IN THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI

EDDIE LEE HOWARD — *Petitioner*

v. — Cause No. 2000-0115-CV1

STATE OF MISSISSIPPI — *Respondent*

PETITIONER EDDIE LEE HOWARD'S RESPONSE TO STATE OF MISSISSIPPI'S MOTION TO DETERMINE QUALIFICATIONS OF COUNSEL PURSUANT TO RULE 22 OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE AND REQUEST FOR SANCTIONS

Petitioner Eddie Lee Howard, by and through undersigned counsel, files this Response to the State's Motion To Determine Qualifications of Counsel Pursuant To Rule 22 Of The Mississippi Rules Of Appellate Procedure ("Motion").[1] The State of Mississippi has previously affirmatively acknowledged in a separate pleading that counsel are competent to handle this matter. The State's Motion is frivolous and sought only to create delay. The Motion should be denied, and the State should be sanctioned for its filing.

I. PROCEDURAL HISTORY

1. Over 2,700 days ago – September 8th, 2008 – Petitioner retained the services of undersigned counsel.

2. On June 28th, 2010 – nearly six years ago – counsel filed the first of what would be several petitions in the Mississippi Supreme Court. That petition requested post-conviction relief, including leave to conduct post-conviction DNA testing.

[1] The Mississippi Supreme Court amended Rule 22 on Thursday, April 28, 2016.

On December 2nd, 2010, the Mississippi Supreme Court issued an order granting Petitioner leave to seek post-conviction DNA testing and dismissing without prejudice the newly discovered evidence claim so that the claim could be considered later by the Court along with the completed DNA testing results.[2]

3. Vanessa Potkin, one of Petitioner's counsel, submitted a request to appear *pro hac vice* in the case on July 12th, 2010. The State raised no objection. The Court granted her request the next day, July 1st, 2010.

4. Thereafter undersigned counsel filed pleadings in this Court, and on February 18th, 2011, this Court held a hearing at which counsel for Petitioner and the District Attorney, along with the Court's assistance, developed an agreed-upon DNA testing protocol.

5. On September 15th, 2014, upon the conclusion of DNA testing, undersigned counsel filed a supplemental petition for post-conviction relief in the Mississippi Supreme Court.

6. On September 26th, 2014, Messrs. Neufeld and Fabricant requested to appear *pro hac vice*. Their requests were granted on October 2nd, 2014. The State raised no objection.

7. On June 23rd, 2015, Messrs. Fabricant and Carrington appeared in front of the Mississippi Supreme Court to conduct oral argument. Notably, the State raised no objection to either of counsel's qualifications at the oral argument.

6. On August 4th, 2015, the Mississippi Supreme Court remanded the case to this Court for a hearing on the narrow question of "Whether the newly discovered evidence presented in Howard's Motion to Vacate Conviction, including the results of his post-conviction DNA testing, is of such a nature that it 'will probably produce a different result or induce a different verdict, if a new trial is granted.'" (citations omitted).

[2] *Howard v. State*, 49 So.3d 79 (Miss. 2010). The cause number for Howard's earlier petition is 2010-DR-1043.

7. On September 14th, 2015, this Court set a hearing date for January 11th, 2016.

8. On December 12th, 2016, Dana Delger filed a motion to appear *pro hac vice* in the Mississippi Supreme Court. The State did not object. (The Supreme Court dismissed that request because the case had been remanded to this Court. Ms. Delger then filed for admission in this Court; that motion remains pending. The State has not objected.)

9. In advance of the hearing then scheduled to take place on January 11th, 2016, undersigned counsel filed a Motion for Judicial Notice and Related Relief on December 7th, 2015.

10. On December 18th, 2015, the State requested a ten-day extension to respond to Petitioner's Motion for Judicial Notice and Related Relief.

11. The State has yet to reply to that motion.

12. Also on December 18th, 2015, the State sought a continuance of the hearing date, which had been scheduled for nearly four months, based on its representations that the State desired to depose "most, if not all," of Petitioner's witnesses, who had already arranged travel, including international travel, to appear on January 11th, 2016, in this Court and, as a result of the State's request, were forced to cancel travel plans at considerable expense.

13. Shortly after the initial hearing date, Petitioner's counsel, in an effort to aid the State, provided to the State several dates that Petitioner's witnesses would be available for deposition.

14. In the nearly five months since it requested an adjournment to do so, the State has yet to make any effort whatsoever to depose a single one of Petitioner's witnesses.

15. On April 16th, 2016, Petitioner's counsel deposed Dr. Michael West, the State's expert witness in this matter. Dr. West provided the only physical evidence in this case: identifying purported marks on the victim as bite marks and matching them to Petitioner.

16. At that deposition, Dr. West made the following claims and statements:

- That bite mark evidence is insufficiently reliable to be used in court;
- That, more specifically, with respect to the core question of his assessment of the value of bite mark identification as a forensic discipline, Dr. West no longer believes in the "system" because, among other reasons, many of his forensic odontologist contemporaries, whose methodology and opinions he respected, turned out to have been mistaken in a continuously growing series of wrongful conviction cases;
- That he provided "one set of photographs . . . to the prosecution, one set of photographs . . . to the defense, and one set of photographs to the police" which documented his findings in this matter;
- that counsel was an "asswipe" and a "sociopath";
- that undersigned like to "cum" on Dr. West's unsupported claims that only the upper arches of suspect's teeth are visible in the Brooks, Brewer and Howard cases;
- that other forensic odontologists, several of whom are renowned in the discipline, have themselves been involved in wrongful conviction cases and have questioned the discipline's legitimacy were, in the case of Dr. Richard Souviron, "an idiot. I know why his momma named him 'Dick'"; Dr. Raymond Rawson: "He's an idiot"; Dr. Norman Sperber: "He's a WHORE"; Dr. Michael Bowers: "He's a big-time idiot."

17. On April 25th, 2016, undersigned wrote a letter (Attached as Exhibit "A") to the State in which it referred to Dr. West's deposition testimony (Attached as Exhibit "B") and requested that the State reconsider its stance backing Dr. West as an expert in this case, noting generally Dr. West's demeanor and inappropriate conduct, but also specifically calling to the State's attention Dr. West's false claims that he had ever provided documentation of his findings in this case. As undersigned wrote:

> Factual problems and legal conduct aside, we believe that Dr. West's deposition testimony also raises serious ethical questions for the State should the State continue to sponsor it, specifically implicating Mississippi Rules of Professional Conduct 3.3(a)(1) and (2), 8.4(d), and the substance and spirit of Rule 3.8.
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> Because Dr. West's expert testimony was the only direct "evidence" of guilt in this case, and because Dr. West has rejected the entire discipline of bite mark analysis and comparison, as has the broader scientific community, the State has an ethical, legal and moral obligation to move to vacate this conviction and dismiss the indictment. There is simply no credible evidence to support the conviction and the State's continued reliance on Dr. West demonstrates contempt for both Mr. Howard's civil rights and for the rule of law.

18. On April 27th, 2016, a week prior to the already rescheduled evidentiary hearing in this matter, the State filed the instant Motion, in which, more than six years after Petitioner retained counsel, the State seeks a hearing "as to whether the attorneys appointed as counsel for Eddie Lee Howard * * * are qualified post-conviction counsel."

II. ARGUMENT

The Court should summarily deny the State's Motion because Petitioner's post-conviction counsel manifestly satisfy the competency requirements of Rule 22; the State itself has represented as much in earlier-filed pleadings in this matter. Second, Petitioner would face significant prejudice if the State were permitted to seek reconsideration of counsel's appointment at this late date. Without objection from the State, counsel has served as Petitioner counsel of choice for over six years, including in arguments before the Mississippi Supreme Court— arguments at which the State's lead attorney also appeared. Despite the fact that the State has literally had years to object to counsel's appearance, the State waited to raise this challenge until after Petitioner's counsel has devoted thousands of hours to Petitioner's case

and developed a relationship of trust and confidence with their client. Thus, the Court should find that the State is barred under, *inter alia*, the doctrine of laches from raising this challenge now. Finally, disqualifying Petitioner's post-conviction counsel at this juncture would violate his Sixth Amendment right to retain the *pro bono* counsel of his choice. When courts improperly interfere with that right, the result is typically automatic reversal.

A. The State Itself Has Already Taken a Legal Position on Counsel's Competence and Has Filed Pleadings in This Matter Stating That Petitioner's Counsel Are Competent

The Court should deny the State's Motion because Petitioner's post-conviction counsel satisfy Rule 22, a position that the State itself has taken in pleadings filed earlier in this case. On January 28th, 2015, the Mississippi Supreme Court ordered undersigned counsel, as well as the State, to reply to a *pro se* letter/motion that Petitioner had filed in the Court. In its response, the State had the following to say about Petitioner's counsel's competence:

> At the outset, the State submits that, as this Court is well aware, the petitioner is represented by competent counsel . . . . Howard is presently represented by Tucker Carrington, the Director of (*sic*) Innocence Project at the University of Mississippi, Will Mcintosh (*sic*) staff attorney at same, by Vanessa Potkin, Senior Staff Attorney at the New York Innocence Project and Chris Fabricant, Director of Strategic Litigation there, as well as by Co-Director of the Innocence Project, Peter J. Neufeld. These five (5) accredited lawyers have proven they are more than capable of "rasing (*sic*) all appropriate appellate questions." (citations omitted).

The State's position[3] in its pleading filed in the Mississippi Supreme Court makes clear two things: (1) that the State's position is that Petitioner's counsel are "competent" and "accredited", and (2) that the State's instant Motion is frivolous.

[3] Confidence in the justice system cannot be affirmed if any party is free, wholly without explanation, to make a fundamental change in its version of the facts in which it has indicated some requisite level of belief and adoption, and then conceal this change from the trier of the fact. *See, e.g. United States v. GAF Corp.*, 928 F.2d 1253, 1260 (2d Cir. 1991). The State speaks and acts only through its agents. Those agents are responsible for among other things, exercising prosecutorial discretion. *See, e.g.*, ABA

B. There Are Numerous Other Reasons Why The State's Motion is Improper and Should Be Denied

1. The State Has Waived Any Objection To The Qualifications of Petitioner's Counsel, and Otherwise Should be Barred from Challenging Them Now under the Doctrine of Laches.

The Court should deny the State's motion because the State not only made public filings in this matter attesting to counsel's competence, but also because the State waived any argument that Petitioner's counsel are not Rule 22 qualified when the State failed to object to counsel's initial appearances in this matter, including counsel's oral argument in the Mississippi Supreme Court, and the Mississippi Supreme Court's admission *pro hac vice* of Ms. Potkin, and Messrs. Neufeld and Fabricant. *See Colson v. Johnson*, 764 So.2d 438, 439-440 (Miss. 2000) (holding that defendant waived any argument in support of disqualifying plaintiff's attorney, and emphasizing that a "[m]otion to disqualify is properly denied when there has been a delay for an extended period of time before moving for disqualification").

Moreover, the State should be precluded under the doctrine of laches from seeking to disqualify members of Petitioner's post-conviction team at this late stage because that result would be manifestly unjust and would irreversibly prejudice Petitioner's ability to pursue

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STANDARDS FOR CRIMINAL JUSTICE ABA STANDARDS FOR CRIMINAL JUSTICE § 3-1.2(c)(3d ed. 1992)("The duty of the prosecutor is to seek justice, not merely to convict."); NDAA NATIONAL PROSECUTION STANDARDS § 1.1 (2d ed. 1991) ("The primary responsibility of prosecution is to see that justice is accomplished").

Mississippi case law is also similarly permissive regarding the treatment of such statements as admissions. In *Hoover v. State*, 552 So.2d 834 (Miss. 1989), Hoover argued, and the State conceded, that the State took inconsistent positions on the culpability of co-defendants in the separate trial of those co-defendants. Specifically, the State had argued in the separate trial that it had been the co-defendant, not Hoover, who had shot the victim. Hoover sought to have that statement admitted in his trial as an admission, citing MRE 801(d)(2) and *United States v. McKeon,* 738 F.2d 26 (2d Cir.1984). After its analysis the court found that the former statements were admissible as party admissions even though "the arguments sought to be used are those of the prosecutor in a subsequent trial of the same defendant, or as is the case here, co-indictees." *Id.* at 840. *See also, Wilson v. Baptist Memorial Hosp.--North Mississippi, Inc.*, 2011 WL 6157659 (Miss. Ct. App. 2011)(finding that a party admission has enough evidentiary value as a fact in dispute to defeat a party's motion for summary judgment).

meaningful post-conviction relief. *Mississippi Dep't of Pub. Safety v. Johnson*, 66 So. 3d 703, 709 (Miss. Ct. App. 2011); *see also Allen v. Mayer*, 587 So.2d 255, 260 (Miss.1991). Under the doctrine of laches, a party may not raise a right or claim if: (i) that party delayed in asserting that right or claim; (ii) that delay was not excusable; and (iii) the delay has caused or would cause undue prejudice to the party against whom the claim is asserted. *Id.* Each of these factors is easily met here: The State waited six years to raise this challenge (even the latest motion for admission *pro hac vice* filed by Ms. Delger was filed nearly five months ago); there is no plausible excuse for the State's lengthy delay (nor has the State offered one); and, for all of the reasons described below, removing Petitioner's counsel from his case at this juncture would be extraordinarily prejudicial.

During the past six years, Petitioner's post-conviction team has devoted several thousand hours of combined legal work and borne the expense of significant DNA testing. To characterize the record as voluminous would be a gross understatement. Those efforts have borne significant fruit: among them, DNA testing that exculpates Petitioner and proves that Dr. West's claims are junk; that Dr. West no longer believes in the discipline he once practiced and that underlies Petitioner's conviction and sentence; and that Dr. West never documented his findings in this case and is not above perjuring himself when asked about it.

Further – and of critical importance – Petitioner's post-conviction counsel has developed a relationship of deep trust and confidence with Petitioner during the course of their representation. To strip Petitioner of the benefits of that relationship at this late stage would irreversibly prejudice Petitioner's Sixth Amendment rights.

2. Disqualifying Petitioner's Post-Conviction Counsel Would Violate His Sixth Amendment Rights.

Inexplicably, the State's motion leaves out the leading and very recent case on this subject, *Luis v. United States*, 578 U.S. _____(2016). As a practical matter, *Luis* calls into question the applicability of Rule 22 as a constitutional matter in cases like this one where retained counsel are counsel of Petitioner's choosing.[4] In *Luis*, the Court reiterated a long-line of cases in noting that "this Court's opinions often refer to the right to counsel as "fundamental." *Powell v. Alabama*, 287 U.S. 45, 68 (1932); that "commentators describe the right as a "great engin[e] by which an innocent man can make the truth of his innocence visible," Amar, Sixth Amendment First Principles, 84 Geo. L. J. 641, 643 (1996); and, that "we have considered the wrongful deprivation of the right to counsel a "structural" error that so "affec[ts] the framework within which the trial proceeds" that courts may not even ask whether the error harmed the defendant." *United States v. Gonzalez Lopez*, 548 U.S. 140, 148 (2006). Given the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust, neither is it surprising that the Court has held that the Sixth Amendment grants a defendant "a fair opportunity to secure counsel of his own choice." *See* id., at 150 (describing "these myriad aspects of representation").

As noted above, the constitutional principles articulated in *Luis* have deep roots. The Sixth Amendment right to counsel includes a right of defendants to be represented by the counsel of their choice. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2008) ("[A]n element of [the Sixth Amendment right to counsel] is the right of a defendant who does not require appointed counsel to choose who will represent him"); *id.* at 146 ("[T]he Sixth Amendment right to counsel of choice * * * ***commands*** * * * that the accused be defended by the counsel he believes to be best.") (emphasis added); *id.* at 147 ("The right to select counsel of one's choice *

[4] The right to counsel in Mississippi extends to post-conviction proceedings. *See Jackson v. State*, 732 So. 2d 187 (Miss. 1991).

* * [is] the root meaning of the constitutional guarantee."); *Wheat v. United States*, 486 U.S. 153, 159 (1988) ("[T]he right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment."). Although that right is not absolute, there is a strong "presumption in favor" of protecting a defendant's choice of counsel. *Wheat*, 486 U.S. at 164.

To give content to these principles, courts uniformly hold that depriving a defendant of the counsel of his choice is a structural violation of counsel—*i.e.*, unlike a defendant raising an ineffective assistance of counsel claim, a defendant seeking relief based on the court's interference with his right to retain the attorney of his choice need not show prejudice to prevail. Instead, a trial court's erroneous disqualification of a defendant's counsel of choice requires ***automatic reversal*** of the conviction. *Gonzalez-Lopez*, 548 U.S. at 148; *see also United States v. Collins*, 920 F.2d 619, 625 (10th Cir. 1990) (defendant's right to retain counsel of his choice is grounded in the Constitution, such that the violation of that right requires reversal of a conviction because attorneys are not fungible); *United States v. Rankin*, 779 F.2d 956, 960 (3d Cir. 1986) ("The right [to counsel of one's choice] is either respected or denied; its deprivation cannot be harmless"); *Linton v. Perini*, 656 F.2d 207, 208 (6th Cir. 1981) ("Evidence that a defendant was denied this right [to counsel of choice] arbitrarily and without adequate reason is sufficient to mandate reversal without a showing of prejudice").[6]

As *Luis* and earlier cases make clear, the Court may not interfere with Petitioner's choice without "a cautious and sensitive consideration and balancing of individual constitutional protections, public policy and public interest in the administration of justice, and basic concepts of fundamental fairness." *United States v. Garcia*, 517 F.2d 272, 273 (5th Cir. 1975), abrogated

[6] *See also United States v. Novak*, 903 F.2d 883, 886 (2d Cir. 1990); *Fuller v. Diesslin*, 868 F.2d 604, 606 (3d Cir. 1989); *United States v. Panzardi Alvarez*, 816 F.2d 813, 818 (1st Cir. 1987).

on other grounds by *Flanagan v. United States*, 465 U.S. 259 (1984). Indeed, the law is clear that "mechanistic application" of Rule 22 is insufficient to outweigh Petitioner's strong interest in retaining the counsel of his choice. *See, e.g.*, *Collins,* 920 F.2d at 626 ("mechanistic application" of rules regarding admission of counsel insufficient to justify judicial interference with choice of counsel); *Panzardi Alvarez,* 816 F.2d at 817 (finding numerical limitation of *pro hac vice* appearances violated defendant's right to retain counsel of choice where there was no record that allowing such admissions would have inhibited the fair and orderly administration of justice).

Moreover, the State's contention that "[a] post-conviction movant who is not represented by qualified counsel is tantamount to creating an ineffective assistance of post-conviction counsel claim" is incorrect, and the State's reliance on *Grayson v. State*, 118 So.3d 118 (Miss. 2013), to support that argument is misplaced. *Grayson* stands only for the unremarkable proposition that a criminal defendant is entitled to effective assistance of post-conviction counsel. *Id.* It has no bearing on the Sixth Amendment right to counsel of choice, which is an entirely separate inquiry. As the Supreme Court explained in *Gonzalez-Lopez*:

> Deprivation of the right [to counsel of choice] is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.

548 U.S. at 148. In sum, the State's argument about ineffective assistance of counsel misses the point. And the State has failed entirely to address countervailing U.S. Supreme Court case law that stripping Petitioner of his chosen counsel may provide an automatic basis for reversal.

C. Counsel Meet Rule 22 Requirements

On April 28th, 2016, the Mississippi Supreme Court amended Rule 22. All counsel meet the Rule's requirements.

On January 29th, 2016, in another capital post-conviction case, *Curtis Flowers v. State of Mississippi*, the Circuit Court of Montgomery County, found that Mr. Carrington was Rule 22 qualified. Nothing has changed with respect to this finding, other than a modification to the Rule itself. As such, the Rule is satisfied as to Mr. Carrington by extension to the rest of Petitioner's counsel.

1. Ms. Potkin Satisfies Rule 22.

Ms. Potkin has been admitted to practice in and is a member in good standing of the State Bar of New York since 2001, as well as the Southern District of New York since 2001. Since 2007 she has been a member in good standing of the New Jersey Bar.

Ms. Potkin has practiced in the area of post-conviction proceedings for over fifteen years. She has litigated post-conviction claims on behalf of death-sentenced petitioners and others in Mississippi, Tennessee, Louisiana, and Alabama. Perhaps most notably for this Court and in answer to the instant Motion, Ms. Potkin has been counsel in four cases involving bite mark testimony. Each of those petitioners was exonerated. Two of those individuals, Levon Brooks and Kennedy Brewer were convicted in this District with testimony from Dr. West. In addition, the true perpetrator was identified, charged and convicted.

2. Mr. Neufeld Satisfies Rule 22.

Mr. Neufeld is the co-founder of the Innocence Project. Since its founding, the Innocence project has exonerated 341 individuals. Of those twenty have been exonerated from sentences of death. Mr. Neufeld was co-counsel with Ms. Potkin in the Levon Brooks and Kennedy Brewer cases. Mr. Neufeld has been admitted to practice and a member in good

standing of the Bar of New York since 1977 and the Bars of Washington State since 1977, the Supreme Court and multiple federal district and circuit courts. Mr. Neufeld has likewise practiced in the area of state post-conviction proceedings for many years.

Mr. Neufeld is an internationally recognized expert in forensic science and criminal law. He currently sits on National Commission on Forensic Science and the New York State Commission on Forensic Science. For his work pioneering the use of DNA evidence in post-conviction proceedings and as the co-founder of the Innocence Project, Mr. Neufeld has received countless awards and honors, including being named a lawyer of century by The American Lawyer.

3. Mr. Fabricant Satisfies Rule 22

Mr. Fabricant has been admitted to practice in and a member in good standing of the State Bar of New York since 1998, as well as the Southern District of New York since 1999 and the Eastern District of New York since 2002 and the Second Circuit Court of Appeals since 2016.

Mr. Fabricant has served as defense counsel in serious felony cases for nearly two decades, including other capital cases. He has tried and/or supervised dozens of felony cases, including appearing as lead and supervisory counsel in numerous homicide trials; he has been lead counsel in approximately 50 direct appeals of serious felony cases, including at least 20 homicides. Mr. Fabricant has also taught trial advocacy, criminal procedure, and criminal law in law schools, most recently at Pace Law School. As director of Strategic Litigation at the Innocence Project, he has consulted with attorneys litigating capital cases across the country, particularly cases involving forensic science. Mr. Fabricant has co-counseled six cases, including two capital cases, involving the use of bite comparison, both at the trial level and in post-

conviction litigation. As a nationally recognized expert on bite mark comparison evidence, he has consulted on dozens of other bite mark cases across the nation and given dozens of lectures on the topic. Mr. Fabricant is frequently asked to lecture on broader forensic science issues, and he has trained thousands of attorneys on litigating forensic science over the past four years, including lectures at the American Academy of Forensic Sciences, the American Bar Association, the National Association of Criminal Defense Lawyers and various state bar associations and judicial conferences.

4. Ms. Delger Satisfies Rule 22.

Ms. Delger has been admitted to practice in and is a member in good standing of the State Bar of New York since 2011, as well as the Southern and Eastern Districts of New York since 2012 and the Second Circuit Court of Appeals since 2016.

Ms. Delger has practiced in the area of criminal law since 2010. For the two years preceding her retention in this case, she has practiced primarily in the area of criminal post-conviction work, and in the years prior to that, her criminal law practice included post-conviction representations as well as trial-level work and appeals. Ms. Delger has a particular expertise in discredited science cases, with a special focus on bite mark evidence, going back to 2010. Ms. Delger has served or is serving as counsel in six bite mark cases, including capital cases, and has been a retained consultant in many others. Along with Mr. Fabricant, Ms. Delger has won new trials or had clients fully exonerated in four discredited science cases, two involving bite marks.

D. The Court Should Award Fees And Costs

Petitioner also respectfully requests that the Court award attorneys' fees to compensate his counsel for the time and expense they incurred in responding to the State's frivolous

motion, which was filed for the purpose of harassment or delay. *See Tricon Metals & Servs., Inc. v. Topp*, 537 So. 2d 1331, 1334 (Miss. 1989) ("There can be no doubt of the authority of our trial courts to assess reasonable attorneys [sic] fees when in the opinion of the court a motion or pleading is 'frivolous.'"); Miss. R. Civ. P. 11(b) ("If any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party to pay to the opposing party or parties the reasonable expenses incurred by such other parties and by their attorneys, including reasonable attorneys' fees.").

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the Court deny the State's Motion and award Petitioner attorneys' fees and costs for their time spent preparing this Response.

Respectfully submitted this the __ nd day of May, 2016.

EDDIE LEE HOWARD, Petitioner

By: _____

W. Tucker Carrington, MB# 102761
Mississippi Innocence Project
P.O. Box 1848
University, MS 38677-1848
Tel: 601-576-2314

Vanessa Potkin
Peter Neufeld
Chris Fabricant
Admitted *pro hac vice*
Dana Delger
Pro hac vice pending
Innocence Project
40 Worth Street
New York, NY 10013

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney for Eddie Lee Howard hereby certifies that he has caused to be mailed by electronic mail and by U.S.P.S. mail, postage prepaid, a true and correct copy of the above Motion for Leave to Seek Discovery to:

Jim Hood
Attorney General
Office of the Attorney General of Mississippi
P. O. Box 220
Jackson, MS 39205-0220

Brad A. Smith
Special Assistant Attorney General
Office of the Attorney General of Mississippi
P. O. Box 220
Jackson, MS 39205-0220

Jason L. Davis
Office of the Attorney General of Mississippi
P. O. Box 220
Jackson, MS 39205-0220

The Honorable Lee Howard
Judge, Circuit Court of Lowndes County, Mississippi
P.O. Box 31
Columbus, MS 39703

SO CERTIFIED, this the 2nd day of May, 2016

Counsel for Petitioner