

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
\_\_\_\_\_ COURT DIVISION  
\_\_ Cr\_ \_\_\_\_

STATE OF NORTH CAROLINA

v.

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EX PARTE MOTION FOR FUNDS  
TO EMPLOY LICENSED PSYCHOLOGIST  
UNDER SEAL

\_\_\_\_\_  
  
NOW COMES the Defendant, ex-parte through counsel, respectfully moving the Court to enter an ORDER requiring the Administrative Office of the Courts of the State of North Carolina to provide funds with which the Defendant may employ a licensed psychologist.

1. The Defendant is currently charged with \_\_\_\_\_. The Defendant is indigent and unable to afford the services of such an expert.
2. The authority for making this motion *ex parte* is *Ake vs. Oklahoma*, 470 U.S. 68 (1985) and *State vs Moore*, 321 N.C .321 (1988). Furthermore, the Defendant is entitled to an *ex parte* hearing to determine the need for expert assistance when to hold such a hearing with the State present would impinge upon his right to effective assistance of counsel or upon his privilege against self-incrimination. Such violation occurs when the court pries into confidential communications between lawyer and client and into defense strategy. *State vs Ballard* 333 NC 515, 428 SE 2<sup>nd</sup> 178

(1993). This particular motion involves the confidential communication between lawyer and client which the court would unconstitutionally violate by failing to hold the hearing *ex parte* and would further deprive the Defendant of effective assistance of counsel should it allow the State to be present and thus discover the defense strategy.

3. These cases state that the Defendant is entitled to the services of an expert, a licensed psychologist in this case, upon meeting either of the following two tests:

1. Showing that a material likelihood exists that a psychologist will assist the defense preparation for or presentation at trial; OR

2. Showing that without such assistance it is probable that the Defendant will not receive a fair trial.

4. The services of a licensed psychologist will materially assist in the preparation of the defendant's defense in the following respects. The Defendant [insert facts to support the alleged defense][suffers from Post-Traumatic Stress Disorder and as a result thereof was unable to form the specific intent to commit the alleged crime]. Counsel has consulted with the proposed psychologist, \_\_\_\_\_, Ph.D, an expert in forensic psychology. Dr. Sapia opines that children are particularly susceptible to leading and

suggestive interviewing techniques that can result in obtaining unreliable information from children and inaccurate allegations.

5. To establish a defense of [insert mental health defense] [diminished capacity] counsel has determined that he will need to have Dr. \_\_\_\_\_ review the State's investigative materials, review the personal records of this Defendant, and interview the Defendant. Further, in preparation for trial, counsel will need to consult with this expert and prepare the expert for trial testimony. If this client had the funds, counsel would routinely employ a psychologist to conduct this activity.
6. If the Defendant is not provided with this expert assistance, the defendant will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, the defendant's right to confront the witnesses against the defendant, the defendant's right to a fair trial, and the defendant's right to present evidence on the defendant's behalf.
7. Under these circumstances, the Constitution of the United States and North Carolina require that funds for expert assistance be provided. Based upon the facts alleged a material likelihood exists that a licensed psychologist will

assist the defense in preparation for trial and that without such assistance it is probable that the Defendant will not receive a fair trial.

8. At the rate of \$\_\_\_\_.00 hour, Counsel has determined that an initial amount of \$\_\_\_\_.00, plus expenses, would be necessary in this case to retain a licensed psychologist.

ACCORDINGLY, the Defendant requests that this court order that the Defendant be allowed to expend up to \$\_\_\_\_.00, plus expenses, to retain licensed psychologist to conduct the services above-indicated, without prejudice to the Defendant to renew application for funds if this amount is exhausted, and that the Clerk of Court seal this motion and any order of this Court.

Respectfully submitted, \_\_\_ day of \_\_\_\_\_, 2013.

W. JAMES PAYNE LAW FIRM

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Appointed Counsel

VERIFICATION

W. James Payne, first being duly sworn, deposes and states: That he is counsel for the Defendant in this action; that he has read the foregoing pleading and knows the contents thereof; that the same are true of his own knowledge except as to those matters and things therein stated on information and belief, and as to those he believes them to be true.

\_\_\_\_\_

W. James Payne

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

I certify that the following person personally appeared before me this day, and

\_\_\_\_\_ I have personal knowledge of the identity of the Principal;

\_\_\_\_\_ I have seen satisfactory evidence of the principal's identity by current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_;

\_\_\_\_\_ A credible witness has sworn to the identity of the principal;

acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Name of Principal: \_\_\_\_\_

Date: \_\_\_\_\_, 2013.

\_\_\_\_\_

Notary Public

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