

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

*

*

v.

*

Case No. CC-00-0000

*

JOE CLIENT.

*

MOTION TO APPOINT ADDITIONAL COUNSEL

Joe Client respectfully moves this Court to appoint one additional attorney to assist in his defense. In support of this motion, Mr. Client submits the following:

1. The State has charged Mr. Client with capital murder and is seeking the death penalty. Mr. Client is indigent and this Court has appointed undersigned counsel to represent him. Ala. Code § 15-12-21.

2. Alabama Code section 15-12-21 authorizes this Court to appoint adequate counsel in a capital case. Appointment of co-counsel is necessary to represent Mr. Client adequately. In a capital case, counsel is obligated to consider all potential legal claims, thoroughly investigate the basis for each claim, evaluate each claim in light of the unique characteristics of death penalty law – comprised of hundreds of state and federal death penalty decisions – and present each claim as forcefully as possible. Counsel must protect Mr. Client’s rights against later contentions that his claims have been waived, defaulted, or otherwise forfeited, and make a full record of all legal proceedings in connection with each claim. American Bar Association (ABA), Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases § 10.8, 31 Hofstra L. Rev. 913, 1028-29 (2003); see also Dugger v. Adams, 489 U.S. 401 (1989) (precluding federal habeas review of claim because capital trial lawyer failed to object).

3. Undersigned counsel needs assistance with all aspects of the representation of Mr. Client, including interviewing potential witnesses, preparing to confront anticipated scientific and other expert evidence, challenging prior convictions that the State plans to offer at trial, researching and filing motions necessary to protect Mr. Client’s rights in this capital prosecution, supervising and assimilating facts developed by investigators, and developing and presenting a legal theory of defense.

4. Counsel also needs co-counsel to assist in preparing and presenting mitigating evidence, which Alabama law broadly defines as “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.” Ala. Code § 13A-5-52; see also Porter v. McCollum, 558 U.S. 30, 42 (2009); Eddings v. Oklahoma, 455 U.S. 104, 115 (1982); Lockett v. Ohio, 438 U.S. 586, 604 (1978); Woodson v. North Carolina, 428 U.S. 280, 304 (1976). Counsel requires assistance to interview witnesses familiar with aspects of Mr. Client’s life history, including members of his immediate and extended family; neighbors; friends; former teachers; clergy; employers and co-workers; social service providers; doctors; correctional officers; and probation or parole officers, to review and assess 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 any religious or cultural influences; and to develop and present this mitigating evidence at the penalty phase of Mr. Client’s trial.

5. Co-counsel also is needed to assist counsel in challenging evidence the State intends to use to prove any of the aggravating circumstances necessary for imposition of the death penalty.

6. Alabama appellate courts have held that “[i]t is plainly preferable to have two attorneys in a capital case.” Quick v. State, 825 So. 2d 246, 260 (Ala. Crim. App. 2001) (quoting State v. Jones, 707 So. 2d 975, 978 (La. 1998)); see also Robitaille v. State, 971 So. 2d 43, 51-52 (Ala. Crim. App. 2005) (recognizing certain capital cases may require two attorneys). The American Bar Association’s Guidelines require that at least one associate counsel be made part of the defense team. ABA, Guidelines, supra, § 10.4, 31 Hofstra L. Rev. at 1000; see also 18 U.S.C. § 3599(a)(2) (providing for appointment of co-counsel in federal habeas corpus proceedings).

7. Unlike Mr. Client, the State has a wealth of resources at its disposal, including numerous attorneys and investigators in the District Attorney’s Office to assist in this prosecution, as well as specialists in capital litigation at the Attorney General’s Office Capital Unit. In light of this disparity, counsel respectfully requests the appointment of one associate counsel. See ABA, Guidelines, supra, § 9.1, 31 Hofstra L. Rev. at 981 (requiring parity between defense and prosecution).

8. If Mr. Client were not indigent, he would employ the team of lawyers necessary to conduct the factual and legal preparation outlined above. 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) (equality necessary between indigent and nonindigent defendants).

9. 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).

10. If Mr. Client is not appointed associate counsel, he will be deprived of due process, equal protection, effective assistance of counsel, his right to confront the witnesses against him, his right to 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 moves this Court to appoint one additional counsel to represent him in this capital case.

Respectfully submitted,

/s/ Linda Lawyer
Linda Lawyer
123 Main Street
Maycomb, AL 54321
(334) 987-6543
lawyer@email.com

Counsel for Joe Client

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/03/17]