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| DISTRICT COURTJEFFERSON COUNTY, COLORADO100 JEFFERSON COUNTY PARKWAY DATFILIGOLDEN, COLORADO 80401 CAS | E FILED: July 27, 2017 11:27 AM G ID: B66D91699A5C1E NUMBER: 2016CR1463COURT USE ONLY  |
| **THE PEOPLE OF THE STATE OF COLORADO**Plaintiff, v.**GARY NICKAL**,Accused. |
| MULLIGAN BRIET, LLCPatrick Mulligan, #169811801 Broadway, Suite 1203Denver, CO 80202PH. 303-295-1500 FAX:EMAIL: 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. 16CR001463Division: 12 |
| **REQUEST FOR FUNDS TO RETAIN AND PAY EXPERT WITNESSES****AND INVESTIGATORS** |

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Gary Nickal, through counsel, moves this Court for funds to retain the assistance of expert witness assistance in his defense at trial:

1. Mr. Nickal is a man of modest means who has remained in custody throughout the course of these proceedings. Without work, and because of the

extensive costs associated with defending homicide charges, Mr. Nickal cannot afford the costs of private experts.

1. Counsel for Mr. Nickal will call experts in psychology, psychiatry, and the effects of Adderall at trial in this case. These experts have also been consulted in evaluating Mr. Nickal and have been at great expense to the case.
2. Further, witnesses in this case live all across the United States, including several counties in Colorado, Nebraska, and Minnesota. Thus, it has been essential for counsel to hire an investigator to assist in interviewing witnesses and gathering evidence.
3. Although experienced, counsel for Mr. Nickal is not an expert in these areas. Regardless, Counsel is precluded by law from acting as a witness in these areas on behalf of Mr. Nickal. As such, he will require the assistance of persons who are experts in these areas in order to educate counsel, alert

counsel to possible defenses to the charge and weaknesses in the People’s case, and to testify in these areas on behalf of Mr. Nickal.

1. To the extent possible, consistent with their duty to zealously represent their client, counsel will make every effort to use the same witnesses to perform as many of the above functions as possible.
2. In a criminal case involving the defense’s need for psychiatric experts by an indigent defendant, the United States Supreme Court held that an indigent defendant has the constitutional right to the assistance of competent,

independent experts in preparing his case where expert evidence was likely to be a critical issue at trial. *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985). The Court held the following:

“[When a] question . . . [is] likely to be a significant factor in his defense . . . [the defendant is] entitled to the assistance of a[n expert] on this issue and . . . the denial of that assistance deprive[s] him of due process. . . . Meaningful access to justice has been the consistent theme of [our] cases . . . [M]ere access to the courthouse doors does not by itself assure a proper functioning of the adversary process . . . [A] trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense.”

1. Ake applies to all experts reasonably necessary for an effective defense.

*See, e.g., Moore v. Kemp*, 809 F.2d 702, 711 (11th Cir. 1987).

1. If the State’s case involves important expert testimony, the Courts have required that the defense be similarly armed with their own experts in a wide variety of fields. *See, e.g., Bradford v. United States, 413 F.2d 467* (5th Cir. 1969) (handwriting and fingerprint experts); *Williams v. United States*, 618 F.2d 1021 (4th Cir. 1980) (pathologist); *United States v. Durant*, 545 F.2d 823, 827 (2nd Cir. 1976) (fingerprint expert); *Knott v. Mabry*, 671 F.2d 1208, 1212-1213 (8th Cir. 1982) (expert assistance required whenever contradiction in a given area of expertise).
2. Absent the assistance of an investigator and expert witnesses, Mr. Nickal will be in no position to defend himself against the charges currently pending

against him. The constitutional protections available to him would be rendered meaningless unless he is permitted to retain the services of experts necessary to help counsel evaluate the case and present relevant testimony at trial.

1. Ultimately, to deny the requested funds would be to violate the Equal Protection Clause of the United States Constitution. Indeed, as the Supreme Court has noted in *Griffin v. Illinois*, 351 U.S. 12, 17-19 (1956):

“. . . there can be no equal justice where the kind of trial which a man gets depends on the amount of money he has Plainly

the ability to pay costs in advance bears no relationship to a defendant’s guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial.”

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. As he is in custody, Mr. Nickal would automatically qualify for the Office of the Public Defender.
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.

1. 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.
2. Mr. Nickal asks this Honorable Court to recognize that, even though he has not been found indigent, only the richest among us are capable of paying the total cost of a murder trial; however, this should not equate to only the richest obtaining justice.

WHEREFORE, Mr. Nickal prays that this Court grant this Motion and any other relief that this Court deems just and proper to assist him in obtaining his Colorado and United States constitutional guarantees of equal protection and due process of law.

Respectfully Submitted,

 /s/

Patrick Mulligan Registration # 16981

Jennifer Longtin, #43509

The Law Office of Jennifer E. Longtin, LLC

**Certificate of Service**

The undersigned does hereby certify that on July 27, 2017, s/he served the foregoing REQUEST to all opposing counsel of record via ICCES:

