
**NOTICE: THIS IS AN EX PARTE MOTION BEING PRESENTED TO
THE COURT EX PARTE BY THE RESPONDENT WHICH SHOULD BE
SEALED**

Trial Court Cause No. _____

IN THE MATTER OF:	§	IN THE DISTRICT COURT
[Name]	§	____ JUDICIAL DISTRICT
A CHILD	§	_____ COUNTY, TEXAS
DOB: [DOB]	§	SITTING AS THE JUVENILE COURT

**RESPONDENT’S MOTION FOR LEAVE TO PROCEED
EX PARTE CONCERNING APPOINTMENT FOR EXPERT ASSISTANCE:**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **[Name]** Respondent, through counsel, **[Attorney of Record]** who has submitted a *Motion for a Defense Expert* and hereby moves to appoint a Defense expert and to proceed *ex-parte*, in camera, and on a sealed record with regard to applications for expert fees. Such assistance is necessary for Respondent’s defense.

I.

Ake v. Oklahoma, 470 U.S. 68, 82, 105 S.Ct. 1087 (1985), requires the trial court to provide an expert to assist an indigent Respondent in the evaluation, preparation, and presentation of their defense upon a preliminary showing that assistance of the expert is necessary. In *dicta*, *Ake* suggests that the Respondent ought to be allowed to make this preliminary showing *ex parte*. The Texas Court of Criminal Appeals has recently held that due process requires that an accused be allowed to proceed *ex parte*. *Williams v. State*, 958 S.W.2d 186, 193 (Tex. Crim. App. 1997). As recognized in *Williams*, the *ex parte* procedure permits the accused to obtain necessary expert assistance without disclosing his work product, his defensive theories, or his suggested experts, to his adversary.

II.

The Respondent has prepared, in a sealed envelope, his motion for the appointment of a particular expert with legal and factual reasons explaining the need for such appointment. This motion meets the requirements of *Rey v. State*, 897 S.W.2d 333, 340 (Tex. Crim. App. 1995). The motion is presented to this Court *ex parte* and sealed, in order that this Court may evaluate the merits of the Respondent's request under *Ake v. Oklahoma*, and its progeny. The motion should not be disclosed to the State of Texas. Instead, after this Court has reviewed these documents, they should be returned to their envelope, resealed, and made available to the appellate courts, should further review on appeal become necessary.

III.

Finally, it should be noted that judges are not prohibited from "considering an *ex parte* communication expressly authorized by law." TEX. CODE JUD. CONDUCT, Cannon 3B (8) (e). *See also* TEX. DISC. R. PROF. CONDUCT 3.05 (b). (lawyers are not prohibited from initiating *ex parte* communications where "otherwise permitted by law and not prohibited by applicable rules of practice and procedure...") As noted, the *ex parte* sought in this motion is expressly authorized and permitted by the Texas Court of Criminal Appeals in *Williams v. State, supra*.

WHEREFORE, PREMISES CONSIDERED, the Respondent requests that this Court consider this Motion and enter an Order that he be provided with an *ex parte* hearing on his Motion to have appointed a private investigator to assist him in the preparation of the defense of this cause, or grant his motion for the same.

Respectfully submitted,

[Attorney of Record]
[Address]
[City], Texas [ZIP Code]
Office [Office Phone]
Facsimile [Facsimile Phone]
Email: [Email]

By: _____
[Attorney of Record]
SBN: [SBN #]
Attorney for Respondent

CERTIFICATE OF NON SERVICE

This is to certify that a true and correct copy of the foregoing *Motion for Appointment of Expert* was not served upon the attorney for the State and made ex parte pursuant to *Williams v. State*, 958 S.W2d 186, 191 (Crim. App. 1997, reh'g denied).

[Attorney of Record]
Respectfully submitted,

**NOTICE: THIS IS AN EX PARTE MOTION BEING PRESENTED TO
THE COURT EX PARTE BY THE RESPONDENT WHICH SHOULD BE
SEALED**

Trial Court Cause No. _____

IN THE MATTER OF:	§	IN THE DISTRICT COURT
[Name]	§	___ JUDICIAL DISTRICT
A CHILD	§	_____ COUNTY, TEXAS
DOB: [DOB]	§	SITTING AS THE JUVENILE COURT

ORDER

On the undersigned date came on to be heard the Respondent's *Motion for Leave to Proceed Ex Parte* and, after considering the same, this Court is of the opinion that the same shall be:

_____ GRANTED, with respect to his Motion for Expert Assistance.

_____ DENIED.

SIGNED on _____.

Judge Presiding

SIGNED AND RECOMMENDED on _____.

Juvenile Court Referee