FirstLine

SecondLine

AddressLine

CityCity, StateState ZipZip

PhoneNumber

FaxNumber

Attorney for ClientName

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF COUNTYCOUNTY

|  |  |  |
| --- | --- | --- |
| People of the State of California,  Plaintiffs,  - vs -  ClientName,  Defendants | )  )  )  )  )  )  )  )  )  )  )  ) | CASE NO. CaseCase  **CONFIDENTIAL EX PARTE MOTION BY**  **RETAINED COUNSEL**  (Penal Code §987 et. seq.;  Evidence Code §§730, 952) |
|  | ) |  |

Defendant requests an order appointing a Private Investigator at the expense of the county to advise the defendant on a confidential basis and testify on the defendant’s behalf, to seal this request and any orders of the court based on this request, and for such other orders as may seem just and proper to the court.

This request is made on the grounds that the services of a Private Investigator are necessary to the preparation of the defense of this action.

This request is based on the attached declaration, on the memorandum of points and authorities served and filed herewith, on such supplemental declarations, affidavits, or memorandum of points and authorities as may hereafter be filed with the court, on all the papers and records on file in this action, and on such further oral and documentary evidence as may be presented at the hearing of this request.

Date: September 28, 2020

|  |  |
| --- | --- |
|  |  |
| By | SignSign,  Attorney for Defendant |

**MEMORANDUM OF POINTS AND AUTHORITIES**

**AN INDIGENT DEFENDANT IS ENTITLED TO APPOINTMENT OF INVESTIGATORS AND EXPERTS AT COUNTY EXPENSE EVEN IF COUNSEL IS PRIVATELY RETAINED**

Among the rights granted to an accused by the Sixth Amendment to the United States Constitution is the entitlement “to have the Assistance of Counsel for his defence.” Likewise, Article I, section 15, of the California Constitution guarantees the right “to have the assistance of counsel for the defendant’s defense.”

A defendant is not simply entitled to perfunctory assistance of counsel; rather, a defendant is entitled to effective assistance of counsel (*Strickland v. Washington* (1984) 466 U.S. 668, 686).

A defendant who is able to obtain the services of a chosen attorney is entitled to do so (*People v. Gzikowski* (1982) 32 Cal. 3rd 580, 586; *People v. Holland* (1989) 23 Cal. 3rd 77, 86). An indigent defendant who is not able to engage an attorney of choice is entitled to a competent attorney at public expense. (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342-345; see *Powell v. Alabama* (1932) 287 U.S. 45, 71-73.)

The right of an indigent defendant to the effective assistance of counsel includes the right to hire experts and investigators at public expense when their assistance is reasonably necessary to prepare a defense (*Corenevsky v. Superior Court* (1984) 36 Cal. 3rd 307, 319-320). “The right to counsel includes the right to the use of any experts that will assist counsel in preparing a defense” (*Anderson v. Justice Court* (1979) 99 Cal. App. 3rd 398, 401).

A defendant establishes the entitlement to such appointments by showing that (1) he or she is indigent (*People v. Worthy* (1980) 109 Cal. App. 3rd 514, 520) and (2) the requested services are reasonably necessary to the preparation of a defense (*Corenevsky*, supra, at p. 320).

In *Worthy,* supra, the court inquired, “May a trial court appoint experts at county expense for an indigent defendant represented by private counsel?”

The court “concluded that the Constitution compels such appointment in a proper case and that the trial court has inherent power to do so.... The test of entitlement to county assistance in defense preparation must be indigency.” (*Worthy*, supra, at 518-520).

“[E]xpert and investigative help is necessary to the defense pending the preliminary hearing” because the “preliminary hearing is a critical stage of the criminal process.” (*Anderson v. Justice Court* (1979) 99 Cal. App. 3rd 398, 401)

**THE TEST OF INDIGENCY IS PERSONAL TO DEFENDANT AND DOES NOT REQUIRE HIS FAMILY AND FRIENDS TO ALSO BE INDIGENT**

“If the family and friends of a defendant have no legal duty to support him, their financial means would ordinarily be entirely irrelevant. The fact that they employed counsel for him or gave him money would be relevant to whether he could afford to obtain investigative services. It would, however, be only one of many facts the court would consider in determining the question of financial ability.” (*Anderson v. Justice Court* (1979) 99 Cal. App. 3rd 398, 402–403)

“A test [of indigency] based upon the status of defense counsel would be constitutionally infirm. If a criminal defendant requires the services of investigators or scientific or medical experts to assist him in preparation of his defense, that assistance must be provided. Whether it is paid for by the government or by the defendant depends solely on the defendant’s economic status.” (*Worthy*, supra, at 520)

**APPOINTMENT REQUESTS AND ORDERS ARE CONFIDENTIAL AS ARE COMMUNICATIONS WITH INVESTIGATORS, EXPERTS, AND OTHER MEMBERS OF THE DEFENSE TEAM**

In *People v. Suarez* (2020) 10 Cal. 5th 116, our Supreme Court noted in the context of a capital case that, “defendant’s counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. The fact that an application has been made shall be confidential and the contents of the application shall be confidential.” (citations and punctuation omitted)

“The confidentiality requirement was evidently intended to prevent the prosecution from learning of the application for funds and thereby improperly anticipating the accused’s defense.” (*People v. Anderson* (1987) 43 Cal. 3rd 1104, 1132)

“The attorney-client privilege is a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. That privilege encompasses confidential communications between a client and experts retained by the defense.” (*Elijah W. v. Superior Court* (2013) 216 Cal. App. 4th 140, citations and internal punctuation omitted).

//

COUNSEL DECLARATION IN SUPPORT OF MOTION

I, SignSign , declare:

1. I am attorney for the Defendant, having been privately retained.
2. As shown by the attached financial documents, Defendant is indigent.
3. I have not yet been fully paid for my services, and the money I did receive came from a third party. Defendant has indicated that he does not have the funds to pay any part of the fee for a private investigator.
4. The assistance of a Private Investigator is necessary in this case to complete the following tasks: xxx
5. I have spoken with Private Investigator ExpertExpert regarding this has indicated his availability. This investigator is on the Indigent Defense Panel of investigators and has previously been appointed by this court as a Private Investigator.
6. It is anticipated that the investigator’s services will not take more than HourHour hours, at the rate of $RateRate per hour. Mileage is billed at MileMile cents per mile, and most witnesses appear to be local, so I am requesting an authorization not to exceed $TotalTotal total.

I declare under penalty of perjury that I am informed and believe that the foregoing is true and correct.

Date: September 28, 2020

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SignSign,

Attorney for Defendant

FirstLine

SecondLine

AddressLine

CityCity, StateState ZipZip

PhoneNumber

FaxNumber

Attorney for ClientName

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF COUNTYCOUNTY

|  |  |  |
| --- | --- | --- |
| People of the State of California,  Plaintiffs,  - vs -  ClientName,  Defendants | )  )  )  )  )  )  )  )  )  )  )  ) | CASE NO. CaseCase  **ORDER** |
|  | ) |  |

**GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED:**

The Court hereby appoints Private Investigator ExpertExpert to assist the defense on a confidential basis at the expense of the County. ExpertExpert shall be compensated at $RateRate per hour and MileMile cents per mile traveled, not to exceed $TotalTotal total.

Dated:

|  |
| --- |
|  |
| Judge of the Superior Court |