

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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MOTION FOR INTERIM PAYMENT OF FEES AND EXPENSES

Joe Client respectfully requests that this Court order immediate payment to defense counsel of funds sufficient to cover previously-approved expenditures incurred to date in the defense of Mr. Client. In support of this motion, Mr. Client submits the following:

1. Mr. Client is before this Court awaiting trial for capital murder and the State is seeking the death penalty. Because Mr. Client is indigent, this Court appointed undersigned counsel to represent him.

2. Undersigned counsel has spent 000 hours thus far on Mr. Client's defense, which at the out-of-court hourly rate amounts to \$0000. Additionally, pursuant to this Court's order granting Mr. Client's motion for a mental health expert and mitigation specialist, Mr. Client has identified a mental health expert and mitigation specialist, both of whom require a retainer before they will begin work on Mr. Client's case. This Court approved the expenditure of up to \$0000 to retain defense experts; the total retainer due at this time is \$0000.

3. Because undersigned counsel is financially incapable of prepaying these costs, counsel requests that this Court order immediate payment of \$0000 to Mr. Client's defense, with additional payment to be made after members of the defense team have completed work on the case.

4. Alabama law permits periodic or interim payment to members of the defense team. Ala. Code § 15-12-21(d)(6); Guideline 9.1, American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 31 Hofstra L. Rev. 903, 981-988 (2003) (periodic billing and payment should be available for members of defense team, including counsel).

5. Members of the defense team cannot perform their constitutionally mandated duties without being paid. Were it not for Mr. Client's poverty, he certainly would pay the retainer necessary to obtain expert assistance and would make interim payments to other

members of the defense team, including counsel. Ex parte DuBose, 662 So. 2d 1189, 1194 (Ala. 1995) (holding that due process requires that indigent defendant be afforded expert assistance when necessary to fully present his case); 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).

6. 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). Alabama law recognizes that different arrangements with respect to compensation are necessary in a capital case. See, e.g., Ala. Code § 15-12-21(d)(1) (“In cases where the original charge is a capital offense . . . there shall be no limit on the total fee.”).

7. If interim payment is not approved, Mr. Client will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, a fair trial, a reliable sentencing, and his right to present a defense as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court enter an order granting interim payment of fees and expenses in the amount of \$0000.

Respectfully submitted,

/s/ Linda Lawyer
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Counsel for Joe Client

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/05/17]