

CRIMINAL DOCKET NUMBER _____

DIVISION ____

THIRTIETH JUDICIAL DISTRICT COURT, PARISH OF VERNON

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

LEONARD LEWIS

FILED: _____ : _____ DY.CLK.

MOTION TO DETERMINE SOURCE OF FUNDS
TO PROVIDE COMPETENT DEFENSE

TO THE HONORABLE, THE THIRTIETH JUDICIAL DISTRICT COURT, PARISH OF VERNON, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel, comes defendant, LEONARD LEWIS, who moves this Honorable Court pursuant to the 5th, 6th, 8th, and 14th Amendments to the United States Constitution; Article 1, Sections 2, 3, 13, 14, 16, 17, 19, 20, 22, and 24 of the Louisiana Constitution, as amended; *State v. Craig*, 637 So.2d 437 (La. 1994), *State v. Touchet*, 642 So.2d 1213 (La. 1994), *State v. Wigley*, 624 So.2d 425 (La. 1993), *State v. Peart*, 621 So.2d 780 (La. 1993); and all other applicable law to determine a source of funds that will provide for competent and compensated defense counsel, expert witnesses and litigation assistance for Leonard Lewis in this capital prosecution, and in support thereof respectfully shows:

1.

Defendant is charged by Grand Jury indictment with two (2) counts of first degree murder. No trial date has been set at this time.

2.

The charges which Defendant faces are the most serious that are known to the criminal justice system. While undersigned counsel are happy to accept appointment to Defendant's case, no source of funds has ever been identified for the defense of Mr. Lewis. Both counsel are private attorneys. Leonard Lewis is entitled to have this Court identify a source of funds and method of payment for:

A. Attorney fees and overhead for undersigned counsel;

- B. Case-related out-of-pocket expenses incurred by counsel (such as travel, copying, hotel, postage, telephone, etc.); and
- C. Experts, as deemed necessary by the Court after motion by defense.

3.

There is no type of case in the criminal justice system that is more time consuming and exacting than that of the case at bar. This is how it should be when the defendant's very life is at stake. The Administrative Division of the U.S. Courts have compiled statistics of the number of hours spent by attorneys in federal death penalty cases that go through trial and arrived at an average of 1,889 hours per case. As argued *infra*, counsel are entitled to reasonable overhead and fees. In State v. Adrian Citizen, for example, the trial court ordered that counsel for defendant be paid \$70 per hour for overhead and an additional fee of \$125 per hour. The court additionally ordered that \$75,000 be set aside for expert witnesses.¹ Thus, in all likelihood, the funds required to provide Mr. Lewis with a constitutionally effective defense may amount to \$400,000. Even this amount is likely to be understated as defendant's faces not one but two (2) counts of capital murder.

4.

Defense counsel are entitled to reasonable compensation for defending Leonard Lewis. The State and Parish have provided for all fees and expenses of the prosecution, Clerk of Court, District Court, and law enforcement to secure and carry out the death sentence of Leonard Lewis. It is fundamentally unjust, unconstitutional, and unconscionable to expect a lawyer in small, private practice to personally shoulder the financial responsibility of defending Leonard Lewis against the onslaught of the Government's financial and personnel resources, while simultaneously rendering the services necessary to generate income needed to meet monthly office expenses, together with such additional amount required to pay counsel's necessary living expenses.

5.

THE WIGLEY PROCEDURE

The Supreme Court of Louisiana's decision in *State v. Wigley*, 624 So.2d 425 (La. 1993) dictates the procedures that must be followed in this case. In holding that private counsel

1

Citizen is currently scheduled for oral argument before the La. Supreme Court on January 20, 2005 (Docket 2004-KA-1841). The issue, however, is who should pay, not the reasonableness of the amounts ordered.

appointed to represent indigents are entitled to recoup their overhead expenses and are entitled to payment of a fee when the services exceed the customary *pro bono* expectation of all counsel, the Court in *Wigley* ordered precisely the same proceedings that are requested in this case. The Supreme Court did not require the attorneys to file a civil law suit or take any other action wherein they would name parties to a lawsuit and be put to the additional expense of litigating a civil suit while contemporaneously defending this capital prosecution. Consistent with this motion, the Supreme Court remanded the case to the District Court with instructions to hold a hearing to take evidence at which the attorneys would establish their reasonable overhead costs as well as the reasonable expenses associated with the representation. *Wigley* at 430.

This Honorable Court must follow certain procedures in determining the source of funds for the defense of an indigent accused. The *Wigley* court found “. . . that in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out of pocket expenses and overhead costs.” *Wigley* at 429. The Court is obligated to pay a fee in addition to overhead costs if the defense is required to provide more than a number of hours deemed to be a reasonable amount of *pro bono* work each year. It is “. . . the district Judge’s responsibility to determine . . . that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel in the manner outlined above, whether the funds come from the Indigent Defender Board, from the State, from one court fund or another, from the local government subdivision pursuant to LRS 15:304, or from any other available source.” *Id.* at 429.

6.

THE LIDAB

On information and belief, the Louisiana Indigent Defense Assistance Board does not have sufficient funds to provide for the competent and compensated counsel to which Mr. Lewis is constitutionally entitled. Leonard Lewis moves that Edward Greenlee, Executive Director, Louisiana Indigent Defense Assistance Board, be ordered to show cause why the LIDAB should not be ordered and compelled to be a source of funds for the defense of Leonard Lewis herein.

7.

30TH JUDICIAL IDB

On information and belief, the chronic underfunding of the 30th Judicial District Indigent Defender Board prevents it from having sufficient funds from which to pay the cost of fees of appointed private counsel in capital cases. Leonard Lewis moves that an order be issued to Jeff Skidmore, Administrator Thirtieth Judicial District Court Indigent Defender Board, to show cause why it should not be ordered and compelled to be a source of funding for the defense of Leonard Lewis herein. Leonard Lewis further moves that an order be issued to Tony Tillman, Chairman Indigent Defender Board, Thirtieth Judicial District Court, to show cause why it should not be ordered and compelled to be a source of funding for the defense of Leonard Lewis herein.

8.

LOCAL OFFICE

The Supreme Court of Louisiana held in *State v. Craig*, 637 So.2d 437 (La. 1994) that when a local Indigent Defender Board does not have the funds necessary, the trial court should look to the parish government prior to looking to the State. In response, passage was secured of an amendment purporting to exempt parishes from payment of criminal court costs under LRS 15:304 and 574; however, mover challenges the constitutionality of any act purporting to exempt Vernon Parish from satisfying the constitutional requirement that Leonard Lewis be provided with competent and compensated counsel, thereby participating in unconstitutionally depriving undersigned counsel of their property interest in both their license to practice law and the financial interest of their law firms without due process of law in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article 1, Section 4 of the Louisiana Constitution of 1974, as amended.

Mover would further show that the 30th Judicial District Court and the Vernon Parish District Attorney's Office have excess revenue held for investment above and beyond a reasonable reserve maintained for the operation of their respective offices in consideration of short term revenue fluctuations. Accordingly, Leonard Lewis respectfully moves that an order issue: to the Vernon Parish Police Jury through its Treasurer E. Grady Stephens; to the Judicial Administrator of the 30th Judicial District Court, Linda

Cedars; the 30th Judicial District Court's CPA, Mike Elliott. and to the District Attorney of Vernon Parish, William E. Tilley, ordering them to show cause why the Vernon Parish Police Jury, 30th Judicial District Court, and Office of the District Attorney should not be designated a source of funds to provide for the defense of Leonard Lewis herein.

On information and belief, Mover alleges that the Vernon Parish Sheriff's Office likewise has excess revenue held for investment above and beyond a reasonable reserve maintained for the operation of its office in consideration of short term revenue fluctuations. Accordingly, Leonard Lewis respectfully moves that an order issue to the Vernon Parish Sheriff's Office, Sheriff Sam Craft, ordering him to show cause why the Vernon Parish Sheriff's Office should not be designated a source of funds to provide for the defense of Leonard Lewis herein.

9.

THE STATE OF LOUISIANA

The constitutional guarantees implicated in providing a defense for Leonard Lewis and prohibiting the taking of defense counsel's property without due process of law are meaningless at best and hypocritical at worst unless some governmental entity accepts the responsibility and discharges the obligation of providing for the reasonable and necessary expenses for the defense of Leonard Lewis. Leonard Lewis is being prosecuted by the State of Louisiana and it is the State of Louisiana which seeks the right to obtain a warrant for his execution and to carry out the process of killing him, the costs associated with which history demonstrates it will provide. The mere passage of a statute creating LIDAB does not discharge the fundamental and constitutional guarantees when the legislature habitually fails to provide an adequate appropriation and the executive branch habitually fails to request an adequate appropriation to prevent an unconstitutional deprivation of rights in this matter of both mover and appointed counsel as recognized in *Wigley and Peart*, supra. More than fifteen years ago, the United States Supreme Court held in *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985) that ". . . justice 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." It further held that, where issues of funding equity clash with the constitutional rights of the accused, the "State's interest in its fisc" must yield to its interest in fairness. *Id.* at 83.

Leonard Lewis, consequently, by service of these pleadings on: the Office of the State Budget Director; the Honorable Charles Foti, Attorney General; Senator Francis Heitmeier, Chairman, Senate Finance Committee; and Representative John A. Alario, Jr., Chairman, House Joint Appropriations Committee, gives notice of the pendency of these proceedings and challenge to the constitutionality of LRS 15:304, LRS 15:571 and any other law which the State of Louisiana alleges constitutes a bar to a source of funds being available for use by this Honorable Court in providing for the reasonable and necessary expenses of providing Leonard Lewis with competent and compensated counsel, expert witnesses, and litigation assistance in the defense of these capital proceedings.

WHEREFORE, Leonard Lewis respectfully moves this Honorable Court for issuance of an order to show cause why the Louisiana Indigent Defense Assistance Board, 30th Judicial District Indigent Defender Board, Vernon Parish Police Jury, 30th Judicial District Court, Vernon Parish District Attorney's Office, Vernon Parish Sheriff's Office, and the State of Louisiana through the Office of the State Budget Director and through the State Legislature and through the Office of the Attorney General should not be designated a source from which available funds will be provided for payment of the reasonable and necessary costs and fees in the defense of Leonard Lewis;

FURTHER, to establish an hourly rate to reimburse counsel for overhead in providing the expenses of its office, together with an amount constituting a reasonable fee for attorney fees and that of legal assistants;

FURTHER, to establish the procedure for submission of invoices and payment on a monthly basis of attorney overhead and fees and case-related out-of-pocket expenses; and

FURTHER, to provide for the procedures necessary for the submission of invoices and payment of expert witnesses and litigation assistance on a monthly basis.

Respectfully submitted,

S. CHRISTIE SMITH IV
THE SMITH LAW FIRM LLP.
300 COURTHOUSE STREET
PO BOX 1528
LEESVILLE, LA 71496-1528

GARY E. PROCTOR
BAR ROLL # 27,859
1115 6th STREET
ALEXANDRIA, LA 71301

BY: _____

C E R T I F I C A T E

I hereby certify that a copy of the above Motion to Determine Source of Funds to Provide Competent Defense has been served on District Attorney William E. Tilley by hand delivery. I further certify that I have served Attorney General Charles Foti by first class United States mail with proper postage affixed.

Alexandria, Louisiana, this ____ day of December, 2004.

GARY E. PROCTOR

CRIMINAL DOCKET NUMBER _____

DIVISION ____

THIRTIETH JUDICIAL DISTRICT COURT, PARISH OF VERNON

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

LEONARD LEWIS

FILED: _____ : _____ DY.CLK.

ORDER

PREMISES CONSIDERED, it is

ORDERED that the foregoing Motion to Determine Source of Funds to Provide Competent Defense be fixed for contradictory hearing on the ____ day of _____, 200__ at __:00 a.m.

THUS DONE AND SIGNED THIS ____ day of _____, 200__.

JUDGE, THIRTIETH JUDICIAL DISTRICT COURT

SERVICE INSTRUCTIONS:

PLEASE SERVE:

William E. Tilley
District Attorney
PO Box 1188
Leesville, LA 71496-1188

Linda Cedars
Judicial Administrator
PO Box Drawer 1700
Leesville, LA 71496-1700

Tony Tillmann
Chair, Indigent Defender Board
PO Box Drawer 648
Leesville, LA 71496-0648

Hon. Charles Foti
Attorney General
301 Main Street
Baton Rouge, LA 70825

Mike Elliott, CPA
607 S. 5th Street, Suite A
Leesville, LA 71446-4437

E. Grady Stephens
Treasurer, Vernon Parish Police Jury
PO Box 1548
Leesville, LA 71496-1548

Edward Greenlee
Executive Director
Louisiana Indigent Defense Assistance Bd.
1010 Common Street, Suite 2710
New Orleans, LA 70112

Budget Director,
State of Louisiana
626 N. Fourth Street
Baton Rouge, LA 70802

Jeff Skidmore
Administrator, 30th JDC IDB
215 S. 4th Street, PO Box 40
Leesville, LA 71496-0040

Sen. Francis Heitmeier
Chairman, Senate Finance Committee
3709 General DeGaulle
New Orleans, LA 70114

Mike Elliott, CPA
607 S. 5th Street, Suite A
Leesville, LA 71446-4437

Sheriff Sam Craft
Vernon Parish Sheriff's Office
203 South 3rd Street
Leesville, LA 71446

Rep. John A. Alario, Jr., Chairman
House Joint Appropriations Comm.
1063 Muller Pkwy.
Westwego, LA 70094-5616