

CRIMINAL DOCKET NUMBER 22815-02

DIVISION H

FOURTEENTH JUDICIAL DISTRICT COURT, PARISH OF CALCASIEU

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

ADRIAN CITIZEN

FILED: _____ : _____ DY.CLK.

MOTION TO DETERMINE SOURCE OF FUNDS
TO PROVIDE COMPETENT DEFENSE

TO THE HONORABLE, THE FOURTEENTH JUDICIAL DISTRICT COURT, PARISH OF CALCASIEU, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel, comes defendant, ADRIAN CITIZEN, 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 Adrian Citizen in this capital prosecution, and in support thereof respectfully shows:

1.

Defendant is charged by Grand Jury indictment with first degree murder. No trial date is set at this time.

2.

Chief Public Defender Ronald Ware was previously appointed to represent Defendant. Recognizing that Mr. Ware's caseload is many times in excess of that recommended by professional standards, this Honorable Court removed Mr. Ware from his representation of Defendant and ordered undersigned counsel to represent him.

3.

While undersigned counsel is happy to accept this appointment, no source of funds has ever been identified for the defense of Mr. Citizen.

4.

Defense counsel are entitled to reasonable compensation for defending Adrian Citizen. 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 Adrian Citizen. It is fundamentally unjust, unconstitutional, and unconscionable to expect a lawyer in small, private practice to personally shoulder the financial responsibility of defending Adrian Citizen 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 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. Citizen is constitutionally entitled. Adrian Citizen 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 Adrian Citizen herein.

7.

14TH JUDICIAL IDB

On information and belief, the chronic underfunding of the 14th 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 despite a specific portion of the court costs collected by it being designated for capital cases. Adrian Citizen moves that an order be issued to Mike Dees, Chairman, Fourteenth 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 Adrian Citizen 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 Calcasieu Parish from satisfying the constitutional

requirement that Adrian Citizen be provided with competent and compensated counsel, thereby participating in unconstitutionally depriving undersigned counsel of her property interest in both her license to practice law and the financial interest of her law firm 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 14th Judicial District Court and the Office of the District Attorney are funded in part by a property tax referred to as “the justice tax” in addition to the funds provided all other Judicial District Courts and District Attorney’s offices from the State general fund and, on information and belief, alleges that both the 14th Judicial District Court and the Calcasieu 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, Adrian Citizen respectfully moves that an order issue: to the Calcasieu Parish Police Jury through its Administrator Mark McMurry; to the Judicial Administrator of the 14th Judicial District Court, Skipper Hastings; and to the District Attorney of Calcasieu Parish, Robert R. Bryant, ordering them to show cause why the Calcasieu Parish Police Jury, 14th Judicial District Court, and Office of the District Attorney should not be designated a source of funds to provide for the defense of Adrian Citizen herein.

9.

THE STATE OF LOUISIANA

The constitutional guarantees implicated in providing a defense for Adrian Citizen 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 Adrian Citizen. Adrian Citizen 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, 84 L.Ed. 2nd 53 (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.

Adrian Citizen, consequently, by service of these pleadings on the Office of the State Budget Director and the Honorable Richard P. Ieyoub, Attorney General, 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 Adrian Citizen with competent and compensated counsel, expert witnesses, and litigation assistance in the defense of these capital proceedings.

10.

Undersigned counsel represents to the Court that extensive testimony and evidence has been adduced previously before this Court from all of the potential funding sources named in this Motion. In one of those proceedings, undersigned counsel testified as to her office overhead of \$71.73 per hour (which has risen significantly since that testimony was given), to her pro bono work of approximately 250 hours per year (which has remained roughly the same throughout her practice), to the number of hours necessary to the preparation and presentation of a capital case estimated at approximately 1000 hours per lawyer, and to the costs necessary to the preparation and defense of a capital case, including investigators, experts, and costs of defense. Accordingly, in the interest of judicial economy, counsel moves to adopt the record of the proceedings held in State v. Charles Winfree et al, Criminal Docket Number 6359, on the 10th day of October, 2001. Counsel further moves that this Motion be determined on the basis of that record, rather than requiring all of the necessary entities and their representatives to once again appear before this Court to give the same testimony that has been received by this Court

ad nauseum. To the extent that this Court desires current data on the availability of funds from any source, or on counsel's overhead and pro bono work, undersigned counsel suggests that such evidence be received by affidavit.

WHEREFORE, Adrian Citizen respectfully moves this Honorable Court for issuance of an order to show cause why the Louisiana Indigent Defense Assistance Board, 14th Judicial District Indigent Defender Board, Calcasieu Parish Police Jury, 14th Judicial District Court, Calcasieu Parish District Attorney's Office, and the State of Louisiana 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 Adrian Citizen, and for adoption of the proceedings held on October 10, 2001 in State v. Charles Winfree et al, Criminal Docket 6359;

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; 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,
LAW OFFICE OF PHYLLIS E. MANN

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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 Assistant District Attorney Wayne Frey by hand-delivery.

Alexandria, Louisiana, this ____ day of December, 2003.

PHYLLIS E. MANN

CRIMINAL DOCKET NUMBER 22815-02

DIVISION H

FOURTEENTH JUDICIAL DISTRICT COURT, PARISH OF CALCASIEU

STATE OF LOUISIANA

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VERSUS

ADRIAN CITIZEN

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 _____, 2003.

JUDGE, FOURTEENTH JUDICIAL DISTRICT COURT

SERVICE INSTRUCTIONS:

PLEASE SERVE:

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