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State v. Kling Appellant's Reply Brief 2 Dckt. 37322

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE LICENSE)
SUSPENSION OF MATILDA K. KLING,)

Supreme Court No. 37322

STATE OF IDAHO,)

Plaintiff/Appellant/)
Cross-Respondent,)

v.)

MATILDA K. KLING,)

Defendant/Respondent/)
Cross-Appellant.)

CROSS-APPELLANT REPLY BRIEF

Appeal from the District Court of the
Fifth Judicial District of the State of Idaho,
in and for the County of Blaine

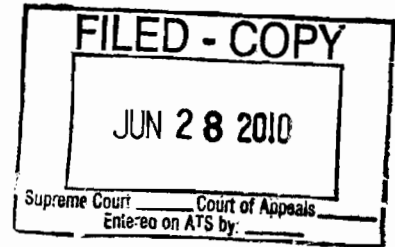
HONORABLE R. TED ISRAEL, Magistrate Judge
HONORABLE ROBERT J. ELGEE, District Judge

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I. INTRODUCTION

Pursuant to IAR 35(c) Kling submits this Cross-Appellant Reply Brief in reply to the Reply Brief of Appellant. This brief will be strictly limited to the question of whether Kling is entitled to attorney's fees and costs on appeal.

*II. THE STATE IS INCORRECT IN ITS ASSERTION THAT KLING DID NOT
CROSS-APPEAL THE LOWER COURT'S DENIAL OF HER REQUEST
FOR COSTS AND ATTORNEY'S FEES.*

In the Reply Brief of the Appellant, the State suggests: "Kling did not cross-appeal the lower courts' denial of her request for costs and attorney's fees." *See*, Reply Brief of Appellant, p. 9. The State is incorrect in that observation.

The record in this matter reflects that Kling filed her Notice of Cross-Appeal on February 5, 2010. R., pp. 147-148. In her Notice of Cross-Appeal, Kling indicated in paragraph 3 the issue that she would be asserting on appeal as being "Whether the District Court erred by denying Kling's request for an award of attorney's fees and costs." R., p. 148.

The State's argument on this point is frivolous and without foundation.

III. CONCLUSION.

Likewise, for the reasons previously stated by Kling in her earlier brief, the State has pursued this appeal unreasonably, frivolously and without foundation and Kling requests that she be awarded her attorney's fees and costs.

RESPECTFULLY SUBMITTED this 24 day of June, 2010.

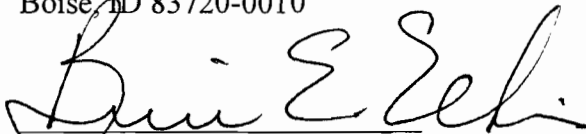

BRIAN E. ELKINS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of June, 2010, I caused two true and correct copies of the foregoing document to be delivered to the following in the method marked herein:

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