



the charge or in sentencing.

Accordingly, the undersigned requests that the Court grant the following relief:

1. That this Motion be treated as a verified affidavit in the cause.

2. Authorize counsel for the Defendant to retain the services of a psychologist for the purpose of evaluating the defendant's mental capacity and assess insanity issues, in an initial amount not to exceed \$10,000.00, without further authorization of Court.

3. Require the State of North Carolina to pay the costs of the psychological evaluation and assessments in accordance with the order of the Court.

4. That this Motion and any orders resulting therefrom be sealed and preserved for appellate review.

5. For such other relief as the Court deems just and proper.

This the \_\_\_\_\_ day of October, 1994.

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Jean B. Lawson  
PO Box 472691  
Charlotte, NC 28247  
(704) 543-1785

ATTORNEY FOR THE DEFENDANT

Sworn to and subscribed before me  
on this the \_\_\_\_\_ day of October, 1994.

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Notary Public

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
94-CRS-00000

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 JOHN JOE DOE )  
 \_\_\_\_\_ )

EX PARTE ORDER  
FOR FUNDS FOR  
PREPARATION OF THE  
DEFENSE CASE

THIS MATTER came on before the undersigned Judge presiding in the Superior Court for Mecklenburg County on the written ex parte Motion of the Defendant for funds to assist in the defense of this case. Based upon matters of record and upon the Motion, the Court finds as fact:

1. The Defendant is indigent and entitled to assistance of an expert at the expense of the State in this capital case.
2. Based upon the information available to the Court at this time, the defense should not spend in excess of \$10,000 without further authorization of the Court.

The Court further finds as fact and concludes, as a matter of law [pursuant to the authority of Ake v. Oklahoma, 470 U.S. 68, 84 L. Ed. 2d. 53 (1985), State v. Ballard, 333 NC 515 (1993), State v. Bates, 333 NC 523 (1993), and NCGS Section 7A-450(b), 451 and 454)], that the Defendant is entitled to the assistance of a psychologist at the expense of the State of North Carolina, in an amount not to exceed \$10,000 without further authorization of the Court.

It is therefore ORDERED, ADJUDGED and DECREED that:

1. The Defendant, through counsel, may retain the services of a psychologist to assist in preparation of the defense of this case, in an amount not to exceed \$10,000 without further order of the Court.
2. The State of North Carolina, through its Administrative Office of the Courts, will pay the expert retained by the Defendant pursuant to this authorization.
3. The Defendant's ex parte Motion for funds and this Order will be sealed in the Court file and retained for Appellate Review.

This the \_\_\_\_\_ day of October, 1994.

\_\_\_\_\_  
Superior Court Judge Presiding



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF ROBESON

SUPERIOR COURT DIVISION  
FILE NO. 78-CRS-25575

STATE OF NORTH CAROLINA

VS.

JOHN DOE

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)  
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)

**EX PARTE MOTION FOR FUNDS TO  
EMPLOY MITIGATION INVESTIGATOR**

NOW COMES the Defendant, John Doe, through counsel, respectfully moving the Court to enter an ORDER requiring the State of North Carolina to provide funds with which the Defendant may employ Mary Smith, M.S.W., a mitigation investigator.

The services of Ms. Smith are required to assist counsel in discerning, documenting, interpreting, and presenting mitigating circumstances which might militate in favor of a sentence less than death. Potential mitigating factors include, but are not limited to: Defendant's low I.Q. which impairs his judgement and insight in everyday living, Defendant's participation in the murders was under the domination of another person, Defendant's capacity to conform his conduct to the requirements of the law was impaired, the history of substance abuse in his family made his own addiction largely predestined, and other factors relating to his traumatic upbringing and mental impairments.

This motion is made pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1, §§19 and 27 of the North Carolina Constitution, and N.C. Gen. Stat. §7A-454.

In support of this motion, the Defendant state the following:

1. Defendant was found guilty of first degree murder and sentenced to death. The North Carolina Supreme Court vacated Defendant's death sentence in October 1991 and remanded his case for a new capital sentencing proceeding. At his resentencing hearing the jury will determine whether Defendant should be sentenced to death or to life imprisonment.

2. It is well established that any evidence regarding the mental impairments or limitations of an accused are constitutionally indispensable to that determination.

[E]vidence about the defendant's background and character is relevant [to an individualized assessment of the appropriateness of the death penalty] because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse.

California V. Brown, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring). Accord Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (any of the "diverse frailties of humankind" regarding the accused must be taken into consideration); Lockett v. Ohio, 438 U.S. 586, 604 (1978) (sentencer must "not be precluded from considering, as a mitigating factor, any aspect of a defendant's character of record . . . as a basis for a sentence less than death"; Eddings v. Oklahoma, 455 U.S. 104 (1982) (childhood trauma must be considered by the sentencer); People v. Marsh, 36 Cal.3d 134 (1984) (evidence of unhappy childhood and neglect found to be mitigating factor); Moody v. State, 418 So.2d 989 (Fla. 1982) (personality change following service in Vietnam a mitigating factor).

3. Based upon counsel's investigation to date, interviews with the Defendant, and evidence presented at trial, it appears that at least two impairments of a psychological/neuro-psychological nature will form the basis of mitigation at the sentencing phase:

a) The Defendant suffers from a low I.Q. Thus, he has carried through life the burden of extremely limited intellect. Even after two years of intensive tutoring in prison, he can only read at

approximately a third grade level.

b) The Defendant suffered a severe head injury when he was younger. Thus, it is quite possible that he also suffered brain injury. Such injury may be the cause of his low I.Q. and of his poor adaptive behavior throughout life.

c) The Defendant, who is now 60 years old, has a history of substance abuse. The extent of this abuse and the abuse of others in his family are yet unknown. It may be that his family background will show that as a result of his genetic nature and social nurture, Defendant was virtually bound to fall into patterns of substance abuse.

4. The services of a mitigation investigator are required in this case to flesh out these mitigation factors and others which may present themselves upon further investigation. In order to do so, the mitigation investigator would:

- a) review medical, mental health, employment, school and institutional records;
- b) interview teachers, family members, friends, employees, and others who can give a picture of Defendant's home environment and his psychological, intellectual and social development;
- c) review and evaluate psychological and educational assessments;
- d) determine the need for alcohol/drug assessment, psychological evaluation, neuro-psychological evaluation and/or medical assessment;
- e) serve as a liaison to any required mental health experts; and
- f) find and prepare witnesses.

6. Undersigned counsel is not sufficiently knowledgeable in the areas of forensic psychology and mental retardation to determine the extent of the Defendant's impairments or predisposition or their effect on his behavior as an adult. Members of the Defendant's family are understandably quite reluctant to discuss family problems and substance abuse; the services of a specialist are needed to

explore these areas with the family and to document what occurred during the Defendant's childhood and thereafter.

7. Undersigned counsel, therefore, desires to retain the services of Mary Smith, a social worker with experience as a mitigation investigator. Her resume is appended to this motion and hereby incorporated by reference.

8. Counsel requests authorization to spend up to \$5,000 for the services of Ms. Smith whose rate is \$35 an hour.

9. Counsel reserves the right to seek additional funds upon documentation to the Court that it is warranted under the circumstances.

10. The requested expert assistance is essential if the Defendant is to have a fair trial. The services of a mitigation investigator are necessary to enable Defendant's counsel to prepare effectively for resentencing and to present evidence on his behalf. Were it not for the Defendant's poverty, counsel would certainly retain the experts requested.

11. If the Defendant is not provided with this expert assistance, he will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, his right to confront the witnesses against him, his right to a fair trial, and his right to present evidence on his own behalf. Under these circumstances, the Constitution of the United States and North Carolina require that funds for expert assistance be provided.

ACCORDINGLY, Defendant requests that this court order that he be allowed to expend up to \$5,000 to retain Mary Smith as a mitigation investigator, without prejudice to the Defendant to renew application for funds if this amount is exhausted.

Respectfully submitted, this \_\_\_ day of \_\_\_\_\_, 1994.

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF ROBESON

FILE NO. 78-CRS-25575

STATE OF NORTH CAROLINA )

VS. )

JOHN DOE )

**ORDER EX PARTE**

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This motion came on to be heard upon motion of the attorneys for the Defendant and was heard by the undersigned Superior Court Judge and for good cause shown and detailed in the Defendant's Motion, it is ORDERED, ADJUDGED and DECREED as follows:

1. Counsel for the Defendant is authorized to retain Mary Smith, M.S.W. as mitigation investigator to assist them and that the State of North Carolina shall pay for such services and expenses in the amount of \$\_\_\_\_\_ an hour, not to exceed \$\_\_\_\_\_.

2. If counsel demonstrates need for further services of the mitigation investigator, she shall seek leave of this court.

3. The Order and accompanying Motion and Affidavit are to be sealed and placed in the record.

This the \_\_\_\_ day of May 1998.

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HONORABLE \_\_\_\_\_  
Superior Court Judge Presiding



STATE OF NORTH CAROLINA  
NORTHAMPTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NOS. [REDACTED] CRS [REDACTED] 2:30

STATE OF NORTH CAROLINA

NORTHAMPTON CO., C.S.C.

V.

MOTION FOR FUNDS TO HIRE  
PRIVATE INVESTIGATOR

[REDACTED],  
Defendant

The Defendant, [REDACTED], by and through counsel, respectfully moves the Court, pursuant to Article I, §§ 19 and 23 of the North Carolina Constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, to allow counsel to retain the services of an investigator to assist him in the preparation of his motion for appropriate relief (MAR).

In support of this motion, the Defendant would show unto the Court the following:

1. On May 24, 1992, the Defendant was arrested and charged with first-degree murder in the death of [REDACTED]. He was also charged with assault with a deadly weapon with intent to kill inflicting serious injury, in connection with an assault on [REDACTED].

2. The trial on the aforementioned charges commenced on January 11, 1993 and, on January 28th, the Defendant was found guilty of both charges.

3. On February 3rd, following the penalty phase of the trial, the Defendant was sentenced to death. In addition, he received a

twenty-year term of incarceration on the assault charge.

4. On February 10, 1993, the Defendant was granted a stay of execution.

5. On September 8th, 1995, the North Carolina Supreme Court affirmed the Defendant's conviction and capital sentence.

6. On May 13, 1995, the Supreme Court of the United States denied the Defendant's petition for writ of certiorari.

7. On June 10, 1996, the court appointed undersigned counsel to represent the Defendant in post-conviction proceedings authorized under N.C.G.S. §15A-1411.

8. Due to his indigency, the Defendant is unable to provide funds for hiring an investigator.

9. North Carolina General Statute § 7A-454 clearly establishes that an indigent defendant is entitled to apply to the court to request funds for the services of an expert witness:

The Court, in its discretion, may approve a fee for the service of an expert witness who testifies for an indigent person . . . . Fees and expenses accrued under this section shall be paid by the state.

In addition, the North Carolina Supreme Court has recognized that the right to expert assistance includes the employment of private investigators. See State v. White, 340 N.C. 264, 276-77 (1995). Furthermore, in State v. Taylor, 327 N.C. 147, 393 S.E.2d 801 (1990), the North Carolina Supreme Court made it abundantly clear that capital defendants have a right to expert services in pursuing post-conviction claims. See also State v. Potts, 334 N.C. 575, 586, 433 S.E. 2d 736, \_\_\_ (1993) (noting that a trial court has the

authority to appoint an investigator to aid a defendant in the preparation of a motion for appropriate relief).

10. In the present case, the Defendant requires the services of an investigator to interview witnesses who were available to testify at either the guilt/innocence phase or the penalty phase of the capital trial, but were not called as witnesses by trial counsel. These witnesses need to be interviewed so that undersigned counsel can determine whether trial counsels' failure to call them to testify should be alleged as a violation of the Defendant's state and federal constitutional rights to effective assistance of counsel trial, one of the grounds upon which appropriate relief may be granted pursuant to N.C.G.S. § 15A-1415(b)(3).

11. Undersigned counsel is not in a position to conduct the requisite interviews himself because Rule 5.2 of the North Carolina Rules of Professional Conduct prohibits a lawyer from accepting employment in pending litigation "if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness." In the commentary to Rule 5.2, the drafters of the rules note that "[c]ombining the roles of advocate and witness can prejudice the opposing party" and, more importantly, "can involve a conflict of interest between the lawyer and the client."

If, during the course of an evidentiary hearing, a witness interviewed by counsel were to testify regarding a material fact in a manner that was inconsistent with his or her representations during the interview, counsel would be faced with the difficult choice of taking the stand to impeach the witness or allowing the

inconsistency to go unchallenged. The potential for such an occurrence would be significantly reduced if the Court authorized funds for the Defendant to retain an investigator to interview the relevant witnesses.

12. Undersigned counsel requests authorization to retain the services of Montague Investigative Services, 5104 New Bern Avenue, Raleigh, North Carolina 27610, to assist him in the investigation of issues relevant to the motion for appropriate relief.

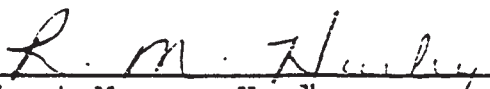

13. The hourly rate charged by Montague Investigative Services is \$50.00 per hour. It also charges \$.35 per mile for travel expenses.

14. At this time, the Defendant requests that the Court authorize the expenditure of \$2,500.00 or such other amount as the Court deems appropriate.

15. In the interests of time, the Defendant requests that the Court rule on this motion without holding a hearing.

WHEREFORE, for the foregoing reasons, the Defendant respectfully requests that this motion be granted.

Respectfully submitted, this the 11<sup>th</sup> day of September, 1996.

  
\_\_\_\_\_  
Robert Manner Hurley  
Counsel for   
P.O. Box 167  
Raleigh, North Carolina 27602  
(919) 831-4211

NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
87 CRS 55408

STATE OF NORTH CAROLINA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) MOTION FOR EX-PARTE HEARING  
 )  
 BOBBY HIGHTOWER, )  
 )  
 Defendant. )

NOW COMES the defendant, Bobby Hightower, by and through his attorneys, pursuant to the Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States and Article One, Sections 19, 23 and 27 of the North Carolina Constitution, and respectfully moves the Court to conduct an ex-parte hearing in which the defendant may apply for the necessary funds to employ an expert witness to aid in his defense.

As grounds for this motion, the undersigned shows the Court as follows:

1. That the defendant is charged with first degree murder.
2. That District Attorney Jim Kimel has announced he seeks death for Bobby Hightower.
3. That the defendant wishes to apply to this Court for State funds with which to employ expert witnesses.
4. The United States and North Carolina Supreme Courts have both held that indigents are entitled to make such a request in an ex-parte proceeding.
5. In Ake v. Oklahoma 470 US68 (1985) case, the Supreme Court construed the due process clause of the Fourteenth Amendment to entitle an indigent to an expert psychiatrist at State expense upon making a showing that mental health is likely to be a significant factor in his defense.
6. The North Carolina Supreme Court has construed Ake v. Oklahoma to entitle an indigent defendant to State furnished psychiatric assistance in issues relating to mental status.

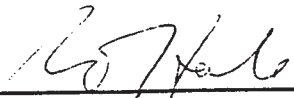
7. In State v. Gambrel 318 NC 249, 347 S.E2d 390, the Court has also extended the requirement of Ake v. Oklahoma to other forms of expert assistance upon a showing that the matter subject to the expert testimony is likely to be a significant factor in the defense.
8. The North Carolina Supreme Court has expressly approved ex-parte applications for such experts. In State v. Smith 320 NC 404, 358 S.Ed 329 (1987), the Court noted that in Ake v. Oklahoma, the Supreme Court held an indigent defendant to be entitled to the assistance of an expert at State expense upon making an ex-parte threshold showing .... "of a need for such assistance" Id 358 S.Ed338.
9. That the North Carolina Supreme Court has reiterated its authorization for ex-parte applications for funds for experts.

"The question of whether defendant should have been provided with the assistance of a finger print expert is controlled by Ake v. Oklahoma. As noted already, Ake v. Oklahoma requires an ex-parte threshold showing that the matter subject to expert testimony is likely to be a significant factor in the defense ... State v. Moore 364 S.E2d 65657."

10. An ex-parte application for funds is necessary to insure that the defendant is not deprived of his right to equal protection of the laws.
11. If an indigent defendant is required to apply for funds in open court, he will be forced to reveal to the State the identity of experts he intends to consult and make a public showing of his evidence in the case.
12. That the State of North Carolina has access to numerous experts and has used the services of numerous experts in preparation of their case, without consulting the defense or asking if we care to be heard.
13. That the defendant does not have access to such experts without State funds.

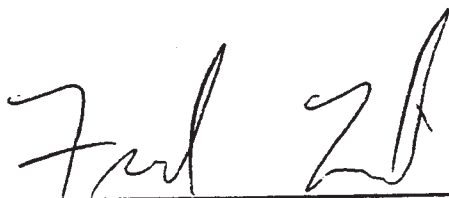
WHEREFORE, the defendant respectfully prays the Court that the defendant be allowed to apply for funds for an expert witness in an ex-parte proceeding; that the proceedings be recorded; not reveal the contents of the proceeding; that no transcript of the proceedings be prepared except upon request of the defendant; that any order granting funds for experts be kept under seal until ordered unsealed by the Court upon request.

Respectfully submitted this the 8 day of December, 1992.

  
\_\_\_\_\_  
Robert O'Hale  
Attorney for Defendant

OF COUNSEL:

MCNAIRY, CLIFFORD & CLENDENIN  
300 Southern National Bank Building  
127 North Greene Street  
Greensboro, North Carolina 27401  
Telephone: (919) 378-1212  
NCSB 9983

  
\_\_\_\_\_  
Fred Lind, Assistant Public Defender  
Attorney for Defendant

Public Defender's Office  
Post Office Box 2368  
Greensboro, North Carolina 27402  
Telephone: (919) 574-4312



**CONFIDENTIAL: Attorney/Client Privilege & Work Product  
AGREEMENT FOR EXPERT ASSISTANCE**

1. On behalf of John Smith, Ed Solomon, John Smith's attorney, agrees to retain Jill Jones, MSW, as an expert in the case of *Smith v. State*, Indictment No. 94-1-MR, a capital murder case with the aggravating factor of first degree rape.
2. Jill Jones will do the following:
  - a. interview, assess and evaluate John Smith on two separate days for at least 2 hours each day;
  - b. interview John Smith's mother, father, brother at their home;
  - c. review all records and materials supplied to her;
  - d. provide a preliminary oral report by \_\_\_\_\_;
  - e. provide a draft of a written report by \_\_\_\_\_;
  - f. provide a final written report by \_\_\_\_\_;
  - g. meet with Ed Solomon and review the report & prepare for testifying;
  - h. testify as needed prior to trial, at trial or at sentencing;
3. Jill Jones will investigate, evaluate and report on the following:
  - a. who John Smith is;
  - b. what traumas and assaults he suffered and their impact on him;
  - c. what kind of family did he come from and how did it influence who John is;
  - d. how John perceived reality;
  - e. what explains his periods of no memory;
  - f. an analysis of the treatment John received, what treatment would have been appropriate for him in the past, and whether he is amenable to treatment today;
  - g. what role anger plays with John;
  - h. why he raped and killed: what was the purpose of the behavior.
4. The payment to Jill Jones will be at the following rate/amounts \_\_\_\_\_; and payment will be made at the following time: \_\_\_\_\_.
5. Jill Jones understands that since this expert assistance is being performed at the request of the attorney for Mr. Smith, it is confidential within the legal and ethical attorney-client and work product privileges which can only be waived by the client. I will not divulge to the court, the prosecutor, or any other person confidential information without the approval of the attorney for Mr. Smith.
6. Jill Jones will maintain the confidentiality of the communications and materials I receive.
7. Jill Jones agree that all communication and materials received by me and all of my work product are the property of Mr. Smith.

DATE: \_\_\_\_\_

\_\_\_\_\_  
JILL JONES

DATE: \_\_\_\_\_

\_\_\_\_\_  
ED SOLOMON



\_\_\_\_\_ County In The General Court Of Justice  
 District  Superior Court Division

Case Name \_\_\_\_\_

**MOTION, APPOINTMENT AND  
ORDER AUTHORIZING PAYMENT  
OF INTERPRETER**  
G.S. 8B-2, 8B-8; 8C-1, Rule 604

**MOTION**

The undersigned requests the Court to appoint an interpreter to serve in this proceeding for the reasons stated below:

Nature Of Proceeding \_\_\_\_\_ Name Of Person In Need Of Interpreter \_\_\_\_\_

Type Of Interpreter:  Deaf (Specify Certificate (DHR)) \_\_\_\_\_  Language (specify) \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_  Prosecutor  Defendant's Counsel  Special Counsel  
 Magistrate  Other

**APPOINTMENT**

The Court finds that a sufficient showing has been made for the appointment of the type of interpreter requested above.

**Interpreter For Deaf** - The Court finds that the interpreter named below is a qualified interpreter for the person named above as required by Chapter 8B of the North Carolina General Statutes.

**Language Interpreter** - The Court finds that the interpreter named below is qualified by knowledge, skill, experience, training and education to interpret the language set out above into the English language and the English language into the language set out above for the person named above.

Name And Address Of Interpreter Appointed \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_

District Court Judge  Superior Court Judge  
 Clerk Of Superior Court  Magistrate (G.S. 8B-1(1) - language only)

**CERTIFICATION**

I, the undersigned, certify that I served as the appointed interpreter in the above named proceeding, and I request payment for professional services and travel expenses set out below.

Dates Of Service (From - To)	No. Hours	Hourly Rate \$	Travel Expenses	Total	\$

**NOTE:** If payment is to be made to interpreter individually, write "same" under payee and give interpreter's own taxpayer ID No. (either Social Security No. or Federal Employer ID No. as used by interpreter). If payment is to be made to interpreter's firm, give firm name under payee and give firm's taxpayer ID No.

Date \_\_\_\_\_  
 Signature Of Interpreter \_\_\_\_\_  
 Name And Address Of Individual Serving As Interpreter \_\_\_\_\_

Payee (see note) \_\_\_\_\_

Taxpayer ID No. (see note) \_\_\_\_\_

**ORDER FOR PAYMENT OF INTERPRETER**

It is ORDERED that the named interpreter be awarded the total shown below for professional services and travel expenses.

Date \_\_\_\_\_ Signature \_\_\_\_\_  DC Judge  CSC  SC Judge Total \$

**FOR USE BY AOC CONTROLLER'S OFFICE**

FUND	CONTROL	AMOUNT	C R	FRC	OBJECT	RCC	PROGRAM	DIST.	IDENTIFICATION	ID
	7500				1903					
	7500				1903					
<b>TOTAL</b>										

Date Of Approval \_\_\_\_\_ Approval For Payment Signature \_\_\_\_\_