

[CAPTION]

**VERIFIED PETITION FOR REASONABLE EXPENSES PROVIDED AT
PUBLIC EXPENSE**

The Defendant, by counsel, respectfully requests this Court to order the County Public Defender's Office to pay for reasonable expenses, including but not limited to, investigator fees and costs, expert witness fees and costs, transcription fees and depositions, and local counsel fees at public defender rate, and ordinary out-of-pocket expenses, including, but not limited to, copying and postage. In support of the Petition, the Defendant states the following:

1. The Defendant is charged with the crimes of [insert offenses.]
2. The Defendant is indigent and cannot afford the expenses associated with defending himself against the crimes of [insert offenses]. *See attached Affidavit of Indigency herein referenced and incorporated as Exhibit A.* (NOTE: The Affidavit should set forth the Defendant's financial situation, and whether a third party is paying for private counsel).
3. [Insert an explanation of the experts with whom the State has consulted and the anticipated forensics. Provide an explanation of the importance of these experts and forensics to the State's case].
4. [Insert an explanation of the experts the Defendant will need to put the State's experts to meaningful adversarial testing. If in order to provide an explanation of the experts with which the Defense needs to consult, trial strategy must be disclose, simply state as much and request an ex parte hearing (*see Motion for Ex Parte Determination of Defendant's Motion for Appointment of Experts*)].
5. The State has multiple investigators and officers from the State Police investigating the case for the prosecution. Moreover, the prosecutor's office has multiple investigators on the case. In fact, the lead investigator works on the Defendant's case full-time.
6. The Defendant reasonably anticipates hiring an investigator to investigate the factual allegations of which the State is accusing the Defendant, and qualified experts in order to address the opinions of the experts who will testify for the State.

7. The Defendant reasonably anticipates the need for local counsel to provide office space, office equipment, and immediate access to the Court if necessary. The Defendant's attorneys are located in [insert city], and the trial has been venued to [insert county].

8. The County's public defender comprehensive plan "in order to qualify for State reimbursement" pursuant to I.C. 33-40-6-5 must comply with the Indiana Public Defenders Commissions (Standards for Indigent Defense Services in Non-Capital Cases)", standard N which provides as follows:

The comprehensive plan shall authorize expenditures for investigative, expert, or other services for a person who has retained private counsel for a trial or appeal when the person is unable to pay for the services and such services are necessary to prepare and present an adequate defense. Such services are eligible for reimbursement from the public defense fund if authorized by the Court.

9. In order to qualify for any reimbursement of public defender expenditures, the County must comply with the standard.

10. It would be in the interest of judicial economy for the Defendant to request funds for specific needs as they arise from the County Public Defenders' Office, rather than through the Court by a motion, hearing and order.

11. Denial of this Motion would result in violation of the Defendant's right to fundamental fairness, to the effective assistance of counsel, to present evidence and a defense, to confront witnesses, and to compulsory process as guaranteed by the United States Constitution, Fifth, Sixth, Eighth, and Fourteenth Amendments, and the Indiana Constitution, Article I, Sections 12, 13, 14, 19 and 23.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to order all reasonable expenses, including, but not limited to, investigator fees and expenses, experts fees and expenses, transcripts and depositions, local counsel fees at public defender rate, ordinary out-of-pocket expenses, including, but not limited to, copying and postage, and for all other relief just and proper in the premises.

The undersigned affirm under penalties of perjury that the foregoing representations are true to the best of their knowledge and belief.

(Signature)

REFERENCES

CASEBANK Y.6

For more information, see *Getting Funds For Experts*, a pamphlet by Paula Sites, Indiana Public Defender Council which is posted at www.state.in.us/pdc.

CASE LAW

Scott v. State, 593 N.E.2d 198 (Ind. 1992) (appointment of expert assistance is within the trial court's discretion, and the Defendant bears the burden of demonstrating need; while the determination is case sensitive, the court set out some factors to consider: (1) presence of specific showing of what the expert would provide for the Defendant; (2) whether the proposed expert's services would bear on an issue which is generally regarded to be one for which an expert opinion would be necessary; (3) the probability that the proposed expert could demonstrate that which the Defendant desires; (4) whether expert services will go toward answering a substantial question or simply an ancillary one; (5) how technical the evidence is; (6) how serious the charge and penalty facing the Defendant are; (7) how complex the case is; (8) the cost of the services requested; (9) the timeliness of the request; and (10) the likelihood of admissibility of the expert's testimony at trial).

Scott v. State, 593 N.E.2d 198, 201 (Ind. 1992) ("If the State is relying upon an expert and expending substantial resources on the case and defendants with monetary resources probably would choose to hire an expert, the trial court should strongly consider such an appointment to assist defense counsel in investigating the same matters, cross-examining the State's expert, or providing testimony.").

Beauchamp v. State, 788 N.E.2d 881 (Ind.Ct.App. 2003) (trial court urged to reconsider ruling, in event of retrial, denying a requests for funds for a forensic pathologist, ophthalmologist, and a pediatric neurologist made by Beauchamp who hired a private attorney but could not afford experts; the State's case hinged on inferences from opinions of six medical doctors with various specialties and the charge was serious, a Class B felony).

Cook v. State, 734 N.E.2d 563 (Ind. 2000) (although the Court acknowledges that there are times when an eyewitness expert may be needed, the instant case was not one; there were many eyewitnesses to the crime). See also Reed v. State, 687 N.E.2d 209 (Ind.Ct.App. 1997).

Miller v. State, 770 N.E.2d 763 (Ind. 2002) (in a murder prosecution, where the Defendant's statement played a prominent role in the State's case, the trial court erroneously excluded the testimony of the psychologist called by the defense as an expert in the field of police interrogation and false confessions). NOTE: Although not addressing funding for experts, this case could be used to show the need for expert testimony on the issues of coerced confessions.

Arrieta v. State, 878 N.E.2d 1238 (Ind. 2008) (although the trial court must always provide a court-funded proceedings interpreter to translate any non-English testimony, absent a showing of indigency, a defendant is not entitled to the appointment of an interpreter at government expense).

Nur v. State, 869 N.E.2d 472 (Ind.Ct.App. 2007) (whenever trial court is put on notice that Defendant has significant language difficulty, the trial court shall make a determination of whether an interpreter is needed to protect the Defendant's due process rights; the trial court is put on notice of a potential language barrier when the Defendant manifests significant language).

NOTES

Rule of Professional Conduct 3.8 deals with the special ethical responsibilities of a prosecutor. “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” Comment to Ind.R.Prof.Conduct 3.8. It is the prosecutor’s role is to seek justice, not balance the County budget. As a minister of justice, there is no argument the State could make against a level playing field. Thus, the State has little, if any, role in the determination of what funds are granted for the defense because both parties have an interest in a just and fair verdict. See Ake v. Oklahoma, 470 U.S. 68 (1985).