

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

DONALD LYLE CLARK,  Plaintiff,  v.  STATE OF IOWA,  Defendant.	Case No. LACV079404   <b>STATE OF IOWA'S TRIAL BRIEF</b>
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Defendant State of Iowa submits the following trial brief in compliance with the Court's pretrial orders:

**Factual Summary:** This case stems from a criminal conviction and a grant of postconviction relief (PCR). A jury convicted Plaintiff Donald Clark of second-degree sex abuse in February 2010. Assistant state public defender John Robertson represented Clark at that trial. Robertson died in 2013. In 2016, a court found Clark received ineffective assistance of counsel at the 2010 trial, and Clark was released from prison. The PCR ruling was not appealed, and the Johnson County Attorney's office did not retry Clark. Clark now seeks money damages, arguing that Robertson committed legal malpractice which caused him to be convicted and imprisoned.

**Legal Issues:** On interlocutory appeal in this case, the Iowa Supreme Court determined the previous finding of ineffective assistance is not preclusive on the question whether Robertson breached the standard of care. Thus, the jury must decide breach, causation, and damages. Wrapped into this issue are the questions of which specifications of negligence Clark may argue, and whether those acts or

omissions, even if they occurred, fall below the standard of care expected of criminal defense attorneys in similar circumstances.

Another crucial legal issue in this case is how to present to the jury the events of the underlying criminal trial. It is the State's position that the entire criminal transcript and exhibits must be admitted to allow the jury to determine whether, if Robertson had done the things Clark contends he failed to do, the result of the criminal trial would have been different. This is especially true when the principle alleged failures Clark asserts are *omissions*—not adequately investigating the scene, not ensuring Clark's physical presence at depositions, and not calling character witnesses. Under the circumstances, then, the jury should start with the base knowledge of the underlying trial, and then determine whether adding any of the things Clark asserts would have made a difference.

Moreover, it is the State's position that the trial should be bifurcated into a liability phase and a damages phase. First, the jury should hear testimony about the standard of care, breach, and causation; deliberate, and return a verdict on those elements of the claim. If the jury finds that Robertson breached the standard of care and caused Plaintiff damage, then the same jury should return to hear evidence and argument about the amount of damages.

Other legal issues are raised in the parties' motions in limine. These include the relevance and admissibility of other proceedings related to this one (such as the PCR proceedings, and a factually related civil lawsuit). The State hereby incorporates the arguments from the motion in limine.

**Evidentiary Issues:** Other than what has already been raised, the State does not anticipate any additional evidentiary issues.

Respectfully submitted,

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All counsel of record served via EDMS  
on this 6th day of September, 2022.