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| DISTRICT COURTJEFFERSON COUNTY, COLORADO100 JEFFERSON COUNTY PARKWAY DFGOLDEN, COLORADO 80401 C | ATE FILED: July 27, 2017 11:27 AM ILING ID: B66D91699A5C1ASE NUMBER: 2016CR1463COURT USEONLY  |
| **THE PEOPLE OF THE STATE OF COLORADO,**Plaintiff v.**GARY NICKAL,**Defendant. |
| MULLIGAN BRIET, LLCPatrick Mulligan, #169811801 Broadway, Suite 1203Denver, CO 80202PH. 303-295-1500EMAIL: Patrick@MulliganBriet.comTHE LAW OFFICE OF JENNIFER E. LONGTIN, LLCJennifer E. Longtin, #43509 2401 S. Downing St.Denver, CO 80201Ph. 303.747.6898Fax. 800.243.2691Jen@jlongtinlaw.com | **Case No.** 16CR001463**Division:** 12 |
| **MOTION FOR FREE TRANSCRIPTS** |

Gary Nickal, by and through counsel, respectfully requests that this Honorable Court authorize free transcripts as necessary for this matter, and that such transcripts be prepared for Mr. Nickal. As grounds, Mr. Nickal states the following:

1. Undersigned counsel entered their appearance on this matter on May 5,

2016.

1. This matter is currently scheduled for Motions Hearing on August 22, 2017. There will be additional appearances before this Honorable Court during the pendency of this case.
2. A critical portion of counsel’s representation in this matter concerns the record that is made before the court over the life of this case. Specifically, transcripts from these appearances are necessary to evaluate any claims going forward and to adequately prepare a defense at trial. Counsel currently has the transcript from the preliminary hearing; however, further transcripts will certainly be necessary prior to trial, and counsel anticipates that these transcripts will be voluminous.

# The Necessity of Transcripts

1. A critical part of effective representation in cases such as this is the availability of transcripts from the various hearings so that counsel may review what testimony and statements were made before the Court.
2. Colorado courts have previously recognized that a transcript is a vital tool for an attorney at trial, and defense attorneys should not be forced to rely on memory “of the preliminary hearing, or notes prepared at [a] hearing, to establish inconsistencies between testimony at the hearing and at trial*.” Gonzales v. District Court*, 198 Colo. 505, 507 (1979). The Colorado Supreme Court states, “because defendants in criminal cases are not able to take discovery depositions of prosecution

witnesses, and prosecution witnesses need not discuss their testimony in advance with

defense counsel, the preliminary hearing takes on added significance in the total spectrum of criminal adjudication.” *Harris v. District Court*, 843 P.2d 1316, 1320 (Colo. 1993). In *Harris*, a hearing transcript could not be recreated by the transcriber due to muffled audio recording. The Supreme Court mandated that a second hearing be conducted in order to affect the accused’s right to a fair trial and effective cross- examination, because the benefits of a hearing are useless “in the absence of an accurate and compete transcript of the essential portions of a preliminary hearing.” *Id*. at 1319.

# The Circumstances of Indigence

1. To establish that a defendant is indigent, they need not demonstrate complete destitution, merely the inability to retain competent counsel with current financial resources. 15 Colo. Prac., Criminal Practice & Procedure § 22.8 (2nd ed.).
2. Mr. Nickal is currently represented by counsel, but this alone should not disqualify him from receiving a free transcript in this case. Mr. Nickal is not able to retain competent counsel with his current financial resources, at the market rate for criminal defense in the metro area.
3. Mr. Mulligan has provided multiple discounts during his representation on this case; Mr. Mulligan has paid some initial expert fees without reimbursement. Ms. Longtin has agreed to work on this case at the rates that she charges for her work with Alternate Defense Counsel; the corresponding rates of other attorneys at her

firm have been equally discounted. Counsel is attempting to secure the assistance of a

paralegal intern, forensic psychologist intern, and law clerk, in order to obtain free assistance throughout this trial. Due to the complexity of this case, and the gravity of the charges, Mr. Nickal’s initial retainer has been exhausted; at this time, no further funds seem forthcoming.

1. Pursuant to Colorado Rule of Professional Conduct 6.1(b)(2), providing legal services at a reduced rate to those of limited means is still considered to be *pro bono* representation under the recommended Voluntarily Pro Bono Publico Service requirement set forth by the Supreme Court. Thus, Mr. Nickal’s reduced rate legal representation is considered to be *pro bono* representation by the Colorado Supreme Court.
2. Pursuant to Chief Justice Directive 04-04(V)(D), the court may grant payment of certain expenses, (including transcript fees, investigators, experts, and court costs), even though a defendant is not represented by state appointed counsel. Under this directive, one such instance is when the defendant is represented by *pro bono* counsel, another is when a defendant becomes indigent during the course of the proceedings and it would be disruptive to the case to appoint the Public Defender. Mr. Nickal arguably falls under both such categories.
3. Because both counsel are willing to remain on this case, should the Court grant Mr. Nickal the benefit of free transcripts, there are savings to the state in allowing Mr. Nickal to proceed with current counsel, as the state will not have to

incur both the cost of free transcripts, and representation by the Office of the Public

Defender.

WHEREFORE undersigned counsel respectfully requests this Court authorize the preparation of transcripts as necessary from hearings conducted in this matter.

Dated: July 27, 2017 Respectfully Submitted,

Jennifer E. Longtin, Esq., #43509

The Law Office of Jennifer E. Longtin, LLC

/s/ Patrick Mulligan

Patrick Mulligan, Esq. #

# Certificate of Service

The undersigned does hereby certify that on July 27, 2017 s/he did serve the foregoing MOTION via U.S. Mail to opposing counsel.

