cannot establish that Edinger has a nondiscretionary duty to provide the notes." ("While it is a good practice, there is no requirement that counsel share discovery material with the defendant.") 'See Supreme Court's decision dated March 4, 2016 at Pg. 3 (6)' Moreover, because Winn acknowledge that Edinger no longer has the notes, Winn cannot establish that Edinger arbitrarily refused to give him a copy.

The movant once again establishes that he is a lay-person of the law and he has not found a separate Rule or Law that requires a counsel to turn over evidence to a defendant; but the movant has discovered that the requirement for counsel to turn over discovery material to a

defendant is already incorporated in counsel's duties in representing his client. The Lower Court failed to consider this facts.

First the movant wants to establish to this court that he is the "Client", even though Mr. Edinger was a Public Defender he worked for the movant as his Attorney and he owed the movant as his client a duty of trust and loyalty.

Preamble: A lawyer's responsibilities.

[1] A lawyer, as a member of the legal profession, is a representative of clients. An officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to other.

In assuring that a client fully understands his legal rights Mr. Edinger had to make know and he must share with his client, the movant, all evidence held against him, and Mr. Edinger also had a duty to preserve the movant's right to have his claim heard on appeal. In the preserving of the movant's right to have the movant's claims preserved on appeal Mr. Edinger could not withhold or destroy evidence that his client needs to prefect his appeal. See: Martinez v. Ryan, at 566 U.S.____ (2012) at Pg.9

Lawyer's Rule of Professional Conduct. Rule 3.4 fairness to opposing party and counsel also states, a lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

The Comment to this Rule is as followed.

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by the prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges. The right of an opposing party, including the government to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable Law in many Jurisdictions make it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be for foreseen.

Again, the Lower Court in its decision stated, "Moreover, because Winn acknowledge that Edinger no longer has the notices. Winn cannot establish that Edinger arbitrarily refused to give him a copy."

The Movant argues to this court, that the movant request for Mr. Edinger to turn over Ms. Cunningham's notes to him was , when Mr. Edinger was finishing the movant's Direct Appeal and he was in the process of terminating his representation of the movant. The Movant requested in writing for a copy of Ms. Cunningham's notes. Explaining he needed the notes for his Motion for Post-Conviction. [See: Exhibit Page 5, 6, 7]

The ABA STANDARD 4-8. 3 Counsel on Appeal (b) States "Appellate counsel should give a client his or her best professional evaluation of the question that might be presented on appeal. Counsel, when inquiring into the case, should consider all issue that might affect the validity of the Judgment of Conviction and Sentence, including any that might require initial presentation in a Post-Conviction Proceeding."

The ABA STANDARD 4-8. 5, Post-Conviction remedies also states, "After a conviction is affirmed on appeal. Appellate counsel should determine whether there is any ground for Relief under other Post-Conviction remedies. If there is a reasonable prospect of a favorable result. Counsel should explain to the defendant the advantage and disadvantages of taking such action. Appellate counsel is not obligated to represent the defendant in a post-conviction proceeding unless counsel has agreed to do so. "The responsibility of a lawyer in a post-conviction proceeding should be guided generally by the standards governing the conduct of lawyer in criminal cases."

Even though Mr. Edinger was not obligated to represent the movant on his post-conviction. Mr. Edinger was obligated to evaluate, discuss and assist the movant in the questions or claims. If any, that could be raised in the movant's post-conviction. After the movant had discuss with Mr. Edinger his intent to raise a claim concerning Ms. Cunningham's testimony and requesting in writing his need for Ms. Cunningham's notes for his post-conviction. In accordance to the ABA STANDARD 4-8. 3 and 4-8. 5 Mr. Edinger was obligated to turn over Ms. Cunningham's notes to the movant in order for the movant to adequately develop his question or claims for his post-conviction.

In Addition, Mr. Edinger knew he was not going to represent the movant on his first post-conviction, and he was in the process of terminating his representation of the movant. During the time of the filing of the movant's initial post-conviction the court did not require a defendant to automatically have counsel on his initial post-conviction as it does today.

(The Court Amended The Rules Of The Post-Conviction in 2013).

The movant had to file his post-conviction as a Pro Se Litigant, making the movant the attorney of record. Therefore, in accordance to Rule 1. 16 (7) (d) Mr. Edinger was required to turn over to the movant all necessary document, papers and information held in the movant's case. See the

movant is going to be his own counsel, representing himself during his post-conviction proceeding after Mr. Edinger terminates his representation of the movant.

Rule of Professional Conduct, Rule 1.16, declining or terminating representation, (d) states, "upon terminating the representation. A lawyer shall take step to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred."

More importantly, Rules of professional conduct Rule 1.4 Communication, (a) (4) and (5) states, "A lawyer shall: promptly comply with reasonable request for information; and consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rule of professional conduct or other law."

The legal comment to this Rule states:

(4) A lawyer's regular communication with clients will minimize the occasion on which a client will need to request information concerning the representation. When a client make a reasonable request for information. However, Paragraph (a) (4) requires prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response maybe expected."

The movant argues that Rule 1. 4 (a) (4) (5) of professional conduct for lawyers, proves the movant's claim; because Rule 1. 4 (a) (4) requires Mr. Edinger to make a prompt compliance to the movant's request to have Ms. Cunningham's notes of her interview with the alleged victim turned over to him. It wasn't until the court informed Mr. Edinger that it had denied the movant's motion to compel on August 6, 2014, that when Mr. Edinger sent the movant a letter dated September 8, 2014, explaining that he had destroyed these notes, 13 years after the movant's initial request for these notes. [See: Exhibit Page 2]

In addition, Rule of professional conduct for lawyer also requires a lawyer to keep documents, papers, property, etc. for a period of at least 5 years and it requires a lawyer to inform his past or present client of his intent to get rid of these notes, given his client the opportunity to obtain these records if necessary.

Mr. Edinger neither did anyone from his staff, never did respond to the movant's request for these notes.

Mr. Edinger never informed the movant at any time that he was going to destroy Ms. Cunningham's notes taken from her interview with the alleged victim, neither did Mr. Edinger come up with this ideal to destroy these notes, but the movant does know that Mr. Edinger had the opportunity to turn these notes over to the movant on several occasions in August 6, 2002 January 23, 2004, and June 12, 2012

When the movant had made additional request Mr. Edinger for discovery was server by letter dated January 9, 2002, before trial started on February 19, 2002, in this case request Mr. Edinger to file a timely motion in responded in the state automatic discovery, that the state under Rule 16, discovery and inspection in this case for statement or reports made by Emily Cunningham, who will testify at trial. Regardless of whether the individual used the statement or report to prepare for examination. If Mr. Edinger could share this information with me to trial order to avoid delay prior to cross-examination. [See: Exhibit Pg. 3,4]

The Lower Court Denied the movant's mandamus in its belief that the movant had no legal right that would request Mr. Edinger to turn over these notes or evidence to the movant. Clearly, The Lower Court had based its decision without considering the Ruling , Establish Law.

Rule 1.4 (a) and (5) and Rule 1.16 (7) (d) of Rule of Professional Conduct for Lawyers alongside of the ABA Standard 4-8. 3 and 4.8.5 as the movant has outlined in this petition. Clearly demonstrates that Mr. Edinger was required to turn over these records. "The notes of Ms. Cunningham's taken from her interview with the alleged victim. When the movant initially requested for these notes over 13 years ago. It is in this court's authority and jurisdiction to give the movant the remedy he seeks. Therefore, the movant ask this court to compel Mr. Edinger to turn over this evidence. Ms. Cunningham's notes taken from her interview with the alleged victim. In the alternative that these notes have been destroyed as Mr. Edinger has stated. [See: Exhibit Pg. 2]

The movant asked that This Court would Grant to him Compensatory Damages in the following amount of \$250.000 against Mr. Edinger, and Grant the movant Punitive Damages of \$5000.000 against Mr. Edinger or Grant the movant a New Trial, because the movant was denied the opportunity to use the notes effectively.

Again, Mr. Edinger had a legal Constitutional Right to turn over these records. When the movant as his client, made a legal request for these notes.

Date 7-16-2019

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**Additional material
from this filing is
available in the
Clerk's Office.**