

\_\_\_\_\_  
ATTORNEYS FOR DEFENDANT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF CALIFORNIA,  
v.

)  
)  
)  
)  
) CASE NO. \_\_\_\_\_  
)  
)  
)

**EX PARTE APPLICATION FOR APPOINTMENT OF EXPERT  
AND FOR FUNDING AND POINTS AND AUTHORITIES IN SUPPORT THEREOF**

(Evidence Code §730)

TO: JUDGE OF THE \_\_\_\_\_ COUNTY SUPERIOR COURT:

Application is hereby made for an ex parte order for funds to employ an expert witness, to wit, an expert to advise the defendant on a confidential basis and testify on the defendant's behalf and for such other orders as may seem just and proper to the court.

The motion will be made on the grounds that the advice and testimony of this expert is necessary to the preparation of the defense of this action.

This application is based on this ex parte application, on the attached declarations of \_\_, the memorandum of points and authorities filed herewith. on such supplemental declarations, affidavits or memorandum of points and authorities as may hereafter be filed with the court, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: \_\_\_\_\_

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant submits the following points and authorities in support of the motion for an order appointing an expert:

**I. THE RIGHT TO COUNSEL GUARANTEED BY BOTH THE FEDERAL AND STATE CONSTITUTIONS REQUIRES THE APPOINTMENT OF NECESSARY EXPERTS TO ASSIST IN THE PREPARATION OF A DEFENSE**

It cannot be doubted that the right to counsel guaranteed by both the federal and state Constitutions includes, and indeed presumes, the right to effective counsel, and "the right to effective counsel also includes the right to ancillary services necessary in the preparation of a defense" [Keenan v. Superior Court (1982) 31 Cal. 3d 424, 428]. "A fundamental part of the constitutional right of an accused to be represented by counsel is that his attorney . . . is obviously entitled to the aid of such expert assistance as he may need . . . in preparing the defense" [Re Kechtel, (1968) 68 Cal. 2d 397, 399-400]. "There can be no question that in a proper factual situation a court must appoint an expert that is needed to assist an indigent defendant in his defense" [Torres v. Municipal Courffor Los Angeles Judicial District, (1975, 2nd Dist.) 50 Cal. App. 3d 778, 785).

**EVIDENCE CODE §730 PROVIDES THE AUTHORITY FOR APPOINTMENT OF AN EXPERT**

Evidence Code §730 explicitly provides for court-appointed expert witnesses:

"When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which such expert evidence is or may be required. The court may fix the compensation for such services, if any, rendered by any person appointed under this section, in addition to any services as a witness, at such amount as seems reasonable to the court."

Evidence Code §731(a) and Government Code §29603 clearly state that the county must pay for those court-ordered expenses.

While these statutes, of course, do not enumerate the type of experts to be appointed, the Supreme Court has held that "the right to such services is to be inferred from at least two statutes respecting an indigent defendant's right to legal assistance" [Corenevsky v. Superior Court, (1984) 365 Cal. 3d 307,319].

A right to ancillary defense services arises once the defendant has demonstrated a need for such services by reference to the general lines of inquiry he wishes to pursue, being as specific as possible" [People v. Fixel, (1979, 2nd Dist.) 91 Cal. App.3d 327,330].

The right to counsel and to due process under the law includes the right to ancillary services such as an expert witness [Kennan v. Superior Court, (1982) 21 C.3rd 424,428; Sand v Superior Court, (1983) 34 Cal.3rd 567, 575; Corenevsky v. Superior Court, (1981) 36 Cal.3rd 307,319-320]. The court may so order the required defense services at county expense [California Evidence Code §730-731].

**CONCLUSION**

Based on the statutes and case law cited here, and on the document presented herein, defendant respectfully requests the funds as noted below be approved for retaining an expert in this matter.

Name of expert witness:

\_\_\_\_\_

*(Curriculum Vitae attached)*

Estimated cost of services: \$ \_\_\_\_\_ per hour to a maximum of \$ \_\_\_\_\_

Estimated cost of covered expenses (travel, accommodations) \$ \_\_\_\_\_

Overages, such as additional services or court proceedings, shall be requested in advance by separate motion.

Dated: \_\_\_\_\_

ATTORNEY FOR THE DEFENSE

BY: \_\_\_\_\_

ATTORNEY AT LAW