

Sec. 8

STATE OF LOUISIANA

DOCKET NO. 04-14-0382

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH EAST BATON ROUGE

NATHANIEL TURNER

STATE OF LOUISIANA

**MOTION TO DETERMINE SOURCE OF FUNDS
TO PROVIDE COMPETENT DEFENSE**

NOW INTO COURT, through undersigned counsel, comes defendant, NATHANIEL TURNER, 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 to determine a source of funds that will provide for competent and compensated defense counsel and litigation assistance for Turner in the charges brought against him, and in support thereof respectfully show:

BACKGROUND

1.

Turner is charged by Grand Jury Indictment with Racketeering, Racketeering Conspiracy, Introducing Contraband into a Penal Institution (Felony), and Distribution of/Possession with Intent to Distribute Marijuana.

2.

Christopher Finister, Demarcus Smith, Kydris Womack, John Goza, Devontay Ricks, Eric Robertson, Dax Carter, Rasheedah Beloney, Candice Wilson, Tracy Sanchez, Lachoy Slan, Donnar Willis Jr., Timothy Prater, Marcus Carter, Marq Woodruff, Quinnton Walker, Dyreal Daniels, and Darious Olalekan are indicted in the same case number 04-14-0382 for additional charges related to and including Racketeering; Racketeering Conspiracy; Distribution of/Possession with Intent to Distribute Marijuana; Distribution of/Possession with Intent to Distribute Hydrocodone; Distribution of/Possession with Intent to Distribute Cocaine; Distribution of/Possession with Intent to Distribute Promethlyzine with Codeine; Conspiracy to Distribute Marijuana; Conspiracy to Distribute Hydrocodone; Conspiracy to Distribute Cocaine; Conspiracy to Distribute Promethlyzine with Codeine; Attempted 2nd Degree Murder; Obstruction of Justice; Accessory after the Fact to 2nd Degree Murder;



Possession of a Firearm with a Controlled Dangerous Substance; Felon in Possession of a Firearm; Illegal Possession of Stolen Firearms; and Introducing Contraband into a Penal Institution (Felony). These defendants are represented by other counsel.

3.

Recognizing the already heavy caseload the indigent defender system bears and the strong likelihood of conflicts of interest arising in this multi-defendant indictment, the Honorable Judge Trudy M. White of the 19th Judicial District Court, appointed attorney James Boren as counsel to represent Nathaniel Turner in the charges brought against him. On June 10, Boren accepted the appointment, reserving the right to seek compensation.

4.

Defense counsel is entitled to reasonable compensation for defending Nathaniel Turner. The Judge, her staff, and her clerks are compensated for their role in the proceedings. The State and Parish have adequately provided to the Sheriff's department, the District Attorney's Office and their investigators and secretaries all fees and expenses related to the prosecution of Turner. Everyone involved in Turner's case receives compensation for their role except for the attorney tasked with the monumentally important role of defending him against the numerous charges levied by the State.

5.

It is unconstitutional to require any lawyer to accept the financial responsibility of defending Nathaniel Turner against the government's vast financial resources while simultaneously rendering the services necessary to generate income needed to meet monthly office, staff, and living expenses.

6.

Uncompensated representation of indigents when reasonably imposed is a professional obligation burdening the privilege of practicing law in this state, and does not violate the constitutional rights of attorneys. *State v. Clifton*, 172 So.2d 657, 667 (La. 1965). Due to the changing environment in the practice of law, some burdens constitute an abusive extension of an attorney's professional obligations. Requiring an attorney to represent an indigent defendant beyond reasonable *pro bono* commitment without assurances of compensation for reasonably incurred expense including costs and overhead is unreasonable

and oppressive. *State v. Wigley*, 624 So.2d 425, 427 (La. 1993). To require an attorney to defend without fee violates an attorney's right to substantive due process and violates La. Const. art. I, § 13. *Id.*

7.

Boren's *pro bono* practice more than satisfies his obligation and commitment to provide assistance to indigent defendant. Counsel is appearing *pro bono* in numerous cases, presently, and submits listing them, publicly, invades the privacy of those citizens; Boren will submit such information, in camera, if instructed to by the court. . To require Boren to undertake the representation of Turner in addition to his already extensive *pro bono* commitment is not reasonable and is an abuse of the legal system.

8.

To adequately defend Turner, Boren predicts that 700 – 1000 hours of attorney and attorney staff time will be required. Additionally, Boren requires the assistance of an investigator to assist with preparation for a complex trial with multiple felony charges and multiple co-defendants. Boren's hourly rate, paid by hundreds of clients, is \$350 / hour. If hired for this case, a fee of \$100,000 plus \$50,000 in expensive would be overly generous. A trial with 18 defendants, with 12 peremptory challenges each, will last months, and each count, naming Turner, is a "separate" case requiring independent investigation and research.

9.

Boren respectfully requests a hearing to justify the request for funds to recuperate overhead expenses and fee for services exceeding the customary *pro bono* expectations of counsel. Following this hearing, counsel asks this court to determine the ultimate source of the established funds needed to adequately defend Nathaniel Turner on the numerous charges brought against him.

10.

State v. Wigley and Its Progeny

The Supreme Court of Louisiana's decision in *State v. Wigley* dictates the procedures this court must follow in this case. *Wigley* holds that private counsel appointed to represent indigents are (1) entitled to recoup their overhead expenses and (2) are entitled to receive payment of a fee when the services provided exceed the customary *pro bono* expectation of

all counsel. *Wigley*, at 428 (La. 1993). The *Wigley* Court ordered precisely the same proceedings that counsel requests in this case: hold a hearing to take evidence at which Boren will establish his reasonable overhead costs as well as the reasonable expenses associated with that representation. *Id.* at 430. Once the court determines a reasonable figure, then this court must determine the source of funds for counsel. *Id.* In the context of these proceedings, adequate funds refer to only those which will provide indigents “adequate opportunity to present their claims fairly within the adversary system.” *State v. Craig*, 637 So2d. 437, 446 (La. 1994).

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.” *Id.* at 429. Additionally, the court is obligated to pay a fee beyond the 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. *Id.* Boren already satisfies his commitment to indigent defense and his duty to the legal profession.

While it is appropriate for a district judge to appoint counsel from the private bar to represent an indigent defendant from that defendant’s first appearance, even if the judge cannot immediately determine the necessity of reimbursement of counsel or the source of funds to compensate representation, appropriate procedure allows the appointed attorney to interrupt proceedings by filing a *Motion to Determine Source of Funds*. *State v. Citizen*, 898 So.2d 325, 338 (La. 2005). If during the course of the hearing on the motion the trial judge determines that funding for representation is not readily available, counsel may file a motion to halt prosecution in the case until such adequate funding is made available. Upon receipt of the motion, the judge may, at his or her discretion, prohibit the State from going forward until the court determines the source of funding. *Id.* “Implicit in these defendants’ constitutional right to assistance of counsel is the State’s inability to proceed with their prosecution until it provides adequate funds for their defense.” *Id.* Of course, Turner must be released from bond, if the State refuses to fund his defense.

11.

Determining Funding

While La. Const. Art I, § 13 clearly vests the responsibility of securing and compensating adequate counsel for indigents with the legislature, this court, in the exercise of its constitutional and supervisory jurisdiction, “has the power to take corrective measures to ensure that indigent defendants are provided with their constitutional and statutory rights.” *Citizen*, at 336 (La. 2005). This power includes the inherent authority “to fashion a remedy which will promote the orderly and expeditious administration of justice.” *State v. Mims*, 329 So.2d 686, 688 (La. 1976).

“The legislature has clearly determined through statutory enactments that the State, not the parishes, will pay for indigent defense pursuant to the constitutional mandate of La. Const. Art. I, § 13.” *Id.* State budgetary issues, however, “cannot serve as an excuse for the oppressive and abusive extension of attorneys’ professional responsibilities.” *Id.*

The constitutional guarantees implicated in providing a defense for Nathaniel Turner and prohibiting the taking of defense counsel’s property without due process requires that some governmental entity accept the responsibility and discharge the obligation of providing for the reasonable and necessary expense for the defense of Nathaniel Turner. The State enacted the Louisiana Public Defender Act of 2007 (Act 307) with the adoption of R.S. 14:142 creating and funding the Louisiana Public Defender Board (LBPD) tasked with ensuring the provision of effective legal representation to indigent defendants and the availability of adequate resources to those representing indigents. La. R.S. 15:142.

Turner is being prosecuted by the State of Louisiana, and its providing for the funding of the LBPD does not discharge the State from its fundamental and constitutional guarantees to Nathaniel Turner if the LBPD proves unable to provide financial assistance. The United States Supreme Court held in *Ake v. Oklahoma* 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.” 470 U.S. 68, 84 (1985). 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.*

WHEREFORE, Nathaniel Turner respectfully moves this Honorable Court for issuance of an order to show cause why the Louisiana Public Defender Board 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 Nathaniel Turner;

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 source of said funds;

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,



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Counsel for petitioner, Nathaniel Turner

FILED
EAST BATON ROUGE PARISH, LA

2014 JUN 17 PM 2:14



CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion to Determine Source of Funds to Provide Competent Defense* has been mailed, postage prepaid, to Assistant District Attorney, Adam J. Haney, 222 St. Louis Street, Fifth Floor, Baton Rouge, Louisiana 70802.



JAMES E. BOREN

STATE OF LOUISIANA

VERSUS

NATHANIEL TURNER

DOCKET NO. 04-14-0382

19TH JUDICIAL DISTRICT COURT

PARISH EAST BATON ROUGE

STATE OF LOUISIANA

ORDER

Considering the foregoing *Motion to Determine Source of Funds to Provide Competent Defense*:

IT IS HEREBY ORDERED that a contradictory hearing be held on the _____ day of _____, 2014 at ___ o'clock __.m. wherein the State of Louisiana will show cause why the Louisiana Public Defender Board 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 Nathaniel Turner;

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 source of said funds;

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.

THIS DONE AND SIGNED this _____ day of _____ 2014.

Honorable Trudy White
19TH Judicial District, Parish of East Baton Rouge

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2014 JUN 17 PM 2:14
TRUDY WHITE, CLERK

