

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA

v.

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NO. _____

**EX PARTE MOTION TO AUTHORIZE
AND FUND AN EXPERT ASSISTANT/WITNESS**

TO THE HONORABLE _____, UNITED STATES DISTRICT JUDGE
FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION:

Comes now the Accused, _____, in the above-styled case through his appointed counsel and requests this Honorable Court to authorize and fund an expert in forensic and clinical psychology to assist in his defense pursuant to Title 18, U.S. Code § 3006A(e) and shows the Court the following:

I. BACKGROUND

[STATE YOUR FACTS]

II. LAW AND ANALYSIS

An indigent accused is entitled to expert assistance in evaluating, preparing, and presenting a defense upon a preliminary showing that expert assistance is necessary; the request may be made ex parte. Title 18 U.S. Code § 3006A(e); and Ake v. Oklahoma, 470 U.S. 68 (1985).

Expert assistance is needed to evaluate the Accused's mental state surrounding the time period of the charged offense given the violent threats to his family and himself given his history of mental illness and traumatic brain injury. An expert in forensic and clinical psychology would assist counsel understanding the effect of his mental illness on his decision making and possibly

identify a legal defense or provide expert testimony as mitigation evidence pursuant to the Federal Rules of Evidence 702. Council must also determine the Defendant's competency to assist them in this case, and to make decisions regarding whether he will try or settle this case. Psychology is a complex subject and Counsel for the Accused is not qualified to perform tests or interpret mental health reports and effects of traumatic brain injuries.

III. EXPERT ASSISTANCE

Counsel conferred with _____, a Board Certified Forensic and Clinical Psychologist and Forensic Neuropsychologist regarding the Accused's case. Based on the consultation, Dr. _____ estimated he would need fifteen hours to properly review the discovery, review the Accused's mental and health records, meet with the Accused for evaluation and testing. Dr. _____'s hourly rate is \$_____ per hour, thus costing an estimated \$_____ for pre-trial expert assistance. This does not include testimony at any trial or pretrial proceeding, if necessary. Based on review of the Government's discovery and after consulting with the Accused, Counsel anticipates Dr. _____ will also be needed for expert testimony for pre-trial hearings and during trial. He has been qualified and testified as an expert in forensic and clinical psychology and forensic neuropsychology in criminal cases. Therefore, additional funding will most likely be necessary above the cost of pre-trial expert assistance quoted above. Dr. _____ estimated pre-trial hearing preparation and testimony at ten hours, if Counsel determines he is necessary. Likewise, trial preparation and testimony is estimated at an additional ten hours. Dr. _____ does not charge a higher rate for in-court testimony. Therefore, the total cost for preparation for both a pre-trial hearing and trial would equal an additional \$_____ (20 hours at \$_____ an hour).

IV. WAIVER

Pursuant to the Guide to Judiciary Policy, Volume 7A, § 310.20.10(A), the waivable maximum for case compensation for expert services is currently \$_____. Dr. _____'s estimated fees for expert assistance exceed the maximum fee authorized; however, Title 18, U.S. Code § 3006A(e)(3) authorizes the Chief Judge of the Circuit, or delegee, to approve payment in excess of the maximum amount authorized.

V. CASE BUDGETING ATTORNEY FOR THE FIFTH CIRCUIT

Counsel has also conferred with Meg Alverson, budget counsel for the Fifth Circuit Court of Appeals who has advised the undersigned that the \$350 an hour rate for a mental health expert such as Dr. _____ has been approved and paid for the assistance requested. Further, she has advised that fifteen hours is typically required for the type of evaluation sought by counsel. Further, she is advised that, a \$350 an hour rate is ordinarily paid for these types of services for pre-trial and trial testimony, and that twenty hours is typically required for the same.

VI. CONCLUSION

The Accused respectfully requests this Court to seek for the Fifth Circuit to authorize payment for these services for the Accused and authorize compensation for pre-trial expert assistance in the field of forensic and clinical psychology in excess of the maximum authorized fee for 15 hours at \$350 an hour and for 20 hours at \$350 an hour for trial testimony, and pre-trial testimony in this case. The total compensation authorization requested is \$_____ to cover the anticipated mental health expert assistance in this case.

Respectfully submitted,

By: /s/ Cynthia E. Orr

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NO. _____

ORDER

On this date came on to be considered Defendant's Ex Parte Motion to Authorize and Fund An Expert Assistant/Witness, and said Motion is hereby

GRANTED DENIED.

SIGNED on this the _____ day of _____, 2022.

UNITED STATES DISTRICT JUDGE