

EX PARTE PLEADING – TO BE FILED UNDER SEAL

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

v.

JOE CLIENT.

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Case No. CC-00-0000

EX PARTE APPLICATION FOR INVESTIGATIVE EXPENSES

Joe Client respectfully moves this Court to approve the expenditure of up to \$0000 for investigative services and expenses, subject to application for additional funds if needed. In support of this motion, Mr. Client submits the following:

1. Mr. Client has been charged with capital rape-murder and the State is seeking the death penalty. He has been incarcerated since his arrest. He is indigent and this Court has granted him permission to proceed *in forma pauperis*.

2. Counsel needs an investigator to help locate and interview potential witnesses, including but not limited to eyewitnesses and other witnesses with knowledge of events surrounding the alleged offense; potential alibi witnesses; and witnesses familiar with aspects of Mr. Client's life history, including members of his immediate and extended family, neighbors, friends, former teachers, clergy, employers, co-workers, social service providers, doctors, correctional officers, and probation or parole officers.

3. Counsel also needs an investigator to investigate all sources of possible impeachment of defense and prosecution witnesses and to secure information in the possession of the prosecution or law enforcement authorities, including police reports, autopsy reports, photos, video and audio recordings, and crime scene and crime lab reports.

4. Because the State is seeking the death penalty, counsel needs an investigator to assist in mitigation investigation, including assistance in obtaining information and records relevant to Mr. Client's medical and mental health history, educational history, employment and training history, family and social history, correctional history, and religious or cultural influences.

5. The Eighth Amendment requires the jury to consider "*as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense

that the defendant proffers as a basis for a sentence less than death.” Lockett v. Ohio, 438 U.S. 586, 604 (1978); see also Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) (sentencer may not refuse to consider, as a matter of law, any relevant mitigating evidence, including evidence of the petitioner’s unhappy upbringing and emotional disturbance, turbulent family history, and beatings by a harsh father); Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (“[I]n capital cases the fundamental respect for humanity underlying the Eighth Amendment requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.” (citation omitted)).

6. Under Alabama law, “mitigating circumstances shall include any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant offers as a basis for a sentence of life imprisonment without parole instead of death, and any other relevant mitigating circumstance which the defendant offers as a basis for a sentence of life imprisonment without parole instead of death.” See Ala. Code § 13A-5-52; see also Ala. Code § 13A-5-51 (specifically listing as mitigating circumstances that defendant has no significant prior criminal history; defendant committed offense under influence of extreme mental or emotional disturbance; victim was participant in crime; defendant’s participation in crime was relatively minor; defendant acted under duress or domination of another; defendant’s capacity to appreciate criminality or conform conduct to requirements of law was substantially impaired; and defendant’s age at time of the crime).

7. Counsel also needs the assistance of an investigator to investigate alleged prior convictions, adjudications, unadjudicated offenses, or other evidence that the State could use to prove the aggravating circumstances necessary for the imposition of the death penalty.

8. Without an investigator, counsel will be forced to violate her constitutional, legal, and ethical duty to investigate fully all aspects of Mr. Client’s life and the charge against him. See Wiggins v. Smith, 123 S. Ct. 2527, 2535 (2003) (counsel has duty to investigate in death penalty case); Williams v. Taylor, 529 U.S. 362, 396 (2000) (counsel has “obligation to conduct a thorough investigation” (citation omitted)); Brownlee v. Haley, 306 F.3d 1043, 1074, 1079 (11th Cir. 2002) (counsel ineffective in Alabama death penalty case for failing to investigate and present mitigating evidence); see also Guideline 10.7(A), American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 31 Hofstra L. Rev. 903, 1015-1027 (2003) (“Counsel at every stage have an obligation to conduct thorough and independent investigations relating to issues of both guilt and penalty.”).

9. The American Bar Association’s Guidelines require that at least one investigator be made part of the defense team. Guideline 10.4, American Bar Association

Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 31 Hofstra L. Rev. 903, 999-1005 (2003).

10. In addition, counsel needs an investigator because of the advocate-witness rule. Because counsel cannot testify in her client's case, counsel must conduct interviews of potential witnesses in the presence of a third person so that there is someone to call as a defense witness at trial in the event that a witness gives testimony that is inconsistent with what he told counsel during the investigation.

11. Moreover, using an investigator is the most cost-effective way to conduct the investigation. The investigator can locate and interview witnesses and obtain records and documents at a lower hourly rate than would be paid to an attorney. Upon the completion of the initial stages of the investigation, counsel's time can then be utilized interviewing those witnesses whose potential testimony may be presented at trial and making a professional determination as to their usefulness.

12. The prosecution has access to numerous investigators, including investigators from the district attorney's office, Maycomb County Sheriff's Department, Alabama Department of Forensic Sciences, Alabama Bureau of Investigation, and Maycomb County Fire Department.

13. This Court should authorize funds for an investigator because Mr. Client is indigent and a person with means on trial for his life would certainly undertake the investigation outlined above to properly prepare and present his case. See Griffin v. Illinois, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."); see also Ake v. Oklahoma, 470 U.S. 68, 76 (1985) ("[J]ustice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake."); Ex parte Moody, 684 So. 2d 114, 120 (Ala. 1996) (holding that there should be equality between indigent and nonindigent defendants).

14. Because this is a capital case, this Court must apply special considerations to ensure that it is fair. "The fundamental respect for humanity" underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special need for reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (death penalty is "special circumstance" that justifies expansion of constitutional rights).

15. Mr. Client seeks authorization to retain the services of an investigator to be paid at the rate of \$00.00 per hour. Counsel estimates that approximately number hundred

(000) hours of investigative time will be required.

14. If Mr. Client is not provided with funds to obtain the assistance of an investigator, he will be deprived of due process, equal protection, effective assistance of counsel, his right to confront witnesses against him, a fair trial and reliable sentencing, and his right to present evidence on his own behalf, as protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully moves this Court to

- a. schedule an ex parte hearing on this motion; and
- b. enter an order granting the motion.

Respectfully submitted,

/s/ Linda Lawyer

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STATEMENT REGARDING SERVICE

Because this is an ex parte application, a copy has not been served on the District Attorney.

[MOTION UPDATED ON 10/11/17]