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

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

**TO THE ABOVE-ENTITLED COURT:**

Defendant requests an order appointing ExpertExpert, as a technology expert at the expense of the county to assist the defendant and counsel on a confidential basis and for such other orders as may seem just and proper to the court.

This request is made on the grounds that the assistance of this expert is 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.

Dated: September 28, 2020

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| By | SignSign,  Attorney for Defendant |

**DECLARATION IN SUPPORT OF EX PARTE APPLICATION FOR EXPERT**

I am the attorney of record for Defendant, having been appointed through IDP.

Defendant is indigent and is in custody.

The Prosecution will have their own technology expert.

I request the Court to appoint ExpertExpert as a technical expert to accomplish the following tasks:

1. xxx
2. xxx

On this project, this expert has given an estimate of hourshours hours at $raterate per hour.

ExpertExpert is a highly qualified technical expert who has been appointed by this Court and Tulare County Superior Court many times in the past with good affect, including multiple murder cases and complex death penalty cases.

Based on the foregoing, I am asking for an authorization of up to $totaltotal (hourshours hours at $raterate per hour).

Dated: September 28, 2020

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| By | SignSign,  Attorney for Defendant |

**POINTS AND AUTHORITIES**

**AN INDIGENT DEFENDANT IS ENTITLED TO APPOINTMENT OF INVESTIGATORS AND EXPERTS AT COUNTY EXPENSE**

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).

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).

“[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)

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**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).

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

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| --- | --- | --- |
| People of the State of California,  Plaintiffs,  - vs -  **CLIENTNAME**,  Defendant | )  )  )  )  )  )  )  )  ) | CASE NO. CASENUMBER  **ORDER** |
|  | )  ) |  |

Pursuant to Defendant’s Ex Parte application, IT IS HEREBY ORDERED that ExpertExpert is appointed to assist the Defense and that $TotalTotal be authorized for work to be performed at the rate of $RateRate per hour. ExpertExpert is further authorized to use computer equipment at the jail to review discovery with the Defendant.

Dated:

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