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Trial Court Cause Number:

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
V.	§	____ JUDICIAL DISTRICT
[defendant's name]	§	____ COUNTY, TEXAS

EX PARTE MOTION TO APPOINT MITIGATION EXPERT

To the Honorable Judge of said Court:

Now comes the defendant in the above entitled and numbered cause and moves the Court to provide funds for expenses of investigation pursuant to TEX. CODE CRIM. PROC. art. 26.05 § 1(d) and in support thereof would show the Court the following:

I. JURISDICTIONAL STATEMENT

This is a [pending or final] conviction from [county name] County, Texas, therefore this Court and the Court of Criminal Appeals have jurisdiction pursuant to [Article 11.07 the Texas Code of Criminal Procedure].

II. NECESSITY OF APPOINTMENT

That the defendant is indigent and without funds to make arrangements for retaining an investigator. [cite to indigency order or provide affidavit of indigency]. In the event funds are not authorized as requested the defendant will suffer egregious

harm and will not be given a fair [trial or appeal], because such denial would prevent him from investigating the very mitigation evidence which is the purpose for the remand. Defendant prays that this Court authorize reasonable funds to permit the defendant to hire an investigator as requested, *and if the court requires*, the defendant requests that under the authority of *Ake v. Oklahoma*, 470 U.S. 68 (1985), the defendant be granted an *ex parte* hearing in order to support this motion. *See Williams v. State*, 958 S.W.2d 186, 194 (Tex. Crim. App. 1997).

¶ The Court of Appeals of Texas, Beaumont held *Ake* to apply to all juvenile proceedings including transfer hearings. *Matter of J.E.H.*, 972 S.W.2d 928, 931 (Tex. App.—Beaumont 1998, pet. denied) (“We therefore hold that the rule in *Ake* is applicable in juvenile proceedings just as it is in adult criminal trials.”); *see also In re R.D.B.*, 20 S.W.3d 255, 261 (Tex. App.—Texarkana 2000, no pet.); *Matter of T.C.*, No. 02-17-00007-CV, 2018 WL 283785, at *5 (Tex. App.—Fort Worth Jan. 4, 2018); *In re N.S.*, No. 10-01-319-CV, 2004 WL 254215, at *5–6 (Tex. App.—Waco Feb. 11, 2004, pet. denied). The court aligned this with TEX. FAM. CODE. A. § 54.11. *Matter of J.E.H.*, 972 S.W.2d at 930.

Due to the serious nature of the offense and to properly prepare this case defense counsel will be required to hire an investigator for the purpose of investigation witnesses and records to weigh in [his/her/their] favor during the sentencing phase which is the entire focus of the remand by the Court of Criminal

Appeals. *See* STANDING COMM. ON THE LEGAL SERV. TO THE POOR IN CRIM. MATTERS, PERFORMANCE GUIDELINES FOR JUVENILE REPRESENTATION IN DELINQUENCY PROCEEDINGS, 13 (State Bar Board of Directors eds., 2017); TRIAL DEFENSE GUIDELINES: REPRESENTING A CHILD CLIENT FACING A POSSIBLE LIFE SENTENCE, 13, (Campaign for the Fair Sent'g of Youth eds., 2015). *See also* *Montgomery v. Louisiana*, 577 U.S. 190, 207–08 (2016); *Miller v. Alabama*, 567 U.S. 460, 475–77 (2012); *Graham v. Florida*, 560 U.S. 48, 77–78 (2011); *Rompilla v. Beard*, 545 U.S. 374, 380–81 (2005) (emphasizing defense counsel's job to provide evidence of mitigation in response to State's allegations of culpability); *Wiggins v. Smith*, 539 U.S. 510, 522 (2003) (highlighting counsel's duty to investigate on behalf of their client).

III. APPOINTMENT OF A MITIGATION EXPERT IS REQUIRED

Counsel requests appointment of [mitigation expert name]. Please see [his/her] attached resume.

Respectfully submitted,

[name]

[SBOT #]

[address]

[Office Phone Number]

[fax]

[e-mail address]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion to Withdraw has been delivered via electronic service to the [county name] County District Attorney's Office, [address], on [date].

/s/ _____

WR- _____

Trial Court Cause Number _____

THE STATE OF TEXAS § IN THE DISTRICT COURT

V. § _____ JUDICIAL DISTRICT

[DEFENDANT'S NAME] § _____ COUNTY, TEXAS

ORDER ON EX PARTE MOTION TO APPOINT MITIGATION EXPERT

On _____, [year], the court took up the Ex Parte Motion Requesting Appointment of a Mitigation Expert to assist in [his/her] defense.

Appointment of [investigator name] as a mitigation expert for [defendant] is hereby:

GRANTED

DENIED

SIGNED _____, [year].

JUDGE PRESIDING