**Motion for Second Attorney**

Mr. [Defendant], defendant, through counsel, [Defense Attorney], requests that this court appoint [ 2nd defense attorney] as co-counsel in the above-captioned case. This motion is based upon the Sixth Amendment to the United States Constitution, Article I Section 22 of the Washington State Constitution, the Standards for Indigent Defense, and the following Declaration,

DECLARATION

[Defense Attorney], attorney of record in this matter, declares that the following is true and correct to the best of his knowledge and belief.

1. I am counsel of record for Mr. . [Defendant], and I am familiar with the files and records herein. I am appointed by the [County] Office of Public Defense to represent Mr. . [Defendant], in this case.
2. Mr. . [Defendant], is charged with [charge(s)]. He is [age] years old. If convicted as charged he faces a sentencing range of [SR] months. [insert if applicable: The State has also noted its intention to seek an enhancement for {a deadly weapon, sexual motivation, etc.} if the case proceeds to trial.] In other words, Mr. . [Defendant], is effectively facing a life sentence if convicted after trial.
3. Mr. . [Defendant], was arraigned on [date]. There is voluminous discovery in this matter. Bates-stamped discovery from the State numbers [number] pages. There are [number] CD’s containing photos, recorded interviews, cell phone records, recordings of jail phone calls, and miscellaneous discovery. The Defense has not received a formal witness list from the State but roughly [number of potential witnesses] civilian witnesses were interviewed in connection with the homicide, and [number/a roughly equal number of] law enforcement officers were involved in some way with the investigation.
4. [Ballistics/Fingerprint/DNA, etc] evidence may play a significant role in this case, necessitating significant research and preparation to scrutinize and challenge the State’s forensic evidence.
5. Use of a number of experts may be necessary, including
6. Mr. Defendant], has a long history of [mental illness and/or intellectual impairment] that will require careful review and consideration of possible defenses and competency concerns may arise. [There are complicated issues related to competency anticipated in this case]
7. This case involves novel or emergent legal issues which may require extensive research and briefing, such as [insert general information]
8. The Defense anticipates that pretrial motions, voir dire, and a jury trial in this matter could easily take [estimate length of time - a month or more, 2 months, etc]
9. Trial is currently scheduled for [date]. The Defense does not anticipate being prepared for trial at that time and at omnibus on [date] intends to request a trial date in [month/year]l. To prevent further unnecessary delay, to be adequately prepared for trial, and to competently represent Mr. [Defendant] at trial, counsel requests that he be appointed co-counsel to assist in the preparation of Mr. [Defendant]’s defense.
10. [For King Co: It is customary among King County Public Defender agencies for two lawyers to be appointed to defend murder cases. Mr. . [Defendant], should be entitled to the same level of representation.]
11. In addition to work on this case, I have a workload/caseload of [insert explanation of other work/caseload in addition to current case]. I do not believe I can provide adequate representation in this matter, pursuant to SID 3.2 and 3.3, without the assistance of a second attorney to work on this case.
12. Financial concerns should not be used as a justification for inhibiting the constitutional rights of criminal defendants. State v. Wilson, 144 Wn.App. 166 (2008) (Court improperly considered county budget concerns in denying appointment of second counsel in murder case); See also Rufo v.Inmates of Suffolk County Jail,502 U.S. 367, 392, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992); Stone v.City & County of San Francisco*,* 968 F.2d 850, 858 (9th Cir. 1992).
13. Counsel requests that [2nd Defense attorney] of [law firm name] be appointed as second counsel to represent Mr. . [Defendant], in this matter. Mr. [2nd Defense attorney] has represented indigent criminal defendants in King County since [year], including in [insert experience of second attorney]. He has jury trial experience in District, Superior, and Federal Court. He is well qualified to second chair this case.

Presented this \_\_\_ day of [Month], [year]

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

[Defense Attorney], WSBA#

Attorney for Mr. [Defendant]

**Engagement Letter**

Expert

Mailing Address

Engagement Letter

State v.\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County Superior Court

Case No:

Dear Expert,

Thank you for being available to perform a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in this matter. This note sets forth our understanding of our arrangement. Please advise if I have misstated or omitted any points.

[Law office/firm] represents the defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on a \_\_\_\_\_\_\_ County Superior Court case, for which he is charged with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. We understand that you have not been consulted by any other party involved in this case, and that you would have no financial interests or ethical obligations inconsistent with our client.

You and your staff are regarded as agents of this office, and your findings and opinions are work product. We consider you bound by the attorney-client privilege, and request that you not discuss this matter with anyone not connected with this office without our prior approval.

With this initial letter, I am only asking for your preliminary findings and ask that your preliminary findings or opinion be delivered to me verbally, over the phone. After our verbal discussion, and if the findings are generally supportive we will discuss a written report and testimony.

I have authorization for the evaluation of our client at your rate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to include interview, testing, score/interpret tests, and report. Client is currently located at \_\_\_\_\_\_\_\_\_. I have authorization for up to a total of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the evaluation and report. I do not have authorization for any additional funding at this time. If for some reason the cost may exceed this agreement, additional authorization from my office would be needed before any additional amount would be tendered to you. Excess work without pre-authorization may not be paid.

Once the evaluation is complete, please present your itemized bill to this office at the address below, to my attention. If your address changes at any time during this engagement you must notify me so that payment can be sent to the appropriate place.

Again, I thank you for your continued interest in this matter. If you have questions or need additional materials, please let me know. My direct line is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and my e-mail is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

If you cannot reach me, please contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at her direct line \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or by email at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](mailto:dmueller@spokanecounty.org). We would be happy to talk to you at any time.

Sincerely,

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

, WSBA #

Attorney

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| STATE OF WASHINGTON,  Plaintiff,  vs.  ,  Defendant. | NO. *EX PARTE* MOTION, DECLARATION AND ORDER FOR EXPERT SERVICES AND FUNDING [X] CLERKS ACTION REQUIRED |

The defendant, \_\_\_\_\_\_\_\_, by and through his attorney of record, AWESOME ATTORNEY, moves the court for an order appointing EXPERT OR INVESTIGATOR, to perform TYPE OF services for WHAT PURPOSE, in this matter at public expense.

DEFENDNT is charged with LIST CHARGES, and he faces a standard range sentence of STANDARD SENTENCE RANGE. The charges in this case are extremely serious. Defendant has previously been found by this Court to be indigent and remains indigent. [Or has a private attorney but cannot afford an expert – different additional authority needed].

Defense counsel sought multiple experts who refused to evaluate and test DEFENDANT in conjunction with it being for the criminal defense of a defendant, verses only for mitigation at sentencing or for treatment. Finally, after multiple refusals, defense located an expert who agreed to perform the SERVICES NEEDED.

After locating a qualified TYPE OF EXPERT available, a funding request was sent to the WHICH County Office of Public Defense to pay for the security. The Office of Public Defense advised the notice was too short, and the resources were not likely available to pay for WHAT EXPERT SERVICES without Court intervention and approval of the appointment of the EXPERT OR INVESTIGATOR and the cost necessary to pay for expert services.

INVESTIGATOR INFORMATION & AVAILABILITY TO DO THE WORK: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ This TYPE OF EXPERT will have a confidentiality agreement with defense for this case. Defense moves this Court to find the TYPE OF SERVICES, and funding of such, as it is necessary for the defense of this client.

LEGAL AUTHORITY

The Sixth Amendment right to effective assistance of counsel includes any expert assistance necessary to an adequate defense. *Ake v. Oklahoma*, 40 US 68, 72, 105 W.Ct. 1087, 84 L.Ed.53 (1985). Washington discharges its obligation to provide indigent criminal defendants necessary expert assistance under CrR 3.1 (f). Under, CrR 3.1(f), **“a defendant is entitled to the appointment of experts if financially unable to obtain them and if the services are necessary to the defense.”** *St. v. Punsalan*, 156 Wn.2d 875, 133 P.32d 934 (2006)(citing *St. v. Hoffman*, 116 Wn.2d 51, 804 P.2d 577 (1991)). Indigent criminal defendants represented by private counsel are also entitled to expert assistance necessary to an adequate defense under CrR 3.1(f). *St. v. Punsalan*, 156 Wn.2d at 880.

DECLARATION OF COUNSEL

I, AWESOME ATTORNEY, declare the following:

1. I am the attorney of record for DEFENDANT NAME and am familiar with the records and files herein;

2. I was appointed attorney of record in this matter by the Office of Public Defense following a determination that DEFENDANT is indigent.

3. DEFENDANT is charge with: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. An expert is necessary to REASONS WHY THE EXPERT OR INVESTIGATOR IS NEEDED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Defense has located an appropriately qualified person at EXPERT BUSINESS NAME AND/OR NAME OF EXPERT. The Office of Public Defense advised this defense counsel to motion the Court for funding approval, as it did not have sufficient time, or adequate resources available to review or to fund SERVICES for these necessary expert services.

6. INVESTIGATOR LICENSING AND/OR QUALIFICATIONS: \_\_\_\_\_\_

7. EXPERT will charge $\_\_\_\_\_/hour, with the maximum amount being $\_\_\_\_\_\_\_.

8. Other EXPERT TYPE will not accept the case, and/or not at a reduced OPD rate.

9. The Court can deposit with the WHICH County Office of Public Defense the $ FULL AMOUNT requested, and EXPERT NAME can bill the FC OPD once actual hours are known.

10. Any unused amount of money remaining after EXPERT BUSINESS bills can be returned to the state/court by the COUNTY OPD Office.

11. Prior to negotiations with the current expert, defense located, approached, discussed the case and negotiated with 4-6 other experts. Each of these prior experts refused to work with defense.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2022.

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

AWESOME ATTORNEY AND WSBA#

Attorney for Defendant

**ORDER**

IT IS HEREBY ORDERED that EXPERT NAME & BUSINESS NAME as (1) An expert TYPE OF EXPERT performing TYPE OF SERVICE services at the rate of $\_\_\_ per hour, up to the maximum of $\_\_\_\_\_\_. Said pretrial retainer services for private expert TYPE OF SERVICE services shall not exceed $\_\_\_\_\_\_\_\_\_ total without further order of this court.

DATED this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.

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

JUDGE

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

AWESOME ATTORNEY WSBA#

DEFENSE ATTORNEY

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

**IN AND FOR THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |
| --- | --- |
| STATE OF WASHINGTON,  Plaintiff,  VS.  DEFENDANT,  Defendant. | NO.  *EX PARTE* MOTION, DECLARATION AND ORDER  TO SEAL DEFENSE MOTIONS  [X] Clerk’s Action Required |

**MOTION**

The defendant, DEFENDANT, through his attorney, AWESOME ATTORNEY, requests an order sealing the disclosure of: [LIST ALL MOTIONS YOU WANT SEALED. GET CONFORMED COPIES OF EACH MOTION AT THE TIME (typically 4: 1) OPD to pay; 2) Defense File; 3) Jail; 4) One extra original because you can’t get certified copies later if needed) – YOU WON’T BE ABLE TO GET COPIES ONCE SEALED]

1. *Ex Parte* Motion And Order To Seal Defense Motions
2. *Ex Parte* Motion Declaration And Order For Expert Services

These declarations, motions and orders were provided to this Court and the jail, and the Office of Public Defense will be provided a copy. This request is made pursuant to the Washington Supreme Court decision in *Yakima County v. Yakima Herald-Republic* Docket number 82229-8 issued on January 13, 2011. The Supreme Court ruled that documents prepared by court personnel in connection with the court cases and maintained by the court, are judicial documents governed by the court rules for disclosure and not the PRA. In addition, such documents, when transferred to non-judicial county entities, are governed by the PRA *unless they are subject to a protective order.* This would include the County Jail, which could otherwise provide the state with the defense request for experts, and the login sheets showing the expert’s name and visitation with the defendant. The state has no standing in obtaining the defense strategy or objecting to a defense motion to obtain experts or funding, nor any expert visits with the defendant until such time as defense decides to put the expert on the defense witness list. THIS PROTECTIVE ORDER PREVENTS THE \_\_\_\_\_\_\_\_\_\_ COUNTY JAIL FROM PROVIDING THE STATE ANY INFORMATION RELATED TO THE DEFENSE EXPERT, SIGN IN LOGS OR OTHER METHODS OF PROVIDING INFORMATION RELATED TO THE EXPERT’S CONTACT WITH THE IN-CUSTODY DEFENDANT.

The defendant has entered a plea of not guilty. The (1)Ex Parte Motion and Order for Expert Services, both dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, which were filed in this case, **contain information that is work product and confidential under CrR 3.1(f). It outlines part of the defense theory of its case and potentially identifies experts by area of expertise, and/or by name. Thus, pursuant to the most recent Supreme Court decision, the defense requests that a protective order sealing these records be issued** in this case for: [Make certain your list includes all documents, and the names match identically to the motions filed for the expert].

1. This *Ex Parte* Motion And Order To Seal Defense Motions
2. *Ex Parte* Motion Declaration And Order For Expert Services And Funding

Although GR 15 generally requires notice and analysis, since modified in 2006, GR 15(c) also states the exception to these requirements under CrR 3.1(f); “No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).” *State v. Waldon*, 148 Wash.App. 952, 959-60, 202 P.3d 325, 329 (2009); and see *State v. Parvin*, 184 Wash.2d 741, 754-55, 364 P.3d 94, 101 (2015). Under CrR 3.1(f), GR 15 procedures requiring an analysis of the *Ishikawa* factors, and notice to the other parties is not required, and a different procedure applies. *Id.*  Notice and analysis is not required to seal a motion under CrR 3.1(f) which provides: The motion may be made ex parte and, upon a showing of good cause, the moving papers may be ordered sealed by the court and shall remain sealed until further order of the court.” CrR 3.1(f)(2). This is in part because appointment of experts is part of a defendant’s constitutional right to assistance of counsel. *Matter of PRP of Lord*, 123 Wn.2d 296, 868 P.2d 835 (1994), *clarified* 123 Wn.2d 737, *certiorari denied* 115 S.Ct. 146.

The Washington State Supreme Court held in *Yakima v. Yakima Herald-Republic* that motions made pursuant to CrR 3.1(f) for expert funding were properly sealed ex parte “in order to protect defense strategies and client confidences from the prosecutor.” 170 Wash.2d 775, 782, 246 P.3d 768, 770 (2011). The Court further held that these motions filed with the court and county clerk were judicial documents, and not subject to the Public Records Act or the sealing requirements of it. *Id*., at 793. The Court further noted that having the judiciary make decisions on funding and expert motion requests “made by counsel for an indigent defendant’s criminal defense is not a ‘curious’ decision – the requirement for defense funding [and appointment of experts] is constitutionally mandated and the relevant rules expressly discuss ex parte hearings to approve such funding [and motions appointing the expert].” *Id*., at 794-95, citing “CrR 3.1(f)(1)-(2); *State v. Poulsen*, 45 Wn.App. 706, 726 P.2d 1036 (1086)(explaining that CrR 3.1(f) incorporates the “constitutional right of an indigent defendant to the assistance of expert witnesses;” discussing key constitutional cases, including *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985); *Wash.State Bar Ass’n, Standards for Indigent Defense Services*, std. 4; *Responsibility for Expert Witnesses* (2007)(providing in part that requests for expert witness appointment, fees, and related motions “should be made through an ex parte motion”).”

The protective order shall prohibit any non-judicial county agencies from disclosing any of these materials or any information contained in these materials. *The order shall prohibit the disclosure of any of these materials or any information contained in these material, or login sheets, visitation logs, or other areas of information gathered or retained related to the expert seeing the defendant, or to the expert in any way, to any person(s) in the \_\_\_\_\_\_\_\_\_\_\_\_ County Prosecutor’s Office, by any agency. The order shall seal both of the above listed documents.* If defense comes to an agreement with the consulting expert to testify at trial, discovery and notice of the expert to the \_\_\_\_\_\_\_\_\_\_\_\_ County Prosecutor’s Office will be given by defense as required under the discovery rules. An order limiting the disclosure of these materials and sealing these materials is also attached.

Additionally, sealing these motions is appropriate and there is good cause because the Sixth Amendment right to effective assistance of counsel includes investigative and expert assistance necessary to an adequate defense. *See* *Ake v. Oklahoma*, 470 U.S. 68, 72, 84 L.Ed 2d 53, 105 S.Ct. 1087 (1985). Under CrR 3.1(f)(1), “ a defendant is entitled to the appointment of experts if financially unable to obtain them and if the services are necessary to the defense.” *State v. Hoffman*, 116 Wn.2d 51, 90, 804 P.2d 577 (1991). Providing the state with the defense strategy prior to being able to investigate said defense with an expert violates an indigent defendant’s rights in a way a defendant with a private attorney, or who is not incarcerated, would not.

**DECLARATION**

1. I, AWESOME ATTORNEY, am the appointed attorney for DEFENDANT.
2. DEFENDANT is charged with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. An expert has already been authorized and funded to provide expert testing and evaluation services for DEFENDANT.
4. The expert has reviewed the relevant reports and discovery information necessary prior to testing and evaluating DEFENDANT.
5. The expert has indicated he needs to test and evaluate DEFENDANT in person, and the defendant is in custody at the \_\_\_\_\_\_\_\_\_\_\_ County Jail.
6. The expert has indicated the battery of tests and evaluations relevant to DEFENDANT and the types of charges he is facing, typically take an English-speaking defendant 6 hours to complete.
7. DEFENDANT needs a Spanish speaking interpreter, who has been scheduled for the full day on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, starting at 8:00 am.
8. Because an interpreter is necessary, the expert indicates the testing may take up to 9 hours to complete; depending in part on whether the interpreter is able to interpret simultaneously, or consecutively, and in part on how quickly DEFENDANT can understand, follow and reply to the somewhat complex testing questions.
9. This testing and evaluation will provide defense information necessary to the defense against the charges DEFENDANT is facing, as well as possibly providing mitigation information for negotiations with the state, and/or sentencing in the future.
10. Experts are authorized to perform such testing for mitigation purposes, as well as for defense purposes across the board.
11. This information will be confidential work product unless and until defense determines how to use the acquired information, at which time defense will name the expert as a witness and discover both the expert, the expert’s credentials and the content of his/her reports.
12. Because this is work product during the course of an investigation into defenses to provide the defendant against these pending felony criminal charges, defense is required keep all contact and the identity of the expert confidential from the state until the proper time of disclosure under the governing discovery rules applies. The Court should do so as well by sealing these motions and orders related to appointing and funding an expert.
13. AWESOME ATTORNEY moves this Court under case law precedent to seal: (1) “*EX PARTE* MOTION AND ORDER FOR EXPERT SERVICES AND FUNDING” and (2) “*EX PARTE* MOTION, DECLARATION AND ORDER TO SEAL DEFENSE MOTIONS.”

**ORDER**

**THIS MATTER** having come before the Court on the Defendant's *Ex Parte* Motion, Declaration and Memorandum for an Order to appoint and fund an Expert Witness, to the defense under CrR 3.1(f)(1) based upon the expert witness being necessary, and the defendant being “financially unable to obtain the expert services,” *id.*, and herein that “good cause” has been shown to seal the said Motion and this Order To Furlough For Evaluation and This Motion and Order To Seal. CrR 3.1(f)(2).

**IT IS HERBEY ORDERED** that, “good cause” has been shown to authorize sealing this Order and the underlying Motion, the Clerk of this Court shall SEAL the defendant's motions:

1. “*EX PARTE* MOTION AND ORDER FOR FURLOUGH FOR EVALUATION”
2. “*EX PARTE* MOTION, DECLARATION AND ORDER TO SEAL DEFENSE MOTIONS.”

DONE BY THE COURT this day of , 2022.

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

[ ] JUDGE [ ] COMMISSIONER

Presented by:

AWESOME ATTORNEY, WSBA #\_\_\_\_\_\_\_, *ex parte*

Defense Counsel