**D-1-DC or C-1-CR**

|  |  |  |
| --- | --- | --- |
| **STATE OF TEXAS** | **§** | **IN THE DISTRICT COURT** |
|  | **§** |  |
| **v.** | **§** | **\_\_\_TH JUDICIAL DISTRICT** |
|  | **§** |  |
| **JOHN SMITH** | **§** | **TRAVIS COUNTY, TEXAS** |

**EX PARTE MOTION FOR FINDING OF INDIGENCY TO RETAIN**

**THE SERVICES OF EXPERT WITNESSES**

***NOTICE TO CLERK OF COURT:***

***This motion is to be considered EX PARTE and is filed for purposes of the record. This motion is required to be SEALED, by law, and disclosure shall be made ONLY to the TRIAL COURT, COUNSEL FOR DEFENDANT, and the CAPITAL AREA PRIAVATE DEFENDER SERVICE.***

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW JOHN SMITH, Defendant in the above-styled and numbered cause and herein respectfully moves the Court to provide funds for the expense of obtaining expert witness(es) pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, Article I, 3, 3a, 10, 13 and 19 of the Texas Constitution, and Article 26.05 of the Texas Code of Criminal Procedure, and in support of thereof would show the Court as follows:

**I.**

Defendant is charged with the offense of XXXXXXXXXXXXXXXX. The Defendant is indigent upon the filing of this motion and this proceeding. [See Exhibit A – Petitioner’s Affidavit of Inability to Pay Costs]. Defendant cannot afford to hire an expert to assist in the evaluation, preparation and presentation of his defense. Defendant originally retained the services of counsel; however, Defendant has exhausted any savings and is unable to pay for the assistance of an expert at this time and for the foreseeable future.

**II.**

The disclosures made in the Motion are made in reliance upon the understanding that nothing set out in this Motion will be revealed to the prosecution, the press or the public. Disclosure of information contained in this motion would deprive Defendant of effective representation, counsel of effective preparation for trial, and interfere in the attorney-client relationship.

**III.**

An issue to be highly contested in this case concerns if the Defendant ENTER YOUR EXPERT NEED HERE. The Defendant cannot prepare for trial without expert assistance. Defense counsel believes the cost of the needed expert to be at least $ .

**IV.**

Based upon the gravity of the charges and the serious far-reaching consequences from these charges, the undersigned counsel must request and secure the appropriate assistance of an expert to effectively evaluate and assist the defense to preserve the Defendant’s rights. If the Defendant is not provided with expert assistance, the Defendant will be deprived of due process, due course, and equal protection of the law, the effective assistance of counsel, the right to confront witnesses, the right to a fair and impartial trial, the right to present evidence on his own behalf, and the right to explain or deny evidence presented against the Defendant in the punishment phase, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 3, 3a, 10, 13 and 19 of the Texas Constitution. In these circumstances, the Constitutions of the United States and Texas, as well as other applicable Texas law require that funds for expert assistance be provided. Rey v. State, 897 S.W. 2d 333 (Tex. Crim. App. 1995); Ake v. Oklahoma, 470 U.S. 68 (1985); Griffin v. Illinois, 351 U.S. 12 (1956).

**WHEREFORE PREMISES CONSIDERED**, Defendant respectfully prays the Court to immediately find the Defendant is without means to retain a competent expert in the needed field. The Defendant prays that this Honorable Court, pursuant to the Travis County Fair Defense Plan, direct the Capital Area Private Defender to review a request for expert assistance, make determinations as appropriate, and authorize experts as needed.

Defendant prays that the Court order the Travis County District/County Clerk file this motion under seal and in a separate file, limiting access to the Trial Court, Defense Counsel, and the Capital Area Private Defender Service.

Respectfully submitted,

ATTORNEY

123 Easy Street

Austin, Texas 78701

(512) 000-0000 Phone

(512) 000-0000 Fax

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

ATTORNEY

State Bar Card No. XXXXXXXX

Attorney for Defendant

AFFIDAVIT OF ATTORNEY

ATTORNEY FOR JOHN SMITH

STATE OF TEXAS \*

\*

COUNTY OF TRAVIS \*

I, ATTORNEY, Attorney at Law, represent Defendant in cause \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. As noted in the foregoing Motion, Defendant has been charged with XXXXXXXXXXXX. It is my professional opinion that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_will be a significant factor at trial. Accordingly, the assistance of defense expert witness is essential to guarantee Defendant a fair trial.

As Counsel for Defendant, I anticipate that the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ expert will help evaluate, pursue and present a defense based upon the theory that Defendant did not commit the crimes alleged in the indictment. This expert may later be called on to testify, but is being retained initially as a consulting expert.

Further, if Defendant is denied the right to the requested assistance, he will effectively be deprived of due process of law as well as other constitutional rights.

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

ATTORNEY

State Bar Card No. XXXXXXXX

Attorney for Defendant

SUBSCRIBED AND SWORN TO BEFORE ME this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_ to certify which witness my hand and seal of office.

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

Notary Public, State of Texas

**D-1-DC or C-1-CR**

|  |  |  |
| --- | --- | --- |
| **STATE OF TEXAS** | **§** | **IN THE DISTRICT COURT** |
|  | **§** |  |
| **v.** | **§** | **\_\_\_TH JUDICIAL DISTRICT** |
|  | **§** |  |
| **JOHN SMITH** | **§** | **TRAVIS COUNTY, TEXAS** |

**ORDER FINDING THE DEFENDANT INDIGENT FOR THE FOR THE PURPOSE OF OBTAINING THE SERVICES OF AN EXPERT**

Came on this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ to be considered Defendant’s Ex Parte Motion for finding of indigency to retain the services of an expert. Having considered the same and heard the testimony and argument of counsel, the Court finds that the defendant, JOHN SMITH, is indigent for this purpose and is unable to afford the services requested in this motion.

The Capital Area Private Defender Service is hereby AUTHORIZED and ORDERED, pursuant to the Travis County Fair Defense Plan, to review the needs of the Defense and make a proper determination regarding the services of an expert.

IT IS FURTHER ORDERED THAT the Travis County District/County Clerk file this motion under seal and separate file, limiting access to the Trial Court, Defense Counsel, and the Capital Area Private Defender Service.

So ORDERED this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**JUDGE PRESIDING**