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CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: 2023-CV-000052
PII COMPLIANT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

IN THE MATTER OF THE WRONGFUL CONVICTION OF CARRODY M. BUCHHORN	)	**CASE NO. 2023-CV-000052**

MRS. BUCHHORN'S MOTION FOR SANCTIONS, TO DISQUALIFY COUNSEL, FOR AN ORDER TO SHOW CAUSE, AND OTHER APPROPRIATE RELIEF

In written pleadings and at oral argument, the State, the Douglas County District Attorney's Office ("DCDA"), Mr. Seiden, Ms. Valdez, Ms. Dyer, Mr. Goheen, and Mr. Qualseth have repeatedly represented that the DCDA has an active, ongoing investigation into Mrs. Buchhorn for murdering a nine-month-old child (who died of natural causes). They have used the claim of an "active investigation" to successfully persuade the Court to restrict Mrs. Buchhorn's civil discovery rights in this case.

But this was all a lie.

And they almost got away with it.

After lying to the Court, these attorneys worked to keep their lie from being exposed. Working hand and glove, on May 21 they stopped Mr. Seiden's deposition and marched on the courthouse 20 minutes into questioning based on a meritless relevance objection that the Court summarily overruled. But the hearing achieved their aim: they again succeeded in deceiving the Court, this time into commenting that *maybe* there are increased protections after the January 4, 2023 press release *because of an active investigation*. Latching onto this, they repeatedly refused to allow the DCDA's corporate designees—Mr. Seiden and Ms. Valdez—to answer questions about

topics after January 4, 2023. This coordinated coverup was intended to conceal that there is no active investigation.[1]

But then Ms. Valdez testified in her individual capacity. Ms. Dyer, not representing a party or an individual being deposed, left the deposition before it started. And without Ms. Dyer's strategic and constant objections, the truth finally came out:[2]

> Mr. Skepnek: **So is there now an active investigation?**
> Mr. Qualseth: Object to form.
> Mr. Goheen: Join.
> Ms. Valdez: **No.**

We now know with certainty that no active investigation exists.

These oft repeated lies have adversely impacted Mrs. Buchhorn on multiple levels. First, they have been used to interfere with Mrs. Buchhorn's pursuit of her rights, burdening, delaying, and obstructing her discovery and her prosecution of her claims in this case. Second, they have attempted to extort Mrs. Buchhorn, by pressuring her with the threat of criminal prosecution for pursuing her statutory rights under K.S.A. 60-5004. Third, by falsely representing that the matter is being "reinvestigated" and "kept open **because Mr. Skepnek filed this lawsuit**," they have attempted to unlawfully interfere with Mrs. Buchhorn's relationship with her lawyers. Fourth, they have withheld relevant documents based on the false claim of an active investigation.

This repeated, intentional misconduct requires the Court's immediate sanction, and, *inter alia*, the Court should issue an order to show cause on why the offending lawyers should not be held in contempt for violating the ethical obligations memorialized by the Court on November 30, 2023.

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[1] Deposition of Joshua Seiden as DCDA Corporate Designee ("Seiden 30(b)(6) Tr.") 185:23-187:22 (Dyer instructing Seiden not to answer "has that changed," and "has that decision changed").

[2] Deposition of Suzanne Valdez as District Attorney ("Valdez Indiv. Tr.") 74:10-13.

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I. BRIEF STATEMENT OF RELEVANT FACTS

A. THROUGH MORE THAN A YEAR OF LITIGATION, THE STATE NEVER MENTIONS AN ACTIVE INVESTIGATION INTO MRS. BUCHHORN

1. From the filing of this case on January 4, 2023 until March 10, 2024, there was never even a suggestion that Mrs. Buchhorn was being actively investigated by the DCDA.

a. The State's May 4, 2024 Answer does not make any claim or affirmative defense about an active investigation. Indeed, it doesn't claim *any* affirmative defense at all.

b. The State's June 15, 2023 Answers to Requests for Admission, Interrogatories, and Requests for Production of Document do not claim or disclose an active investigation. Instead, and inconsistent with the existence of an active investigation, the State turned over what it—and the DCDA—have repeatedly represented was the entire file of both the DCDA *and* the law enforcement agencies involved in investigating Mrs. Buchhorn.

c. The State's June 16, 2023 Preliminary Witness and Exhibit List does not disclose an active investigation. Contrarily, the State named Ms. Valdez and Mr. Seiden as fact witnesses "regarding the facts and circumstances of the dismissal of the underlying criminal case." Neither is identified as having knowledge of an active investigation.

d. Neither Ms. Valdez' nor Mr. Seiden's November 5, 2023 and November 7, 2023 motions to quash claimed or noted an active investigation.

e. The DCDA's February 2, 2024 Supplemental Designations of Witnesses, for topics 2, 3, 4, and 5, claimed:[3]

> "The persons believed to have information or knowledge of the documents for this topic are Mark Simpson and C.J. Rieg, the individuals who represented the State of Kansas in this matter. Mark Simpson and C.J. Rieg, are no longer members of the District Attorney's Office and there are no current members of the District Attorney's Office who have knowledge of the case file. Therefore, the information

[3] 2/2/24 DCDA Supplemental Designations of Witnesses Pursuant to K.S.A. 60-230(b)(6).

is not known or reasonably available to the current members of the District Attorneys' office."

This answer, which references a past investigation known only to lawyers who have left the DCDA, is necessarily inconsistent with the existence of an active investigation.

f. Elsewhere, the DCDA claimed "there are no documents…known or reasonably available to the [DCDA];" and "the entire case file of the [DCDA] was provided to the State of Kansas." This response (made three years after Ms. Valdez took office) could not be true if there were, or had ever been, an active investigation during Ms. Valdez' administration.

B. OUT OF OTHER DELAY TACTICS, THE LIE OF AN ACTIVE INVESTIGATION IS BORN

2. The lie of an active investigation began on March 10, 2024, just ten days after Ms. Dyer replaced Mr. Goheen as counsel for the DCDA.[4] In the DCDA's brief Regarding Privilege and Confidentiality Issues and Motion for Protective Order (joined by Ms. Valdez[5]), the DCDA claimed "[t]his particular case, [is] **an ongoing criminal investigation**;"[6] and the DCDA "considers the matter of this child's tragic death to be **an open investigation** with the potential for new charges."[7]

3. The next day, during the March 11, 2024 Status Hearing, Ms. Dyer (now representing the DCDA and Mr. Seiden), represented on the record:

a. "There has been developed additional information that has caused the district attorney to **classify this case as an ongoing investigation**, meaning that there is the potential that charges could be refiled."[8]

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4 2/28/24 Notice of Withdrawal/Substituting Counsel.
5 3/11/24 Valdez' Joinder to First Privilege Brief.
6 3/11/24 Brief of Nonparty Douglas County District Attorney's Office Regarding Privilege and Confidentiality Issues and Motion for Protective Order ("First Privilege Brief") at p. 1 (emphasis added).
7 First Privilege Brief at p. 2 (emphasis added).
8 3/11/24 Hearing Tr., 16:18-22 (emphasis added).

b. "I think we need to be very careful and deliberate as we do this so that we don't compromise a prosecutor's files unnecessarily and **so that we don't compromise an ongoing investigation** into this nine-month old child's death."[9]

c. "And **particularly here**, as I [Ms. Dyer] noted, when there is an **open investigation** and the potential that there may be additional charges down the road. I think we just have to be really careful about whether those depositions will be appropriate."[10]

d. "And we're in tension here, right, because we have a wrongful conviction case that is able to be filed upon, perhaps maybe not, on a dismissal without prejudice when **there's an ongoing investigation** versus the **ongoing investigation**…"[11]

e. "I don't feel comfortable doing that, and **with an open investigation going on**, I clearly can't do that."[12]

f. "But are we going to simply find a waiver and let things go forward when **there is an ongoing investigation**, and I would note that this is not simply the prosecutor changing their mind, this is the fact that **the filing of this case**, Your Honor, **has generated new evidence and new reports that have**…I don't know what the word would be but have given rise to this whole thing. **The need to reinvestigate and keep this open is because Mr. Skepnek filed this lawsuit**. It's not simply changing your mind, it's not mercurial, it's not vindictive, **there is more evidence than there was at the time of the press release**."[13]

g. "something that satisfies our **need to protect that open investigation**, to protect what is legitimately privileged…"[14]

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9 3/11/24 Hearing Tr., 17:6-10 (emphasis added).
10 3/11/24 Hearing Tr., 18:24-19:3 (emphasis added).
11 3/11/24 Hearing Tr., 19:4-8 (emphasis added).
12 3/11/24 Hearing Tr., 38:10-12 (emphasis added).
13 3/11/24 Hearing Tr., 39:11-23 (emphasis added).
14 3/11/24 Hearing Tr., 40:1-4 (emphasis added).

4. Four days later, on March 15, 2024, Ms. Dyer sent a letter, claiming:[15]

> The production of these documents is subject to the following objections:
>
> 1. *Open investigation*. The DA's Office objects to the requests in the subpoena to the extent they seek documents pertaining to an open investigation.

5. In Ms. Dyer's April 15, 2024 Supplemental Brief…Regarding Privilege and Motion for Protective Order, (joined by Ms. Valdez) [16] the DCDA claimed: "It would not be fair to throw open for inspection the prosecution's mental impressions about this case, whether currently or regarding earlier case proceedings, when **the matter is still open and doing so could potentially jeopardize the search for justice**."[17]

6. At the May 13, 2024 Motions Hearing, Mr. Goheen (representing Ms. Valdez) and Ms. Dyer (representing the DCDA and Mr. Seiden) claimed:

a. "If you're asking about, Well, why did you conclude this? Why did you decide not to refile? **Why are you now deciding to reopen the investigation**? All of those things are mental impressions of my client and Ms. Dyer's client as well. Those are prosecutorial decisions being made in a case where the dismissal was without prejudice and the statute of limitations hasn't run."[18]

b. "I don't think there's been a waiver of privilege as to what's going on **in the current investigation**. I think that's kind of where I'm sitting at."[19]

c. "Understanding – you know, there is still **the open nature of the case. The open nature of the investigation**. So I think it's a – it's a way to kind of balance the invests, here,

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15 3/15/24 Dyer to Skepnek, Letter Transmitting DCDA000001-001064.
16 4/15/24 Valdez' Joinder to Second Privilege Brief.
17 4/15/24 Supplemental Brief of Nonparty Douglas County District Attorney's Office Regarding Privilege and Motion for Protective Order ("Second Privilege Brief") at p. 11 (emphasis added).
18 5/13/24 Hearing Tr., 60:25-61:8 (emphasis added).
19 5/13/24 Hearing Tr., 62:4-7 (emphasis added)

so that there – we don't get into, and interfere with, **the prosecutor's work going forward**, for sure."[20]

C. THE LIE WORKED, DECEIVING THE COURT INTO DELAYING AND LIMITING DISCOVERY

7. At the March 11, 2024 hearing, with the claim of an active investigation sprung on the Court *months* after the litigation began, the Court expressed its apparent frustration in having to delay things further:

> "I don't know what the Latin phrase is, **it sticks in my craw that I'm going to grant the request to continue these depositions**, get this document log submitted, an opportunity to challenge, and the Court to make a decision. **I don't understand why that didn't happen sooner** but…and I know I've said this to Mr. Skepnek before…**there is no question that this is another situation where delay of claimant's ability to prosecute this case is being impacted**."[21]

8. At multiple hearings, the Court noted it believed and relied upon the representations made to it that Mrs. Buchhorn was being investigated by the DCDA:

a. "We've got an **open case**,"[22]

b. "…I'm not convinced at all that my final decision here won't be there is a wavier by virtue of the circumstances but **it is an open investigation**."[23]

c. "The main thing that's giving [me] pause is the fact that **I'm dealing with what's been representing to be an open criminal investigation**."[24]

d. "In terms of—to—to **balance the right of the State to continue to investigate**—versus the events that gave rise to the cause of action."[25]

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[20] 5/13/24 Hearing Tr., 78:14-20 (emphasis added).
[21] 3/11/24 Hearing Tr., 42:16-43:5 (emphasis added).
[22] 3/11/24 Hearing Tr., 41:22 (emphasis added).
[23] 3/11/24 Hearing Tr., 42:3-6 (emphasis added).
[24] 5/21/24 Hearing Tr., 40:15-18 (emphasis added).
[25] 5/21/24 Hearing Tr., 50:9-13 (emphasis added).

e. "At that time, I was taking the press release as an indication that, absent something new, the **District Attorney held the belief that there wasn't a prosecutable case. Now I hear something different**."[26]

f. "And, again, I just say this to give understanding to—it would be that—that **there's an ethical basis to believe that information now exists that did not exist on January 4, 2023, that gives the District Attorney the ability to hold a good faith belief that a prosecutable case may exist**."[27]

9. The Court's struggle to balance Mrs. Buchhorn's civil discovery rights and the State's need to protect an active investigation underpinned the Court's entire analysis: "The tension is, that same witness has a constitutional responsibility to prosecute on behalf of the State, and **there are protections that exist for those investigations**. And I would think that protection would extend to the person that's being investigation."[28]

D. COUNSEL DOUBLED DOWN TO PREVENT THEIR LIE FROM BEING EXPOSED

10. On May 17, 2024—2 business days before Mr. Seiden's deposition—the DCDA amended its prior representations in its 30(b)(6) disclosure, claiming:[29]

a. There is an "open investigation" of Mrs. Buchhorn:

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26 5/21/24 Hearing Tr., 62:15-18 (emphasis added).
27 5/21/24 Hearing Tr., 63:7-12 (emphasis added).
28 5/21/24 Hearing Tr., 43:6-11 (emphasis added).
29 5/17/24 DCDA Second Supplemental Responses and Objections to Subpoena Duces Tecum.

> 1. *Open investigation*. The DA's Office generally objects to the subpoena requests in that there is an open investigation into the death of nine-month-old Oliver Ortiz. The DA's Office objects to producing documents or providing testimony regarding that open matter as an improper invasion of the prosecutorial function. Nothing in these responses or in any potential testimony from a member of the DA's Office will act to limit or prevent the DA's Office from bringing new charges against a potential defendant should the evidence warrant.

b. Documents after the January 4, 2023 press release were being withheld:

> 5. *Time*. The underlying criminal action, Case No. 2017-CR-385, was dismissed without prejudice on December 16, 2022. The press release mentioned in the subpoena is dated January 4, 2023. The DA's Office objects to the production of documents and testimony about matters following the issuance of the January 4, 2023 press release as overly broad, unduly burdensome, not relevant to the claims and defenses in the case, and an improper invasion of the prosecutorial function.

11. During Mr. Seiden's May 21, 2024 deposition, Mr. Qualseth and Ms. Dyer stopped the deposition after roughly 20 minutes of questioning and demanded a hearing with the Court.

12. After a multi-hour delay (because the Court was understandably busy and was not anticipating the unscheduled hearing), the hearing occurred, at which time Mr. Qualseth (representing the State) and Ms. Dyer (representing the DCDA and Mr. Seiden) sought a protective order:

a. "Because **it is an open case**."[30]

[30] 5/21/24 Hearing Tr., 7:20 (emphasis added).

b. "anything after the dismissal of the underlying criminal conviction is really off limits. It's not relevant. **To the extent Oliver Ortiz's death remains open—an open matter**, that's a separate—that's a separate matter, and that shouldn't be inquired about."[31]

c. "**We have raised the fact that this is an open matter with you in this Court** because we've—we've been talking about serious issues about protecting the integrity of the files, and work product et cetera."[32]

d. "I think I have a right to move to—well, my client certainly has an interest in **protecting its open files**. That's number one."[33]

e. "But—but [DCDA], they're witnesses. **Because of the nature of the case right now**, we've got to draw that line."[34]

13. To keep the lie from being exposed, Ms. Dyer argued to the Court "The District Attorney's Office, I think I can say pretty firmly, believes strongly that there should be absolutely no questioning and no discovery of anything that it has done that's in its files after the dismissal, or perhaps, the press release."[35]

14. After the hearing and notwithstanding the Court's refusal to adopt their blanket request for a discovery cut-off, Mr. Qualseth and Ms. Dyer objected to questions about anything after the January 4, 2023 press release, with the latter instructing Mr. Seiden not to answer such questions.[36] Ms. Valdez attended Mr. Seiden's corporate deposition and did not respond when Mr. Qualseth and Ms. Dyer objected and instructed Mr. Seiden not to answer based on the claim of an active investigation.

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31 5/21/24 Hearing Tr., 11:20-25 (emphasis added).
32 5/21/24 Hearing Tr., 12:1-4 (emphasis added).
33 5/21/24 Hearing Tr., 30:3-5 (emphasis added).
34 5/21/24 Hearing Tr., 59:4-6 (emphasis added).
35 5/21/24 Hearing Tr., 36:25-37:4.
36 Seiden 30(b)(6) Tr., 187:9-11 ("The judge said today that you were not to inqure into things after January 4, and we're holding that so—.")

15. Because of the delay due to the request for a protective order over a relevance objection, Mr. Seiden's corporate representative deposition was not finished. His individual deposition has not begun and is currently unscheduled, pending the Court's ruling on this Motion.

E. WITHOUT MS. DYER'S INTERFERENCE, THE TRUTH COMES OUT

16. Ms. Valdez' deposition as a corporate representative of the DCDA was conducted on the morning of May 22, 2024. After lunch, Ms. Valdez was deposed in her individual capacity, as the District Attorney of the DCDA and a fact witness listed by the State in its Preliminary Witness and Exhibit List.

17. At the beginning of the individual deposition, Ms. Dyer's continued presence was challenged because she did not represent an attending party. Ms. Dyer voluntarily left the deposition after a seven-minute recess with Ms. Valdez and Mr. Goheen.

18. The contrast in interference and meritless objections based on Ms. Dyer's presence was massive. For example, Mr. Qualseth, attending every deposition, made 24 objections. Mr. Goheen, attending both of Ms. Valdez' depositions, made 13 objections. Meanwhile, Ms. Dyer—attending only the two DCDA corporate representative depositions—made 192 objections.

19. Without Ms. Dyer's obstructionism, the truth came out. Asked if the repeated representations to the Court of an active investigation were true, Ms. Valdez *to her credit* truthfully testified that they were false:[37]

> Mr. Skepnek: **So is there now an active investigation?**
> Mr. Qualseth: Object to form.
> Mr. Goheen: Join.
> Ms. Valdez: **No.**

II. LEGAL STANDARD

Kansas attorneys are subject to sanction where they sign a pleading without first conducting a reasonable inquiry into the truth of their pleading. K.S.A. 60-211(b); *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 541, 111 S.Ct. 922, 112 L. Ed. 2d 1140 (1991) (analyzing federal analog, Rule 11). "The reasonable inquiry requirement mandates that an attorney stop, think, and assure himself of the legal and factual basis of a pleading before signing and presenting it to the court." *Taylor v. U.S.*, 151 F.R.D. 389, 392-93 (D. Kan. 1993).

The Court is empowered to sanction a party for causing unnecessary delay, needlessly increasing the cost of litigation, making claims not warranted by existing law, and making factual contentions that lack any evidentiary support. K.S.A. 60-211(b)-(c). This sanction can include the party's attorneys' fees incurred by the improper filing. *Id.* at (c). The Court's ability to sanction applies to this matter under K.S.A. 60-245 and 60-245a. *Id.* at (d). It applies to "any attorney, law firm or party," including the State and the DCDA. K.S.A. 60-211(c), (e). Its purpose "is to deter repetition of improper conduct." *Wood v. Groh*, 269 Kan. 420, 430, 7 P.3d 1163 (2000) (internal quotation omitted).

A deponent's failure to obey a court's discovery order to provide or permit discovery, including pursuant to K.S.A. 60-230(b)(6), empowers the Court to issue further just orders. K.S.A.

[37] Valdez Indiv. Tr., 74:10-13.

60-237(b)(2). This includes striking pleadings, rendering a default judgment, and finding the deponent in contempt of court. *Id.* And while imposing sanctions under K.S.A. 60-211 is discretionary, *Thornburg v. Schweitzer*, 44 Kan. App. 2d 611, 625, 240 P.3d 969 (2010), the Court "**must** order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure…." K.S.A. 60-237(b)(2)(C) (emphasis added).

III. ARGUMENT

A. THERE IS NO ACTIVE INVESTIGATION OF MRS. BUCHHORN

Suzanne Valdez, the Douglas County District Attorney and a Kansas licensed attorney, has testified under oath that there is no active investigation of Mrs. Buchhorn:[38]

> **Q: So is there now an active investigation?**
> **…**
> **A: No.**

Ms. Valdez also testified that after receiving Dr. Turner's report—who opined that the child died of natural causes—Ms. Valdez made the decision that she "should not" continue to prosecute Mrs. Buchhorn because she needed a pathologist, but could not "shop around for an expert" to contradict Dr. Turner's opinion of death, which was "harmful to the case…that…couldn't get to reasonable—beyond a reasonable doubt."[39] Ms. Valdez has, under oath, put to rest the repeated lie that there is an active investigation.

B. REPEATED LIES INTENDED TO MISLEAD THE COURT, AND OBSTRUCT JUSTICE SHOULD BE SANCTIONED UNDER K.S.A. 60-211

As articulated in *Wood*, 269 Kan. 420, the following nine factors are considered when deciding if a violation under K.S.A. 60-211 occurred and what sanction should be imposed: "(1) whether the improper conduct was willful or negligent; (2) whether it was part of a pattern of

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38 Valdez Indiv. Tr., 74:10-13.
39 Valdez Indiv. Tr., 23:9-12; 24:19-25:7; 73:7-17; 73:19-23.

activity or an isolated event; (3) whether it infected the entire pleading or only one particular count or defense; (4) whether the person has engaged in similar conduct in other litigation; (5) whether it was intended to injure; (6) what effect it had on the litigation process in time or expense; (7) whether the responsible person is trained in the law; (8) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and (9) what amount is needed to deter similar activity by other litigants." *Id.* at 431. Each of these factors weigh in favor of severe sanctions.

1. The improper conduct was willful, not negligent

Willful is "intentionally or purposefully doing wrong or causing injury to another." PIK 4th CIV 103.04. As evidenced by the above statement of facts, the lies to the Court were willful, not mere negligent misstatements. They were repeatedly made. They were offered to gain an advantage in the litigation. They were offered to deceive the Court into making the rulings which could not, and knowingly were not, supported by the truth. Nothing could be more willful, intentional, or purposeful. As a result, this factor weighs in favor of sanctions.

2. The improper conduct was part of a pattern of activity, not isolated

The above statement of facts also establishes the length and breadth of misrepresentations to the Court. This was not an isolated comment in the heat of an oral argument. Nor was it something that could be explained as a simple misinterpretation or an inartful comment. The statements of Ms. Dyer, Mr. Goheen, and Mr. Qualseth—and their clients the DCDA, Mr. Seiden, Ms. Valdez, and the State—were obviously coordinated. They demonstrate a repeating drumbeat of deceptions, falsehoods, and plain lies to the Court. In fact, upon information and belief, this lie was designed to influence *this* particular judge. Knowing this judge's history as an assistant district attorney himself, counsel was sure that the Court would be acutely sensitive to protecting a prosecutor's active investigation. As a result, this factor also weighs in favor of sanctions.

3. The improper conduct infected the entire pleading

Counsels' conduct has infected *everything.* It has successfully ground the entire litigation to a halt. No case management order is in place. Discovery is stalled. Seiden's corporate representative deposition is not finished and his individual deposition is not even scheduled. Meanwhile—representing mere nonparties—Ms. Dyer has infected this case with confidentiality claims, protective order demands, and otherwise generally barred Mrs. Buchhorn's ability to prosecute her statutory right to a certificate of innocence.

But the lie of an active investigation has also infected every pleading filed since Ms. Dyer first advanced the lie to the Court on March 10, 2024. It has dominated the DCDA and State's entire argument. It has been the basis for instructing witnesses not to answer discovery. It has been the basis for repeated rounds of privilege logs. Repeated rounds of briefing on privilege claims that have never been recognized by any Kansas court. This was not a one-off comment in a brief. The lie of an active investigation is the *entire* argument. And as the Court has repeatedly noted, it has been the single factor weighing heavily on the Court's decisions. As a result, this factor weighs in favor of sanctions.

4. There is documented evidence of similar misrepresentations to gain advantages in litigation

One cannot know every time each of these individuals has engaged in similarly egregious conduct in other litigation. But there are sufficient documented cases of similar falsehoods that indicate these persons have made misrepresentations to courts in order to gain advantages in litigation. First, Mr. Goheen, representing Ms. Valdez and the DCDA, has already been nominally sanctioned by this Court within this litigation. Second, the Court's November 30, 2023 Journal Entry was crystal clear: "Nothing about this ruling limits the ethical obligations of any attorney to make disclose of any document or evidence that would be necessary to avoid making the

representations to the Court during this proceeding inaccurate or incomplete." This Order has been violated. Third, as documented below, the 30(b)(6) designations and representations of what was produced as the "DA File" have been riddled with falsehoods.

In other litigation, the DCDA has made a habit of attempting to deceive courts for its own advantage. For example, *State v. Shannon*, Case No. DG-2023-CR-300181, where the State, through the DCDA and in filings signed by Mr. Seiden, represented that Mr. Seiden "is the **only counsel in the District Attorney's Office** who is prepared and **qualified to represent the State**."[40] The DCDA repeated this representation during the June 4, 2024 status conference[41] and in a June 5, 2024 pleading.[42] The DCDA also repeatedly represented that Ms. Valdez could not finish trying a nearly completed case on her own. *Id.*

Of course, these claims were false when they were made. Surely the DCDA will continue to prosecute rape charges, despite Seiden's abrupt departure last week. The DCDA is comprised of attorneys qualified to represent the State. Ms. Valdez—elected to prosecute cases on behalf of the State—is one such attorney. Moreover, the State's conduct evidences this reality. Seiden did not appear for the *Shannon* trial. Instead, the DCDA sent two different lawyers.[43] And despite the DCDA's repeated lies to a Court, the DCDA disavowed both lies when questioned by the Lawrence Journal World: "schedules were rearranged and other qualified counsel within the office expended

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40 *State v. Shannon*, State's Motion for Continuance at p. 2 (filed June 4, 2024) (emphasis added).

41 *In denying continuance in rape case, judge appears to question why DA can't handle a case on her own*, Lawrence Journal World (June 4, 2024), *available at* https://www2.ljworld.com/news/public-safety/2024/jun/04/in-denying-continuance-in-rape-case-judge-appears-to-question-why-da-cant-handle-a-case-on-her-own/.

42 *State v. Shannon*, State's Motion to Reconsider Motion for Continuance at p. 2 (filed June 5, 2024).

43 *Recent trials, deputy DA's departure amplify questions in legal community about decision-making, relationships in DA's office*, Lawrence Journal World (June 24, 2024), *available at* https://www2.ljworld.com/news/public-safety/2024/jun/24/douglas-county-deputy-district-attorney-leaves-office-ahead-of-election/.

extraordinary effort to prepare for the Shannon trial" and Valdez "could certainly have completed the Burgess trial on her own."[44]

This well documented evidence of similar attempts to deceive courts to gain advantages in litigation means this factor weighs in favor of sanctions.

5. The improper conduct was intended to injure Mrs. Buchhorn

The lies about an active investigation served multiple purposes, but each was intended to advantage the State and nonparties and directly injure Mrs. Buchhorn. First, and as addressed under other factors, the lie of an active investigation was used to delay and obstruct Mrs. Buchhorn's discovery rights and the prosecution of her case.

Second, the lies were an attempt to extort Mrs. Buchhorn; pressuring her with the threat of criminal prosecution for pursuing her statutory rights under K.S.A. 60-5004. The message was clear: don't attempt to depose Mr. Seiden and Ms. Valdez or they will prosecute you for the death of a baby that everyone knows—including the DCDA's own expert witness, Dr. Turner—died of natural causes. Beyond merely repugnant, this enterprise is unlawful and potentially criminal. *In re Ruffin*, 2010-2544, p. 6 (La. 1/14/11), 54 So.3d 645, 648 (per curiam) (discipline of attorney who threatened criminal prosecution to gain advantage in a civil matter); K.S.A. 21-5415.

Third, by falsely representing that the matter is being "reinvestigated" and "kept open **because Mr. Skepnek filed this lawsuit**," they have attempted to unlawfully interfere with Mrs. Buchhorn's relationship with her lawyers. Hoping to create a conflict between lawyer and client and cause Mrs. Buchhorn to blame her counsel in her exoneration lawsuit for subjecting her to criminal prosecution. Such conduct is similarly improper, and, if successful, is a tort. Interference with Attorney-Client Relationship, 19 Am. Jur. Proof of Facts 2d 335 (April 2024 update). The

[44] *Id.*

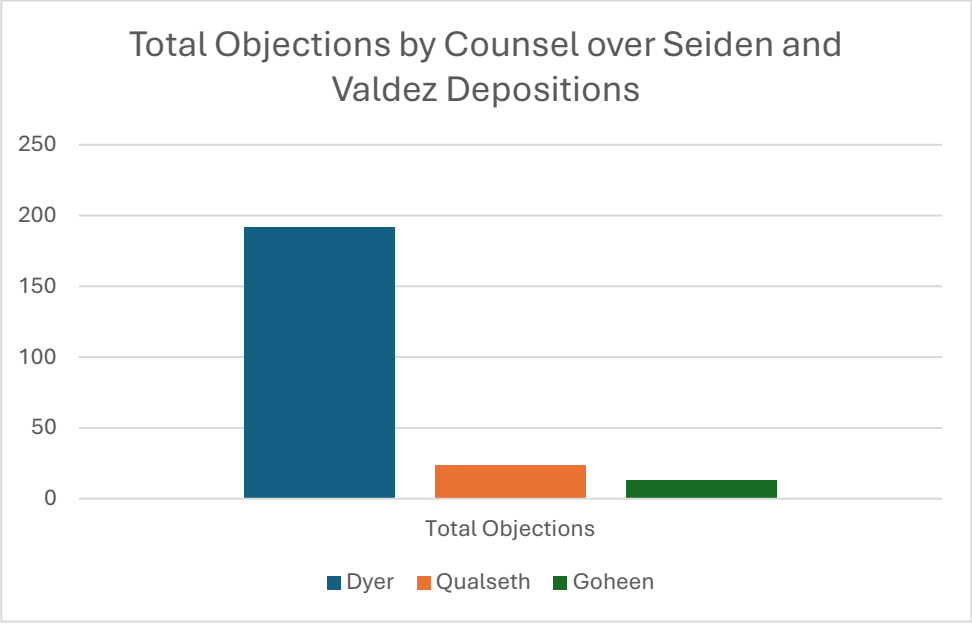
attorney-client relationship—*especially of the wrongfully accused*—is entitled to full protection under the law, including against the tort of interference. *Id.* (collecting citations therein).

Fourth, by withholding discoverable documents, the State has interfered with Mrs. Buchhorn's statutory right to obtain her certificate of innocence. The State, by and through the DCDA, has failed to produce documents that will aide Mrs. Buchhorn's efforts to establish her innocence.

As a result, this factor weighs in favor of sanctions.

6. The improper conduct affected the litigation process in time *and* expense

Since Ms. Dyer replaced Mr. Goheen and the lies about an open investigation were first made to the Court, nonparties to this litigation have filed over 400 pages with the Court. This inundation of paper has served its purpose: grinding this litigation to an utter halt. And this strategy carried over to the nonparties' depositions where Ms. Dyer's obstructionist objections prohibited Mrs. Buchhorn from efficiently taking depositions with a clear record. To evidence this gamesmanship, consider the following comparison of objections made by counsel during only 3 depositions, one of which Ms. Dyer did not attend:



And this data isn't even complete, because due to Ms. Dyer and Mr. Qualseth's march to the courthouse regarding an overruled relevance objection 20 minutes into a deposition, Mr. Seiden's corporate designee deposition is not complete, and his individual deposition has not even been started. If Mr. Seiden's 2 depositions were complete, Ms. Dyer's interfering objections would likely double, ballooning to over 400. Unless this Court takes action to stop this abusive conduct, these numbers can be expected to only get worse.

Ms. Dyer's meritless objections and witness coaching became increasingly obvious. For example, she repeatedly attempted to limit testimony by instructing witnesses on how to answer questions, including:

- "That's just a yes or no;"[45]
- "That's a yes or no;"[46]
- "Object. Can I—can you ask if he recalls. A yes or no if he recalls, and then I can—;"[47]
- "I mean—answer if you—if you know. Yes or no;"[48]
- "That's a yes or no."[49]

She directly interfered when she was unhappy with Ms. Valdez' testimony as the DCDA's corporate designee:[50]

> Q: Okay. Okay. And so did you assist Mr. Seiden in any way in making these designations of—of particular documents as responsive to these topics?
>
> A: So any time we have—it is my policy in my office any level threes or higher off grids we have two—at least two—two prosecutors on the case. So we—

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45 Seiden 30(b)(6) Tr., 67:17.
46 Seiden 30(b)(6) Tr., 71:2.
47 Seiden 30(b)(6) Tr., 71:7-9.
48 Seiden 30(b)(6) Tr., 91:15-16.
49 Deposition of Suzanne Valdez as DCDA Corporate Designee ("Valdez 30(b)(6) Tr.") 49:7.
50 Valdez 30(b)(6) Tr., 29:22-30:12 (emphasis added).

Ms. Dyer: I think there might be a misunderstanding about your question. Can—can you rephrase that question?
Mr. Skepnek: Oh, I think she understood it.
Ms. Dyer: Okay. All right.
Ms. Valdez: I think—I—I'm getting there.

And Ms. Dyer did it again during Mr. Seiden's corporate designee deposition, when asked about how the DCDA gathered documents subsequently produced to Mrs. Buchhorn in this case:[51]

Q: Sure. And you're the person who did it?
Ms. Dyer: Let's—we're going—can we go off the record?
Mr. Skepnek: Why?
Ms. Dyer: Because I want—because we're—we're trailing off into—
Mr. Skepnek: No. We're not. We're—I'm—I'm finding out how the—documents were identified which is—I have a right to do.
Ms. Dyer: Okay.
Mr. Skepnek: How were they identified.

These illustrative examples show the improper conduct of the parties and counsel, and specifically Ms. Dyer, has affected the litigation in both time *and* money. As a result, this factor weighs in favor of sanctions.

7. <u>All responsible persons are trained in the law</u>

Regardless of who the Court determines is responsible, all potential individuals are trained in the law. Ms. Valdez, Mr. Seiden, Ms. Dyer, Mr. Goheen, and Mr. Qualseth are all lawyers. The DCDA is comprised of lawyers, led by Ms. Valdez, and is tasked with practicing law. The State of Kansas is represented by the Kansas Attorney General's Office, also comprised of lawyers, led by Mr. Kobach, a lawyer, and is tasked with practicing law.

In addition, the lawyers subject to this Motion are not uneducated in the ethical requirements of practicing law (even though it seems unnecessary to state that a lawyer cannot

[51] Seiden 30(b)(6) Tr., 95:10-22.

lie[52]). Ms. Dyer is particularly knowledgeable, having almost averaged an ethics presentation a year since at least 2009:[53]

- In 2023: "Bar"-Benheimer! A Bright Pink Nuclear Explosion of Ethical Dos, Don'ts, and Lessons Learned
- In 2022: Everything Ethics, Everywhere, All at Once
- In 2021: Navigating Real Rules of Legal Ethics in a Virtual World
- In 2019: Once Upon a Time: Ethical Fairy (and Scary) Tales
- In 2018: "Is This Thing On?" Lawyers Who Talk Too Much and Other Ethical Mishaps
- In 2017: Roundup of Current Ethics Issues and Cases - Federal, State and Local
- In 2016: Technological Competence: Legal Ethics in the Digital Age
- In 2014: All the Ethics News That'll Fit in 50 Minutes
- In 2013: Knowing What You Don't Know: The Challenge of Complying with Rule 1.1's Technology Competence Requirement
- In 2010: Legal Ethics in Everyday Practice (Listed twice)
- In 2009: Engaging Counsel and the Scope of Conflict, Inquiries and Waivers

As a result, this factor weighs heavily in favor of sanctions.

8. <u>The amount, given the financial resources of the responsible persons, needed to deter repetition in the same case is large</u>

The individuals subject to this Motion include the State, its counsel (Mr. Qualseth), Ms. Valdez, Mr. Seiden, and counsel appointed and paid by the State to represent them (Ms. Dyer and Mr. Goheen). The financial resources of the State are massive as compared to Mrs. Buchhorn.

[52] But that nevertheless is the law. K.S.A. 60-211(b); KRPC 3.1; KRPC 3.3(a)(1), (3); KRPC 3.4; KRPC 4.1.
[53] Dyer's Disclosed Presentations, *available at* https://www.foulston.com/who-we-are/holly-a-dyer.

Moreover, the State hired Ms. Dyer and Mr. Goheen to represent the DCDA, Ms. Valdez, and Mr. Seiden, nonparties to this litigation but lawyers themselves.

Ms. Dyer is a partner with Foulston Siefkin, LLP, whose website self-advertises it is "Kansas' Largest Law Firm" with lawyers licensed in Idaho, North Dakota, Colorado, New Mexico, Oklahoma, Texas, Missouri, Iowa, Wisconsin, Illinois, Florida, Pennsylvania, and Washington DC, and maintaining offices in Kansas City, Topeka and Wichita. As of July 1, 2024, Foulston lists 91 lawyers in its Wichita office alone.

Mr. Goheen, a former member of the KBA Board of Governors and the Kansas Bar Foundation's Board of Trustees, is a partner with MVP Law, which advertises offices in 6 states, including Kansas City in Kansas; Springfield, St. Louis, and Kansas City in Missouri; Tulsa, Oklahoma; Springfield, Illinois; Des Moines, Iowa; and Omaha, Nebraska, and 79 lawyers listed on its website. The Court has already imposed a symbolic sanction of $200.00 on Mr. Goheen personally. Apparently, neither the message nor the Court's leniency were understood or received.

As a result, this factor weighs in favor of significant sanctions.

Rather than force Mrs. Buchhorn to speculate about the financial resources of the responsible persons and force the Court to make a decision without all of the evidence, Mrs. Buchhorn requests that the Court order discovery into the fees paid by the State to Foulston Siefkin and MVP Law, each responsible person's financial resources, and a show cause order of why the funds paid by the State to Ms. Dyer and Mr. Goheen and their law firms should not be clawed back and paid directly to Mrs. Buchhorn and her counsel as restitution for their and their clients' improper conduct.

9. The amount needed to deter similar activity by other litigants is similarly large

Given the magnitude, egregiousness, repetition, and impunity of these lies to the District Court of Douglas County, the amount needed to deter similar activity by other litigants is similarly large. As a result, this factor weighs in favor of significant sanctions.

C. THE COURT SHOULD ENTER DEFAULT JUDGMENT AGAINST THE STATE

If a deponent "fails to obey an order to provide or permit discovery…the court where the action is pending may issue further just orders." K.S.A. 60-237(b)(2)(A). Such just orders may include:

(i) Directing that the facts Mrs. Buchhorn claims to establish her innocence are taken as established in this action;

(ii) Prohibiting the State from opposing Mrs. Buchhorn's claims or the State's defenses, or from introducing designated matters in evidence;

(iii) Striking the State's pleadings, particularly its denial of Mrs. Buchhorn's claim of innocence, in whole or in part;

(iv) Rendering a default judgment against the State, finding Mrs. Buchhorn is innocent of murder; or

(v) Finding those responsible in contempt of court.

"[S]anctions for failure to comply with discovery orders is a matter within the sound discretion of the district court," and "will not be overturned unless that discretion has been abused." *Canaan v. Bartee*, 272 Kan. 720, 726, 35 P.3d 841 (2001). "Where the evidence shows that a party has acted in deliberate disregard of reasonable and necessary court orders, and the party is afforded a hearing and an opportunity to offer evidence of excusable neglect, the imposition of a stringent sanction will not be disturbed." *Id.* at Syl. ¶ 2. The Kansas Supreme Court has articulated the

following test when analyzing whether a district court abused its discretion when granting default judgment for failure to comply with discovery orders:

> "(1) Does the discoverable material go to a dispositive issue in the case? (2) Are alternative sanctions sufficient to protect the party seeking discovery available? and (3) Is the requested information merely cumulative or corroborative?"

Id. at 727; *see also Wenger v. Wenger*, 239 Kan. 56, 57–58, 716 P.2d 550 (1986) (counterclaims dismissed and default judgment entered for continued failure to make discovery); *Binyon v. Nesseth,* 231 Kan. 381, 383-84, 646 P.2d 1043 (1982) (default judgment entered after repeated unsuccessful attempts to force defendant to comply with discovery orders).

1. The discoverable material goes to a dispositive issue in the case

This factor does not require that the discovery is entirely dispositive of the case. "Instead, discovery may be dispositive if it involves a deciding issue in the case." *S.J. Louis Constr., Inc. v. Water Dist. No. 1 of Johnson Cnty.*, No. 122,165, 2021 WL 1704434, at *23 (Kan. Ct. App. 2021). Mrs. Buchhorn is seeking to prove her innocence. The knowledge of the State and the DCDA of her guilt is directly relevant. Therefore, this factor weighs in favor of default judgment.

2. No alternative sanction is sufficient to protect Mrs. Buchhorn

Just like the district court's order in *S.J. Louis Constr., Inc.* 2021 WL 1704434, at *26, "other sanctions [are] insufficient to protect [Mrs. Buchhorn] from further discovery abuses. [The State and the DCDA] exhibited a pattern of discovery-related misconduct that would not have been remedied by a lesser sanction." The lesson to be learned from that case, however, is that before entering judgment in Mrs. Buchhorn's favor, the Court should issue an order to show cause why dismissal should not result. This will adequately place the State on notice of the potential for default judgment and allow it the owed due process to respond.

As described above, the conduct documented in this Motion cannot be tolerated. As a result, the time has come for the Court to simply enter judgment in Mrs. Buchhorn's favor as a sanction

for the State's repeated, intentional misconduct. No other sanction can adequately redress the damage Mrs. Buchhorn has suffered at the hands of the State. And most of the other available sanctions reach this same result. For example, prohibiting the State from opposing Mrs. Buchhorn's claim of innocence and striking the State's pleadings all result in default judgment in Mrs. Buchhorn's favor in this case. The only sanction that does not result in default judgment—and which Mrs. Buchhorn separately requests from the Court, is finding those responsible to be in contempt of court. This sanction should similarly be imposed after the order to show cause.

3. The sought discovery is not cumulative or corroborative

Despite the DCDA's prior representations, we now know that the DA File—the documents handed over to the Attorney General's Office and that formed the basis of the Court's determination of waiver over any applicable privilege—was *not* all of the relevant documents in the DCDA's possession. In fact, as Mr. Seiden testified, the DCDA has not even *gathered* all of the responsive, relevant documents. Outside of the incomplete file it gave the Attorney General's Office, the DCDA has only searched the email inboxes of 3 attorneys—*none of whom worked at the DCDA during Mrs. Buchhorn's criminal prosecution.* Thus, this factor weighs in favor of default judgment. *S.J. Louis Constr., Inc.*, 2021 WL 1704434, at *24-25.

In addition, the Court "must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." K.S.A. 60-237(b)(2)(C). Far from an award being unjust, *not* awarding Mrs. Buchhorn her attorneys' fees and other expenses would be unjust.

Moreover, the DCDA and the State have represented that there is "new evidence" that proves Mrs. Buchhorn is not innocent. Ms. Dyer has claimed "the filing of this case, Your Honor,

has generated new evidence,"[54] and Mr. Qualseth has claimed to possess "evidence of—that Ms. Buchhorn is not innocent."[55] The only thing Mr. Qualseth could point to were "texts from Ms. Buchhorn [that were] part of the underlying criminal case" and "an expert witness disclosure…who said that the child was killed. It was a homicide."[56] But there is no "new evidence."

After noting the text messages, Mr. Qualseth immediately undercut his claim by admitting that they were "part of the underlying criminal case." There are no newly discovered text messages. Neither the State nor the State has produced any "next text messages" in this litigation. They do not exist. In addition, expert opinions are not evidence, but rather limitedly "help the trier of fact [] understand the evidence." K.S.A. 60-456(b); *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1329 (Fed. Cir. 2001) ("Broad conclusory statements offered by [party's] experts are not evidence and are not sufficient to establish a genuine issue of material fact"). That's why expert reports themselves are inadmissible. *In re Quary*, 50 Kan. App. 2d 296, 309-10, 324 P.3d 331 (2014) (finding "expert reports are created during the litigation, long after the operative events" and therefore "essentially reflect a tailored narrative of facts that may be disputed in the trial evidence and [are] a carefully constructed version of the witness' opinions presented at trial").

But the claim of "new evidence" (perhaps merely designed to give the Court pause despite the insurmountable mountain of evidence of Mrs. Buchhorn's innocence—including the State's own expert witness), underscores why the State and the DCDA hiding evidence is such a problem. This discovery—what the State *and* the DCDA know **today**—goes to the heart of Mrs. Buchhorn's ability to prove her innocence. Neither the State nor the DCDA have produced *any* evidence they

54 3/11/24 Hearing Tr., 39:11-23.
55 3/11/24 Hearing Tr., 55:1-3.
56 3/11/24 Hearing Tr., 55:6-14.

claim was uncovered by an active investigation. Nor have they produced any evidence contesting Mrs. Buchhorn's innocence. Therefore, requests for such evidence (despite all of us knowing there is none), cannot be cumulative or corroborative. Until the State and the DCDA admit they do not possess evidence that Mrs. Buchhorn is not innocent, she is entitled—and must—demand they produce evidence to the contrary.

D. THE DCDA HAS UNLAWFULLY—AND IN DIRECT VIOLATION OF THIS COURT'S ORDER—WITHHELD RELEVANT, DISCOVERABLE DOCUMENTS

As the Court is well aware, the DCDA's representation of what was produced to the Attorney General's Office has morphed, changed, contradicted itself, and completed disavowed prior representations in open court and on the record. So too has the DCDA's claim about what it knows. For *months*, the DCDA claimed that it did not know anything about the case because the attorneys who tried the underlying criminal case left the office. The Court, as documented in transcripts, casted doubt on the truth of these representations (especially in light of Ms. Valdez' January 2023 press release), but the Court has not made a formal finding of falsehood. Instead, the Court instructed counsel to move forward with discovery and come back for relief:[57]

> THE COURT: I don't think we can say that that representation does not make sense to me, but I am not prepared here today, unless Mr. Goheen has something more to say about that -- that is the designation they have made -- and I think you take the deposition and then you come back to the Court -- I don't know how to square that response.

Here we are.

[57] 2/9/24 Hearing Tr., 40:11-18.

Following the partial deposition of Seiden as a DCDA corporate representative, it is now documented that DCDA's prior and repeated representations to counsel and the Court were lies.

1. The DCDA falsely represented no one at the DCDA knew about Mrs. Buchhorn's prosecution

As outlined in the Statement of Facts, the DCDA repeatedly claimed in its Court-ordered February 2, 2024 amended 30(b)(6) disclosure that "the information is not known or reasonably available to the current members of the" DCDA. Instead, the DCDA pointed the finger at "Mark Simpson and C.J. Rieg, the individuals who represented the State of Kansas in this matter."

But this was false.

Mr. Seiden "primarily" drafted the press release after consulting with Ms. Tatum and Ms. Valdez.[58] And before this wrongful conviction lawsuit was filed, Ms. Valdez was very familiar with the case and its facts.[59] Thus, on February 2, 2024, when it claimed that no one knew about the conviction in order to respond to the 30(b)(6) designations, the DCDA was lying.

2. The DCDA falsely represented it produced the entire case file to the Attorney General's Office

Elsewhere, the DCDA claimed "the entire case file of the [DCDA] was provided to the State of Kansas." This too was a lie, as is well documented throughout the transcripts and pleadings. The DCDA representations of what was given to the State have repeatedly changed and contradicted themselves. And when it made these representations, the DCDA had not even looked for responsive documents. Seiden testified that occurred this spring.[60]

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58 Seiden 30(b)(6) Tr., 132:16-17; Valdez 30(b)(6) Tr., 17:8-19:9.
59 Valdez 30(b)(6) Tr., 26:9-28:24.
60 Seiden 30(b)(6) Tr., 105:2-5.

3. The DCDA searched unknown keywords on 3 email inboxes for an unknown date range, and then Ms. Dyer culled responsive documents from the list on her own accord

The DCDA has claimed that all relevant documents have been produced in response to Mrs. Buchhorn's subpoenas. As discovered in Mr. Seiden's corporate designee deposition, this is also false. Instead:

A. Sometime "early this spring, but I—I couldn't tell you specifically,"[61] Mr. Seiden submitted multiple IT "helpdesk tickets"[62] "using specific search terms that I thought would capture the e-mails that would be responsive to those—to those requests."[63]

B. Despite creating the search terms himself, Seiden could not remember them, including—incredibly—whether he used "Fraizer" (the State's own expert).[64]

C. These search terms were **only run** on 3 email accounts: Mr. Seiden, Ms. Valdez, and Ms. Tatum's,[65] and they were **not run** on Mr. Deiter's, Ms. Reig's, or Mr. Simpson's email accounts.[66]

D. Mr. Seiden also instructed IT to limit the date range of emails being searched but could not testify about the ranges he created and instructed.[67]

E. Once Mr. Seiden received the limited email search results, he did not review them. Instead, he turned the emails over to Ms. Dyer, who culled out documents.[68] As a result, Mr. Seiden was completely incapable of answering which documents on the DCDA's privilege log are responsive to the subpoenas.[69]

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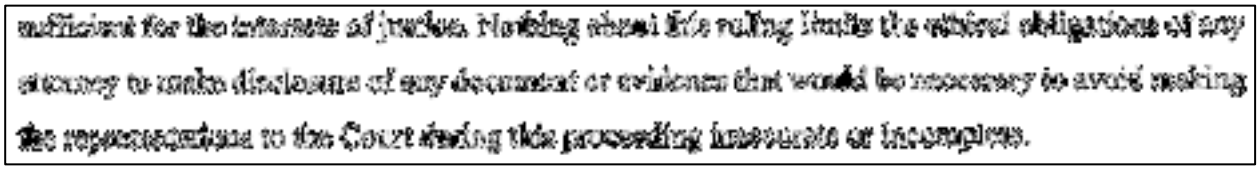
61 Seiden 30(b)(6) Tr., 105:2-5.
62 Seiden 30(b)(6) Tr., 96:9-12.
63 Seiden 30(b)(6) Tr., 94:17-22.
64 Seiden 30(b)(6) Tr., 102:10-20.
65 Seiden 30(b)(6) Tr., 98:12-19; 99:11-25; 101:8-12 ("So once again we're down to Seiden, Valdez, and Tatum? That would be—yes. That—those are—yep. That—that's what I recall. Yes.").
66 Seiden 30(b)(6) Tr., 100:3-5; 100:12-101:7.
67 Seiden 30(b)(6) Tr., 99:7-10.
68 Seiden 30(b)(6) Tr., 104:9-19; 91:24-92:4.
69 Seiden 30(b)(6) Tr., 87:1-91:20.

F. This all occurred "early this spring,"[70] which is months after the subpoenas' deadline and this Court's repeated orders for compliance and its sanction of Mr. Goheen for noncompliance.

Mr. Seiden's corporate deposition is the first time the DCDA, the State, or any of its counsel *ever* disclosed that targeted search terms were used, and that the universe of documents searched was limited to three email accounts, none of whom were even employees of the DCDA when Mrs. Buchhorn was prosecuted. To be crystal clear: Mrs. Buchhorn **never** agreed to search terms, date ranges, or limited email accounts. Nor does the Court's November 30, 2023 Journal Entry permit such tactics.

4. The DCDA has self-servingly refused to search or produce documents from after January 4, 2023

The State and the DCDA—under the lie that there is an active investigation—have refused to produce any documents or allow witnesses to testify about anything after January 4, 2023. But, as Ms. Valdez honestly confessed, there is no active investigation. As a result, the Court should compel the DCDA and the State to produce all withheld—and unsearched-for—documents from January 4, 2023 to present. As this Court made clear already:[71]



The State and the DCDA has openly violated this Order. The Court should compel their compliance with its orders and sanction this gamesmanship and misconduct.

[70] Seiden 30(b)(6) Tr., 105:2-5.
[71] November 30, 2023 Journal Entry

5. The DCDA refuses to comply with K.S.A. 60-230(b) and this Court's January 18, 2024 Order

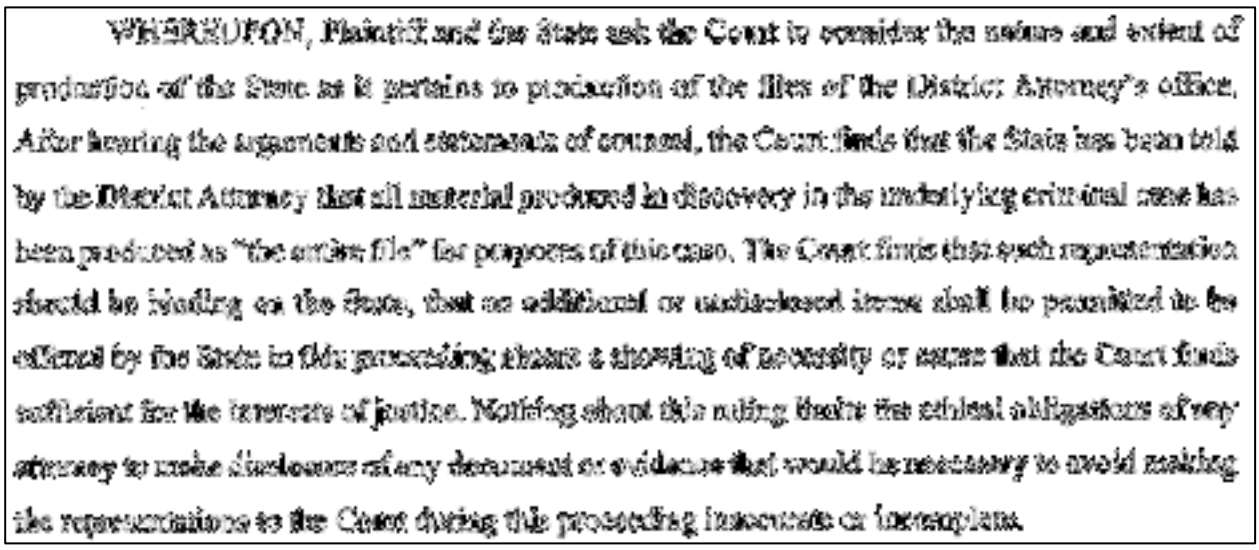
Based on Mr. Goheen (then representing Ms. Valdez and the DCDA) questioning how to comply with well-established Kansas law regarding corporate representative depositions, the Court expressly held: "it seems to me that some indication from the witness as to which documents they believe are responsive to the items in the subpoena duces tecum should be made ahead of the deposition, and what it seems to me I should do today is set a deadline for those events to occur."[72]

The current-*second amended* version of the DCDA's 30(b)(6) designation continues to violate this Order. Among other problems, the response hedges, never actually committing to a designation of documents. Instead, the DCDA repeatedly states the documents it identifies are "by way of example," and are "not intended to be a comprehensive list."[73] This *directly* violates the Court's Order. The DCDA also complains about the phrase "the file of the Douglas County District Attorney's Office:[74]

> 7. *The "file of the Douglas County District Attorney's Office."* The DA's Office objects to the subpoena's overarching condition governing the subpoena that documents are "from the file of the Douglas County District Attorney's Office." This term is vague, unclear, and confusing. For example, it is not clear whether Claimant is referring to the documents produced in discovery to defense counsel in the underlying case, to some other discrete "file," or, by way of example only, to every document in the possession of the DA's Office that mentions the word "Buchhorn." The DA's Office objects generally as to the vagueness of the term and any interpretation of the "file" that is overly broad and unduly burdensome or that invades any privilege or protection (see General Objection No. 2).

72 1/18/24 Hearing Tr., 18:14-19.
73 5/17/24 DCDA Second Supplemental Responses and Objections to Subpoena Duces Tecum.
74 *Id.* at p. 3.

But the definition of this phrase was memorialized in the Court's November 30, 2023 Journal Entry based on the DCDA's own representations:[75]



WHEREUPON, Plaintiff and the State ask the Court to consider the nature and extent of production of the State as it pertains to production of the files of the District Attorney's office. After hearing the arguments and statements of counsel, the Court finds that the State has been told by the District Attorney that all material produced in discovery in the underlying criminal case has been produced as "the entire file" for purposes of this case. The Court finds that such representation should be binding on the State, that no additional or undisclosed items shall be permitted to be offered by the State in this proceeding absent a showing of necessity or cause that the Court finds sufficient for the interests of justice. Nothing about this ruling limits the ethical obligations of every attorney to make disclosure of any document or evidence that would be necessary to avoid making the representations to the Court during this proceeding inaccurate or incomplete.

It is immaterial whether the DCDA is attempting to delay through meritless, boilerplate "objections" or whether the DCDA is trying to walk back its now-documented false representations of what constitutes "the DA File." The simple fact is that the DCDA is, and remains, in violation of the Court's repeated orders in this case.

E. THE DCDA REFUSES TO ABIDE BY THIS COURT'S DETERMINATION THAT IT WAIVED ANY PRIVILEGE THAT MAY HAVE EXISTED

The Court has already ruled that the DCDA waived its privilege by disclosing documents the DCDA claims are privileged, there were no reasonable steps to prevent disclosure, and the DCDA did not promptly raise the issue.[76] And the Court continued: "What the implication of me finding that the material that's been produced—any privilege associated with the production of material has been waived."[77]

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75 11/3/23 Journal Entry at p. 1.
76 5/13/24 Hearing Tr., 76:11-13.
77 5/13/24 Hearing Tr., 76:18-21.

Waiver is absolute and applies to the entire matter. K.S.A. 60-437. "This statute codifies the subject-matter waiver the Kansas Supreme Court had already adopted in *Cranston v. Stewart*, 184 Kan. 99, 334 P.2d 337 (1959), and *Houser v. Frank*, 186 Kan. 455, 350 P.2d 801 (1960). In *Cranston*, the Kansas Supreme Court held that a client's testimony concerning some terms of a contract he claimed was privileged waived any privilege as to the entire contract, explaining that the client cannot be allowed to disclose as much as he pleases and at the same time assert privilege to withhold the remainder. And in *Houser*, the court explained that a client waives the privilege in an attorney-client communication when he begins to testify concerning such communications. Thus, under Kansas law—both statutory and decisional—a partial waiver of a privileged communication constitutes a waiver of the privilege as to the entire communication. *Hartleib v. Weiser L. Firm, P.C.*, 861 F. App'x 714, 720 (10th Cir. 2021)[78] (internal citations and quotations omitted); *see also State ex rel. Stovall v. Meneley,* 271 Kan. 355, 375, 22 P.3d 124 (2001) (recognizing that disclosure of a communication eliminates any privilege he might have had in it, and citing with approval *U.S. v. Buljubasic*, 808 F.2d 1260, 1268 (7th Cir. 1987), which held that "revelation of portions of communications that are private between attorney and client waives the privilege concerning the residue of the communication").

Following the Court's ruling on May 13, 2024, the DCDA has waived any privilege. None continues to exist. The DCDA still claiming the existence of a privilege and withholding documents and testimony is contrary to the Legislature's directive, established caselaw, and this Court's Order.

[78] Because Kansas' civil procedure rules were patterned on the federal rules, Kansas courts look to federal caselaw to aide interpretation. *Wood*, 269 Kan. at 430.

F. THE COURT SHOULD SUMMARILY OVERRULE MR. SEIDEN'S "CONFIDENTIALITY DESIGNATION" AND FOREVER PUT TO BED THE DCDA'S DELAY TACTICS OF FEIGNED "CONFIDENTIALITY" CLAIMS

The Court's docket and this case has been ground to a halt by Ms. Dyer's entirely imaginative "confidentiality" claims. The entire argument is centered around her lies of an active investigation. Her fear mongering succeeded in deceiving the Court into making general indications of a concern about confidentiality.

Because there is no active investigation, there is no need for confidentiality.

Moreover, the only person to make a confidentiality designation was Ms. Dyer. She managed only a single designation: Seiden 30(b)(6) deposition, 160:19-161:16. This portion of the transcript contains a discussion of Mrs. Buchhorn's personal text messages. They follow Mr. Skepnek asking how the text message supports the State's claim that the child was a victim of child abuse resulting in injuries that ultimately led to his death.[79] If anyone has a confidentiality interest in a text message, it's the sender of the message—Mrs. Buchhorn—not the State. The Court should overrule this purported confidentiality designation and unseal Seiden's corporate deposition entirely.

And Mrs. Buchhorn's justification for her repeated objections to any confidentiality requirements imposed by a nonparty to the case have already come true. Unhappy with the Court's ruling on the record, Ms. Dyer needled for a memorialized journal entry. Then to slow things down even more, waited weeks before responding to Mrs. Buchhorn's version. Her proposed edits narrow the Court's ruling where the DCDA lost and attempts to massively balloon the Court's statements where it was deceived by the lie of an active investigation. And then, contrary to the

[79] Of course, this text message, despite being affirmatively designated by the State as evidence that Mrs. Buchhorn committed child abuse and thereby murdered the child, does not evidence any such child abuse or murder. Nor can it. The child died of natural causes because of a congenital heart defect. The State's own expert—Dr. Turner—said so.

Rule and without any standing to do so, **filed another 230 pages** to "settle" a journal entry the Court never requested. More delay. More interference with Mrs. Buchhorn's statutory right to exoneration. More costs. All utterly void of any purpose or need. Just interference and delay for the sake of interference and delay. This must stop.

And this is the crux of the whole problem with Ms. Dyer's fantasy of "confidentiality." **For years, the State—including Ms. Valdez, Mr. Seiden, and the State—have publicly, in statements made both in and out of court, claimed Mrs. Buchhorn murdered a baby**. Ms. Dyer has claimed Mrs. Buchhorn murdered a baby. Mr. Qualseth has claimed Mrs. Buchhorn murdered a baby. But when it's time for Mrs. Buchhorn to present the exonerating evidence that she is innocent and expose the lies that the State has told, and continues to tell, about her, Ms. Dyer jumps up and down about "confidentiality." The simple reality is that they want their cake and to eat it too. They want to be able to call Mrs. Buchhorn a baby-killer and not allow the public to know the truth: that the child died of natural causes from a congenital heart defect, that the State knew all along Mrs. Buchhorn was innocent, and that Mrs. Buchhorn was wrongfully prosecuted by the State. That's it. That is the real reason for this phantom "confidentiality." It is time for the Court to put the entire "confidentiality" claims to rest: Mrs. Buchhorn must have the right to clear her name.

G. THE COURT SHOULD ISSUE A SHOW CAUSE ORDER TO THE STATE, THE DCDA, MS. VALDEZ, MR. SEIDEN, MS. DYER, MR. GOHEEN, AND MR. QUALSETH

Based on the foregoing, Mrs. Buchhorn requests that this Court order Ms. Dyer and Mr. Goheen to show cause why they should not be disqualified from further representation of any party or nonparty to this litigation.

Mrs. Buchhorn also requests that this Court order the State, the DCDA, Ms. Valdez, Mr. Seiden, Ms. Dyer, Mr. Goheen, and Mr. Qualseth to show cause as to why each should not be held

in contempt and sanctioned for their apparent violations of Kansas law and the Kansas Rules of Professional Conduct.

IV. REQUESTED RELIEF

In light of the foregoing, Mrs. Buchhorn seeks the following relief from the Court:

1. An order sanctioning the DCDA, Ms. Valdez, Mr. Seiden, Ms. Dyer, and Mr. Goheen for causing unnecessary delay, needlessly increasing the costs of litigation, making claims not warranted by existing law, and making factual contentions that lack any evidentiary support;

2. An order requiring the disgorgement of all fees paid to Ms. Dyer, Mr. Goheen, and their law firms for their actions in this case, and requiring they be paid directly to Mrs. Buchhorn and her counsel;

3. An order sanctioning the State, the DCDA, Ms. Valdez, Mr. Seiden, Ms. Dyer, Mr. Goheen, and Mr. Qualseth under K.S.A. 60-211 in an amount to deter these individuals and other litigants from engaging in similar repeated lies to gain advantage in civil litigation;

4. An order requiring Ms. Dyer and her law firm to pay all costs and attorneys' fees incurred in taking the DCDA's corporate representatives, Mr. Seiden and Ms. Valdez.

5. An order requiring the DCDA to produce all relevant documents in the DCDA's possession, custody, or control that are subject to the subpoena, unencumbered by the self-imposed, but unidentified "keywords" and "date ranges."

6. An order authorizing Mrs. Buchhorn to retake all depositions in this case in light of the improperly withheld documents;

7. An order requiring the DCDA to amend its 30(b)(6) designation within 7 business days and fully comply with its obligations to identify all responsive documents by Bates number.

8. An order memorializing that the Court's prior order finding waiver has resulted in waiver to the DCDA entirely and no further objection or withholding of documents can occur on the basis of any purported privilege;

9. An order overruling the DCDA's purported "confidentiality designation" of Mr. Seiden's deposition;

10. An order overruling the existence of any protectable "confidentiality" held by the DCDA and withdrawing any previous order implying such existence;

11. An order that Mrs. Buchhorn and her counsel be fully recompensed for all fees and expenses, including attorneys' fees, incurred as a result of the lies told by counsel in this case;

12. An order of default judgment against the State and in favor of Mrs. Buchhorn, or, in the alternative, striking the State's denial of Mrs. Buchhorn's innocence claim, prohibiting the State from opposing Mrs. Buchhorn's claim of innocence, and finding Mrs. Buchhorn is innocent;

13. An order setting this matter for a hearing on Mrs. Buchhorn's claim for monetary relief under K.S.A. 60-5004 and for her attorneys' fees available under that statute;

14. A show cause order directed to the State, the DCDA, Ms. Valdez, Mr. Seiden, Ms. Dyer, Mr. Goheen, and Mr. Qualseth, ordering each to show cause why each should not be held in contempt and further sanctioned for their violations of Kansas law and the Kansas Rules of Professional Conduct; and

15. A show cause order directed to Ms. Dyer and Mr. Goheen, ordering each to show cause why they should not be disqualified form further representation of any party or nonparty to this litigation.

V. TABLE OF EXHIBITS (IN CHRONOLOGICAL ORDER)

Ex. No.	Name	Brief's Short Cite
A	1/18/24 Transcript of Motions Hearing, Zoom Video Conference	1/18/24 Hearing

B	2/2/24 DCDA Supplemental Designations of Witnesses Pursuant to K.S.A. 60-230(b)(6)	
C	2/9/24 Case Management Conference and Motions	2/9/24 Hearing
D	3/11/24 Transcript of Status Hearing, Zoom Video Conference	3/11/24 Hearing
E	3/15/24 Dyer to Skepnek, Letter Transmitting DCDA000001-001064	—
F	5/13/24 Transcript of Motions Hearing	5/13/24 Hearing
G	5/17/24 DCDA Second Supplemental Responses and Objections to Subpoena Duces Tecum	—
H	5/21/24 Transcript of Hearing from Electronic Recording	5/21/24 Hearing
I	5/21/24 Deposition of Joshua Seiden as DCDA Corporate Designee	Seiden 30(b)(6)
J	5/22/24 Deposition of Suzanne Valdez as DCDA Corporate Designee	Valdez 30(b)(6)
K	5/22/24 Deposition of Suzanne Valdez as District Attorney	Valdez Indiv.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2024, a copy of the above and foregoing was filed with the clerk of the court via its electronic filing system which served electronic notice to the following:

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