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Motion in Limine to Exclude Testimony of Paula Ernst

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Gilbert, Terry H. and Carr, George H., "Motion in Limine to Exclude Testimony of Paula Ernst" (2000).
1995-2002 Court Filings. 103.
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1-31-00

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN J. DAVIS, Special Administrator)	Judge Ronald Suster
of the Estate of)	
SAMUEL H. SHEPPARD)	Case No. 312322
)	
Plaintiff)	
)	<u>MOTION IN LIMINE</u>
vs.)	<u>TO EXCLUDE</u>
)	<u>TESTIMONY OF</u>
STATE OF OHIO)	<u>PAULA ERNST</u>
)	
Defendant)	
)	

Plaintiff hereby moves this Court for an Order preventing the State from offering any testimony from Paula Ernst. The reasons for granting this motion are as follows.

For some time, the State had listed Carl Adrian as an expert witness, regarding his work on a computer simulation of the Sheppard home and the scene of the crime. Recently, the State substituted Paula Ernst for Mr. Adrian, apparently as the result of her more detailed work on the simulation, and her greater ability to testify regarding the accuracy of the simulation. In the course of discovery, Ms. Ernst was noticed for deposition.

Counsel for Plaintiff have repeatedly contacted counsel for the State, requesting discovery of Ms. Ernst's simulation prior to her deposition. Finally, on the eve of deposition, counsel for Plaintiffs were informed that Ms. Ernst's work was not yet completed. Therefore, Plaintiff

postponed Ms. Ernst's deposition, until such time as her simulation could be completed, and she could be deposed on the contents of the simulation.

Now, on the eve of trial, the State has still failed to produce Ms. Ernst's simulation. Until her work is completed, it is pointless for Plaintiff to depose her. Therefore, until Plaintiff has had an opportunity to depose Ms. Ernst on the contents and conclusions of her completed work, Ms. Ernst should not be allowed to testify.

Therefore, Plaintiff requests that the State be prohibited from offering Ms. Ernst's testimony or work product, pursuant to Local Rule 21, and Ohio R.Evid. 403, until such time as her work is completed and Plaintiff has been afforded an opportunity to depose Ms. Ernst regarding her work.

Respectfully submitted,



Terry H. Gilbert (0021948)

George H. Carr (0069372)

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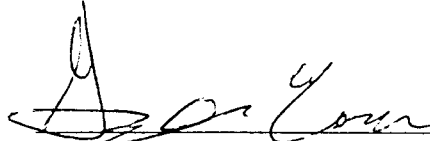
Cleveland, OH 44113

(216) 241-1430

Attorneys for Plaintiff

Certificate of Service

The undersigned certifies that the foregoing Motion *in limine* to Exclude Testimony of Paula Ernst has been served on William Mason, Prosecuting Attorney, Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 31st day of January, 2000.

A handwritten signature in black ink, appearing to read "George H. Carr", written over a horizontal line.

George H. Carr (0069372)

Attorney for Plaintiff