

IN THE XXXXXXXXXX JUDICIAL DISTRICT COURT

PARISH OF XXXXXXXXXX

STATE OF LOUISIANA

_____)	
)	
STATE OF LOUISIANA,)	
)	
Plaintiff,)	
)	Docket No. _____
v.)	Section XX
)	Hon. XXXXXXXX, Presiding
[CLIENT] et al)	
)	
Defendant.)	
)	
_____)	

FILED: _____

**MOTION IN OPPOSITION TO THE STATE’S
MOTION TO VIEW THE DEFENDANTS’ BUDGET
SUBMITTED TO THE EX PARTE COURT IN SUPPORT OF REQUEST
FOR FUNDING TO ENSURE AN EFFECTIVE AND CONSTITUTIONAL DEFENSE**

COMES NOW, [CLIENT], and his co-defendants, through undersigned counsel, and respectfully opposes the State’s attempt to prevent the defense from filing its budget concerning the need for funds for the defense ex parte, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article 1, Sections 2, 3, 5, 13, 14, 16, 17, 20, 22, & 24 of the Louisiana Constitution of 1974, as well as statutory and jurisprudential authorities cited below.

In support, counsel states:

Introduction

1. Mr. [CLIENT] is charged with *[list all of the charges including client’s sentencing exposure]*.
2. On July 15, 2014, this Court ordered the defense to submit to the court a proposed budget outlining *inter alia* the cost of the representing Mr. [CLIENT], including the need and cost for an investigators and any necessary experts. At the same hearing, the State objected on the grounds that it had a right to see the proposed budgets and have a contradictory hearing on

the substance of the request for funds.

3. An indigent defenant's right to make an *ex parte* application to the trial court for funding is well founded. See Ake v. Oklahoma, 470 U.S. 68, 82-83 (1985); State v. Touchet, 93-2839 (La.9/6/94), 642 So.2d 1213, 1218-1219.

4. *Ex parte* proceedings are necessary to protect confidential attorney-client communications and attorney work-product material which must be disclosed to make a showing of need for the requested assistance. Touchet, 93-2839; 642 So.2d at 1221. If counsel is not allowed to proceed *ex parte*, Mr. [CLIENT] will be forced either to forgo an application for assistance or prematurely reveal matters no competent attorney would allow him to disclose. An *ex parte* procedure obviates the need for such an untenable choice.

5. Sounding in equal protection and rooted in the due process clause, the Supreme Court mandates that an impoverished defendant be afforded funds necessary to present a complete defense. Ake v. Oklahoma, 470 U.S. 68, 75 (1985) (holding that the Constitution requires that the state provide access to expert assistance if the defendant cannot otherwise afford one); see also State v. Touchet, *supra* at 1215 ("The state's responsibility to provide an indigent with effective assistance of counsel includes the responsibility to furnish that counsel with the tools necessary to marshal that defense."); State v. Craig, 93-2515 (La. 5/23/94), 637 So. 2d 437, 446-447 (upholding a trial court decision ordering payment for the services of an investigator, a psychologist, and a mitigation expert); State v. Carmouche, 527 So. 2d 307 (La. 1988) (ordering the trial court to grant defendant's request for experts in fingerprint analysis and serology); State v. Madison, 345 So. 2d 485 (La.1977) (ordering expert investigative assistance necessary to an indigent's defense).

6. Failure to allow *ex parte* applications for assistance would deprive Mr. [CLIENT] of the benefits that non-indigent defendant's would receive. In this instance Mr. [CLIENT] would be the victim of discrimination which results solely from his indigence, and would therefore be denied his rights to a fair trial, to effective assistance of counsel, to compulsory process of witnesses, to equal protection, to due process, and to protection from cruel and unusual punishment, guaranteed to him by the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

7. This Court is well familiar with the provisions of Touchet, in which the Supreme court directed the procedure a trial court must follow in dealing with *ex parte* funding requests.

To do otherwise, and allow the State to have a look at Mr. [CLIENT]'s defense, would run afoul

of Touchet. The holding in Touchet may be stated as follows:

an indigent defendant may file a motion for expert funding **ex parte**. Notice of the filing of this motion should be given to the state, which may file an opposition to the hearing being held **ex parte** and/or to the request for funding. The trial court should first determine, **in camera**, either on the face of the allegations of the motion or upon taking evidence at an **ex parte** hearing, whether the defendant would be prejudiced by a disclosure of his defense at a contradictory hearing. If so, then the hearing on expert funding should continue **ex parte**. If not, then the hearing should be held contradictorily with the District Attorney. If either side seeks appellate review of a ruling as to the **ex parte** nature of the hearing, the motion and other proceedings to this point should remain **under seal** until the appellate review is completed, and thereafter if the ruling is in favor of an **ex parte** hearing.

Id., at 1219-21. (emphasis in original).

8. The same provisions apply to other situations where an open hearing would result in a violation of the privileges of the accused. Here, for example, everything set out in the ex parte budget proffer is privileged. Under-signed counsel certainly cannot “waive” the privilege in order to file this motion.

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for [CLIENT] respectfully requests this Court allow the filing of this budget and requests for funding ex parte.

DATED this _____ day of _____, 2015.

Respectfully Submitted,

ATTORNEY
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Counsel for [CLIENT]

Certificate of Service

I hereby certify that a copy of the foregoing motion has been served upon the Office of the District Attorney, this _____ day of _____, 2015.
