

[CAPTION]

MOTION TO LIMIT NUMBER OF TESTIFYING EXPERTS

The Defendant, by counsel, respectfully requests this Court to limit the number of testifying experts and to order the State to identify the experts chosen for trial, or in the alternative, clarify that the Defendant will be entitled to sufficient funds to hire the same number of experts as the State. In support of the Motion, the Defendant states the following:

1. The Defendant has reason to believe that the State intends to introduce multiple experts testifying about the same subject, i.e., [insert subject matter].
2. The trial court has the discretion to control the presentation of witnesses. “The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . (2) avoid needless consumption . . . of . . . time.” Indiana Rule of Evidence 611.
3. Further, a trial court may impose reasonable limitation on the number of witnesses a party may call in support of a particular point. Miller, 13 *Indiana Evidence* 184, Section 611.102 (2d. Ed).
4. Indiana Rule of Evidence 403 excludes relevant evidence if the probative value of the evidence is “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or *needless presentation of cumulative evidence*.” (emphasis added).
5. Moreover, the principles of due process fundamental fairness require that the Defendant be provided with the means to challenge the State’s case. 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.'').

6. Not only would the State's calling of multiple experts on the same subject matter be a needless consumption of time, a presentation of cumulative evidence, and create undue delay, the approach would be unfairly prejudicial to the Defendant and would mislead the jury into believing that the number of analysts hired relates to the reliability of the opinions.

7. If the State is permitted to present multiple experts testifying experts in [insert subject matter], the Defendant must be provided with the funds to also hire and present the same number of experts in [insert subject matter] in order to satisfy the due process requirement of fundamental fairness. This case is essentially a "battle of experts."

WHEREFORE, the Defendant, respectfully requests this Court to limit the number of experts called to testify by both sides concerning [insert subject matter] and to order the State to identify the experts who will be called; or, in the alternative, clarify that the Defendant is entitled to sufficient funds to hire the same number of experts as the State hired, and for all other relief just and proper in the premises.

(Signature)