

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE**

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|--------------------------------------|---|------------------------|
| In re |) | Court of Appeal No. |
| |) | |
| JOHN DOE, |) | _____ |
| |) | |
| Petitioner, |) | (Ancillary to Court of |
| |) | Appeal Nos. |
| v. |) | _____) |
| |) | |
| SUPERIOR COURT OF CALIFORNIA, |) | |
| COUNTY OF LOS ANGELES |) | |
| |) | |
| Respondent, |) | |
| |) | |
| PEOPLE OF CALIFORNIA, |) | |
| |) | |
| Real Party in Interest. |) | |
| |) | |

Los Angeles County Superior Court, No. _____
Honorable _____, Judge Presiding

**PETITION FOR WRIT OF MANDATE FROM ORDER
DENYING AN INDIGENT CRIMINAL DEFENDANT
FUNDS FOR EXPERT WITNESSES**

FAY ARFA, A LAW CORPORATION
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Attorney for Petitioner
JOHN DOE

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE**

| | |
|--------------------------------------|-----------------------|
| In re |) Court of Appeal |
| |) No. |
| |) |
| JOHN DOE, |) (Ancillary to Court |
| |) of Appeal Nos. |
| Petitioner, |) _____) |
| |) |
| v. |) |
| |) |
| SUPERIOR COURT OF CALIFORNIA, |) PETITION FOR |
| COUNTY OF LOS ANGELES, |) WRIT OF |
| |) MANDATE |
| Respondent, |) |
| |) |
| PEOPLE OF CALIFORNIA, |) |
| |) |
| Real Party in Interest. |) |
| _____ |) |

TO THE HONORABLE PRESIDING AND ASSOCIATE
JUSTICES OF THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE:

Petitioner JOHN DOE, by and through his attorney, Fay
Arfa, petitions this Court to issue its writ of mandate directed to

the Los Angeles Superior Court commanding that court to vacate and set aside its order of December 10, 2009 denying indigent Mr. Doe's motion for experts at county expense and to enter a new and different order granting Mr. Doe's motion to appoint experts at county expense.

By this verified petition the following facts and causes are set forth for the issuance of the writ:

- I. Mr. Doe is the indigent defendant named in a felony criminal action entitled "*People v. John Doe*" (Case No. _____.)
- II. Respondent is the Superior Court of the State of California for the County of Los Angeles; real party in interest is the People of the State of California, by their attorney, the District Attorney.
- III. A second amended information charged Mr. Doe with several crimes against Gipson. The prosecution alleged that, on May 22, 2005, Mr. Doe raped her [Count 1; Pen. Code, § 261 subd. (a)(2)], attempted to oral copulate her [Count 2; Pen. Code, § 664/288a subd. (c)(2)], burglarized her, criminally threatened her, and falsely

imprisoned her [Counts 3, 4, 5; Pen. Code, §§ 459, 422, 236]. (1 CT 76-81)

- IV. The information also charged Mr. Doe with spousal abuse and dissuading a witness. [Counts 6, 7; Pen. Code, §§ 273.5, 136.1 subd. (c)(1)]. (1 CT 76-81)
- V. The information further alleged that Mr. Doe personally used a knife during the offenses. (Pen. Code, § 12022 subd. (b)(1), Pen. Code, § 12022.3 subd. (a)).
- VI. The information also alleged that Mr. Doe committed the burglary with the intent to commit rape, that he committed the offense during a residential burglary and that he personally used a dangerous or deadly weapon. (Pen. Code, § 667.61 subds. (a)(b)(d)(e).) (1 CT 76-81)
- VII. On September 25, 2006, the jury found Mr. Doe guilty, as charged, except the jury found the allegation that he intended to commit the rape during the burglary not true. (1 CT 120-132; 6 RT 2707-2715.)
- VIII. On October 13, 2006, Mr. Doe retained Attorney Fay Arfa for purposes of a motion for new trial and sentencing. (1 CT 136.)

- IX. On September 25, 2007, Judge Lisa Chung denied the motion for new trial.
- X. On September 25, 2007, Judge Lisa Chung sentenced Mr. Doe to 25 years to life as to the forcible rape [Count 1; Pen. Code, § 261 subd. (a)(2)] plus a consecutive three year term for the attempted forcible oral copulation [Count 2; Pen. Code, § 664/288a subd. (c)(2)], plus a consecutive four year term for the knife enhancement (Pen. Code, § 12022.3 subd. (a)) for a total of 32 years to life. (1 CT 133-135, 370-374; 6 RT 5757-5764.)
- XI. On September 28, 2007, Mr. Doe timely appealed his conviction. He also filed a petition for writ of habeas corpus. His appeal and petition for writ of habeas corpus are pending before the Court of Appeal, Second Appellate District, Division One. (Nos. B203220/B212333)
- XII. On June 29, 2009, the Court of Appeal issued an Order to Show Cause before the superior court why relief requested in the petition should not be granted. (Exh. B at pp. 11-12.)
- XIII. The Court of Appeal also ordered that the superior court

set the matter for hearing on or before August 31, 2009.

XIV. The written return was supposed to be filed on or before July 13, 2009 and the traverse was to be filed within 15 days after the filing of the return.

On or about July 5, 2009, Attorney Arfa filed an Ex Parte Motion to Appoint Counsel requesting that the Superior Court appoint her to represent Mr. Doe at his evidentiary hearing. (*In re Harris* (1971) 19 Cal.3d 786.) (Exh. A.)

XV. On August 20, 2009, Attorney Arfa refiled the Motion to Appoint Counsel in Department 100. (Exh. B.)

XVI. On August 20, 2009, Judge Presiding denied Mr. Doe's motion for appointment of counsel. (Exh. C.)

XVII. On or about August 25, 2009, Attorney Arfa was privately retained to represent Mr. Doe in his evidentiary hearing. (Exh. D.)

XVIII. On or about September 14, 2009, the prosecution filed a return to the petition for writ of habeas corpus.

XIX. On September 14, 2009, Attorney Arfa filed two Ex Parte Motions, one for the appointment of a Forensic

Pathologist and a second to appoint an OB-GYN, in order to prepare a denial and for the evidentiary hearing.

(Exhs. E, F.)

XX. On September 29, 2009, Judge Charles denied Attorney Arfa's request for the appointment of a forensic pathologist and for an OB-GYN. (Exh. G.)

XXI. In denying the request for an OB-GYN, Judge Charles stated, “. . . The defendant has obtained private counsel and there is no proof of his indigency.” Judge Charles denied the request for a forensic pathologist but agreed to pay for reasonable travel expenses for Dr. Antimarino who relocated to Pennsylvania. (Exh. G.)

XXII. On or about October 12, 2009, Attorney Arfa obtained a Declaration of Indigency from Mr. Doe showing that he had no money or assets and that he had been incarcerated since May 22, 2005. (Exh. H at p. 4.)

XXIII. On October 16, 2009, Attorney Arfa filed an Ex Parte Motion for Reconsideration of Judge Charles's denial. Attorney Arfa based her motion for reconsideration on Mr. Doe's declaration of

indigency and her inability to contact Dr.

Antimarino. (Exh. H.)

XXIV. On October 16, 2009, Judge Charles denied Attorney Arfa's request stating, "The motion [for appointment of experts at county expense] is denied. The defendant is represented by private counsel. The defense is invited to contact Gina Rogers, the courthouse financial evaluator. Ms. Rogers will prepare a detailed report for the Court's consideration in deciding whether or not to grant any requests for experts." (Exh. I.)

XXV. In accordance with the Judge Charles's October 16, 2009 order, Attorney Arfa contacted Ms. Rogers who, on November 3, 2009, faxed Attorney Arfa a financial declaration for Mr. Doe to complete. (Exh. L at p. 3.)

XXVI. On November 10, 2009, Mr. Doe completed and signed the financial affidavit. (Exh. M.)

XXVII. On December 11, 2009, Judge Charles denied the request for the appointment of experts at county

expense because Mr. Doe failed to establish his indigency. Judge Charles noted that the financial report showed that Mr. Doe's parents paid Attorney Arfa \$00,000 in attorneys' fees. (Exh. O.)

XXVIII. Respondent court acted beyond its jurisdiction and abused its lawful discretion in failing to grant indigent Mr. Doe's request for experts at county expense. Mr. Doe's contentions in this regard are more fully set forth in the accompanying points and authorities.

XXIX. Appellate review is appropriate to consider questions of general importance to trial courts and the legal profession and will afford all parties a more timely and less costly appellate review of the propriety of respondent court's order.

XXX. Unless this Court grants relief, Mr. Doe will be denied his statutory right to due process, the effective assistance of counsel, and a meaningful evidentiary hearing.

WHEREFORE Mr. Doe respectfully prays:

1. That this Court issue its writ of mandate directed to the Los Angeles County Superior Court directing that court to vacate and set aside its order of December 10, 2009 denying petitioner the appointment of experts at county expense; and
2. Order reasonable attorneys' fees to counsel to compensate her for her efforts in filing the instant petition; and
3. For such other and further relief as this court may deem just and proper.

DATED: December 19, 2009

Respectfully submitted,
FAY ARFA, A LAW CORPORATION

/s/ Fay Arfa

By _____
FAY ARFA, Attorney for Petitioner

ARGUMENT IN SUPPORT OF PETITION

THIS COURT SHOULD ORDER THE SUPERIOR COURT TO GRANT Mr. Doe'S REQUEST FOR EXPERTS AT COUNTY EXPENSE BECAUSE MR. DOE HAS DEMONSTRATED HIS INDIGENCY

A. Introduction

Mr. Doe is serving a sentence of 32 years to life. (1 CT 133-135, 370-374; 6 RT 5757-5764.) On September 28, 2007, Mr. Doe filed an opening brief and on November 28, 2008, filed a petition for writ of habeas corpus. On June 29, 2009, this Court issued an Order to Show Cause before the superior court why relief requested in the petition should not be granted.¹

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In its June 29, 2009 order, the Court of Appeal ordered that the traverse to the return be filed with the superior court no later than 15 days after the filing of the written return. The Court of Appeal also ordered the superior court to set the matter for hearing on or before August 31, 2009. The written return was supposed to be filed on or before July 13, 2009 and the traverse was to be filed within 15 days after the filing of the return. (Exh. B at pp. 11-12.)

The district attorney received a continuance and, on September 14, 2009, filed a traverse. On October 19, 2009, Judge Charles granted Mr. Doe's request for a continuance and set December 3, 2009 as the due date for the denial. On December 3, 2009, Judge Charles granted Mr. Doe's request for a continuance and set February 3, 2010 as the due date for the denial. (Exhs. K, N at p. 5.)The need for continuances has largely been based on counsel's inability to obtain expert services for the denial and the evidentiary hearing. (Exhs. J at

Counsel for Mr. Doe wished to represent him at the evidentiary hearing and on or about July 5, 2009, filed a *Harris* motion. Attorney Arfa, a California State Bar Certified Specialist in Criminal and Appellate Law with 28 years of legal experience, represented Mr. Doe for over three years. (Exhs. A at pp. 5-6; B at pp. 8-9.) Attorney Arfa agreed to accept the appointment at prevailing county rates. (Decl. of Fay Arfa at ¶ 13.) On August 20, 2009, Judge Presiding denied the request. (Exh. C.)

As a result, Attorney Arfa agreed to accept a nominal sum to represent Mr. Doe at the evidentiary hearing. (Decl. of Fay Arfa at ¶ 15.) On or about August 25, 2009, Attorney Arfa filed a notice of appearance with the superior court. (Exh. D.)

On or about September 14, 2009, Attorney Arfa filed a motion for the appointment of experts at county expense. (Exh. E.) On September 29, 2009, Judge Charles denied the motion for an OB-GYN finding that Mr. Doe had retained private counsel and he failed to show his indigency. (Exh. G.) Judge Charles also denied Mr. Doe's request for a forensic

pp. 5-6; N at pp. 3-4).

pathologist, but authorized reasonable travel expenses for Dr. Antimarino to come to Los Angeles. (Exh. G at p. 2.)

On October 16, 2009, Attorney Arfa submitted an ex parte motion for reconsideration of the denial of the motion for experts. Attorney Arfa included a declaration of indigency showing from Mr. Doe showing that Mr. Doe had no assets whatsoever and had been incarcerated for several years. (Exh. H, at p. 3.)

On October 16, 2009, Judge Charles denied the motion to appoint experts because “[t]he defendant is represented by private counsel.” Judge Charles “invited [the defense] to contact Gina Rogers, the courthouse financial evaluator. Ms. Rogers will prepare a detailed report for the court’s consideration in deciding whether or not to grant any request for experts.” (Exh. I at p. 1.)

Attorney Arfa accepted Judge Charles’s invitation and, on November 14, 2009, submitted a completed and signed financial statement from Mr. Doe. The financial statement showed that Mr. Doe had no assets whatsoever and two minor children. (Exh. M at pp. 2-3.)

On December 10, 2009, without ever disclosing the financial evaluation to counsel, Judge Charles denied the request for the appointment of experts at county expense. Judge Charles denied the request because the undisclosed financial report showed that Mr. Doe's parents paid Attorney Arfa \$00,000 in attorney's fees. Judge Charles also found that Mr. Doe, despite having no income and serving a life term in prison, failed to establish his indigency. (Exh. O.)

Unless this Court grants relief, Mr. Doe will be deprived of due process and deprived of his right to counsel at his evidentiary hearing.

B. The Right to Counsel Compels the Appointment of Experts at County Expense for an Indigent Defendant Regardless of Whether or Not Private Counsel Was Retained for Him

In *People v. Barton* (1978) 21 Cal.3d 513, 519, footnote 3, the California Supreme Court authorized the trial court to appoint counsel for a petitioner who brings a petition for writ of habeas corpus. The *Barton* court stated, "Since it is well settled that the principles of the Fourteenth Amendment cases apply "whenever a state affords a direct or collateral remedy to attack

a criminal conviction." (*People v. Shipman* (1965) 62 Cal.2d 226, 231; see also *Lane v. Brown* (1963) 372 U.S. 477, 484 [9 L.Ed.2d 892, 897, 83 S.Ct. 768].) Counsel must also be provided for an indigent (1) who brings a collateral attack on his conviction, once he has made "adequately detailed factual allegations stating a prima facie case" (*People v. Shipman, supra*, 62 Cal.2d at p. 232) or (2) who appeals from the denial of such a collateral attack, where such an appeal is permitted by law." (See also Cal. Rules of Court, Rule 4.551 [Upon issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel].)

"The right to counsel includes the right to [ancillary services] that will assist counsel in preparing a defense." (*Anderson v. Justice Court* (1979) 99 Cal. App. 3d 398, 401; accord, *Corenevsky v. Superior Court* (1984) 36 Cal. 3d 307, 319; see also *People v. Worthy* (1980) 109 Cal. App. 3d 514, 519 [constitutional right to such services in noncapital cases; due process and equal protection are also implicated].)

". . . The test of indigency for the purpose of funding

investigators and experts is financial means to secure these services. If the family and friends of a defendant have no legal duty to support him, their financial means would ordinarily be entirely irrelevant. The fact that they employed counsel for him or gave him money would be relevant to whether he could afford to obtain investigative services. It would, however, be only one of many facts the court would consider in determining the question of financial ability." (*Tran v. Superior Court* (2001) 92 Cal.App.4th 1149, 1154 quoting *Anderson v. Justice Court, supra*, 99 Cal. App. 3d at pp. 402-403.)

The Court of Appeal in *People v. Worthy, supra*, 109 Cal. App. 3d at page 520, iterated the test similarly: "The test of entitlement to county assistance in defense preparation must be indigency. *A test based upon the status of defense counsel would be constitutionally infirm.* If a criminal defendant requires the services of investigators or scientific or medical experts to assist him in preparation of his defense, that assistance must be provided. Whether it is paid for by the government or by the defendant depends solely on the defendant's economic status." (Italics added.)

In *Taylor v. Superior Court* (1985) 168 Cal. App. 3d 1217, the indigent defendant sought ancillary services from the court. The trial court concluded he was entitled to the services only if he discharged his volunteer counsel and accepted representation from court-appointed counsel.

In issuing its writ, the *Taylor* court reasoned, "The problem with this position is the resulting interference with the defendant's right to choose his own counsel which has been described as 'one of this nation's most fundamental freedoms.' [Citation.] In [*Maxwell v. Superior Court* (1982) 30 Cal. 3d 606, 623], the court reviewed cases which 'limit severely the judge's discretion to intrude on defendant's choice of counsel in order to eliminate potential conflicts, ensure adequate representation, or serve judicial convenience' [citation] and reiterated its explanation that ' " 'once counsel is appointed [or undertakes] to represent an indigent defendant, whether it be the public defender or a volunteer private attorney, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. To hold otherwise would be to subject that relationship to an unwarranted and invidious

discrimination arising merely from the poverty of the accused.' "

' [Citation.]" (*Taylor v. Superior Court, supra*, 168 Cal. App. 3d at p. 1220.)

C. This Court Should Order the Superior Court to Grant Mr. Doe's Request for Experts at County Expense to Guarantee Mr. Doe's Right to the Effective Assistance of Counsel

Judge Charles never questions the need for either the ob-
gyn or forensic pathologist. (Cf. *Corenevsky v. Superior Court, supra*, 36 Cal. 3d at p. 320 [A defendant must make an adequate showing of need for such services].) The issue concerns only whether Mr. Doe can be considered an indigent criminal defendant for purposes of obtaining experts at county expense.

Judge Charles denied Mr. Doe's request for funds solely on the basis of his belief that, because Mr. Doe's parents paid for a privately retained attorney, he can afford to pay for expert services. Judge Charles relies on his belief that "Mr. Doe's parents have paid Attorney Fay Arfa \$00,000 in attorney's fees." (Exh. O.)

Judge Charles overlooks a body of appellate court

decisions that hold that payment of the retainer fee by family to an attorney never alters an criminal defendant's indigency. (*Anderson v. Justice Court, supra*, 99 Cal. App. 3d at pp. 402-403.) Only if some part of the money paid were deemed to be his, could he be considered not indigent. (*Tran, supra*, at p. 1154.)

In *Anderson v. Justice Court, supra*, 99 Cal. App. 3d at page 403, the court noted in dictum that the fact relatives hired counsel for the defendant or gave him money to do so would be relevant in determining his indigency. But the court stressed it was merely a factor, and did not suggest a lawyer's fee for direct legal services would be considered to be the defendant's assets.

More recently, in *In re Tran, supra*, the court "presume[d] the *Anderson* court merely meant such payment would be part of the inquiry to determine whether the defendant had other assets with which to secure ancillary services." (*Tran, supra*, at p. 1155.)

Judge Charles, in denying Mr. Doe's request, erroneously relied on the following observation in *People v. Worthy, supra*,

109 Cal. App. 3d at page 520: "We concur in the concept that if a defendant is able to pay counsel, by whatever means, his indigency has not been established." However, *Tran* interpreted the observation as follows: "We do not believe the court intended any more than the *Anderson* court . . . " (*Tran, supra*, at p. 1155.) Besides here, Mr. Doe's parents, not Mr. Doe retained an attorney because Mr. Doe had no funds to pay any attorney.

Tran reasoned that, ". . . [I]f private counsel expects every retainer agreement will be scrutinized under a reasonableness test: (1) it would impinge on the ability of the free market economy to set the price for legal services; and (2) it would deter many of the best, most experienced attorneys from taking privately retained cases without charging for ancillary services. In those cases in which the family could not afford the attorney's fee *and* the cost of ancillary services, the public would end up paying for both instead of just the ancillary services. Moreover, a reasonableness test would interfere with the principle that, when possible, a defendant should be afforded retained counsel of choice." (*Tran, supra*, at pp. 1155-

1156.)

A review of Mr. Doe's financial status shows that he has no income whatsoever and has been incarcerated for several years. He also has two minor children. (Exh. M at p. 2-3.) At trial, based on Mr. Doe's indigency, the court appointed an attorney to represent him. At the motion for new trial, the court also found Mr. Doe to be indigent and appointed experts to assist him. (See, Decl. of Fay Arfa at ¶ 4.)

Although Mr. Doe's family retained a private attorney for him, she substantially lowered her fee to a nominal amount so that she could continue to represent Mr. Doe at his evidentiary hearing. (See, Decl. of Fay Arfa at ¶ 15.) Judge Charles's rulings unfairly penalize Mr. Doe because he obtained private counsel and directly contradict the mandate of *Anderson v. Justice Court, supra*, 99 Cal. App. 3d at p. 401, *Corenevsky v. Superior Court, supra*, 36 Cal. 3d at p. 319; *People v. Worthy, supra*, 109 Cal. App. 3d at p. 519, and *Tran v. Superior Court, supra*, 92 Cal.App.4th at p. 1154.

Unless this Court grants relief, Attorney Arfa will likely be forced to withdraw. (See, Decl. of Fay Arfa at ¶ 31.) In that

case, the county will be required to pay for both the appointed attorney and the forensic experts. (See, *Taylor v. Superior Court, supra*, 168 Cal. App. 3d at p. 1220 [commenting on interference with defendant's right to choose his own counsel]; see also *Tran, supra*, at pp. 1155-1156.) Mr. Doe will be denied his right to the effective assistance of counsel, to a meaningful court ordered evidentiary hearing and due process.

CONCLUSION

In the instant case Mr. Doe has demonstrated that he is indigent. He has further demonstrated that the law entitles him to the appointment of experts at county expense.

Mr. Doe respectfully requests this court to issue its writ of mandate as prayed. Mr. Doe also requests reasonable attorney's fees incurred in the preparation of the instant writ. (See, *Trask v. Superior Court* (1994) 22 Cal.App.4th 346, 353 [authorizing attorneys' fees for seeking extraordinary relief based on a trial court's complete failure to exercise discretion or, if it was exercised, a severe abuse of that discretion.]; see also *Polakovic v. Superior Court of San Bernardino County* (1972) 28 Cal. App.3d 69.)

Respectfully submitted,
FAY ARFA, A LAW CORPORATION

/s/ Fay Arfa

By _____
FAY ARFA, Attorney for Petitioner

DECLARATION OF FAY ARFA

I, Fay Arfa, declare:

1. I am the attorney of record for the defendant.
2. At trial, based on Mr. Doe's indigency, the court appointed an attorney to represent him.
3. I have represented Mr. Doe since I substituted in on October 13, 2006 to represent Mr. Doe in his motion for new trial and sentencing
4. At the motion for new trial, Judge Lisa Chung found Mr. Doe to be indigent and appointed experts to assist him in the preparation of his motion.
5. Mr. Doe has remained continuously incarcerated since his arrest in this incident.
6. On September 28, 2007, I filed an opening brief for Mr. Doe.
7. On December 3, 2009, I filed a petition for writ of habeas corpus for Mr. Doe.
8. His appeal and petition for writ of habeas corpus are pending before the Court of Appeal, Second Appellate

District, Division One. (Nos. B203220/B212333)

9. On June 29, 2009, the Court of Appeal issued an Order to Show Cause before the superior court why relief requested in the petition should not be granted.
10. The Court of Appeal's June 29, 2009 Order to Show Cause directing "the superior court to hold an evidentiary hearing on defendant's claim that counsel was inadequate by failing to investigate and present expert testimony at trial on the victim's wounds." (Exh. B at pp. 11-12.)
11. On or about July 5, 2009, I filed an Ex Parte Motion to Appoint Counsel requesting that the Superior Court appoint me to represent Mr. Doe at his evidentiary hearing. *In re Harris* (1971) 19 Cal.3d 786. (Exh. A.)
12. On August 20, 2009, I refiled the Motion to Appoint Counsel in Department 20. (Exh. B.)
13. I advised Judge Presiding that I would accept payment at the county rates.
14. On August 20, 2009, Judge Presiding denied my motion for appointment of counsel. (Exh. C.)

15. I substantially reduced my rate and agreed to accept a nominal sum so that I could represent Mr. Doe at the evidentiary hearing.
16. On or about August 25, 2009, I was privately retained to represent Mr. Doe in his evidentiary hearing and I filed a Notice of Appearance. (Exh. D.)
17. On or about September 14, 2009, the prosecution filed a return to the petition for writ of habeas corpus.
18. On September 14, 2009, I filed two ex parte motions, one for the appointment of a Forensic Pathologist and another for the appointment of an OB-GYN, in order to prepare a denial and for the evidentiary hearing. (Exhs. E, F.)
19. On September 29, 2009, Judge Charles my request for the appointment of a forensic pathologist and for an OB-GYN. (Exh. G at pp. 1-2.)
20. In denying the request for an OB-GYN, Judge Charles stated, “. . . The defendant has obtained private counsel and there is no proof of his indigency.” (Exh. G at p. 1.)
21. Judge Charles denied my request for a forensic pathologist but agreed to pay for reasonable travel

expenses for Dr. Antimarino who relocated to Pennsylvania. (Exh. G at p. 2.)

22. On or about October 12, 2009, I obtained a Declaration of Indigency from Mr. Doe showing that he had no money or assets and that he had been incarcerated since May 22, 2005. (Exh. H at p. 4.)
23. On October 16, 2009, I filed an Ex Parte Motion for Reconsideration of Judge Charles's denial. I based my motion for reconsideration on Mr. Doe's declaration of indigency and my inability to contact Dr. Antimarino in Pennsylvania. (Exh. H)
24. On October 16, 2009, Judge Charles my request stating, "The motion [for appointment of experts at county expense] is denied. The defendant is represented by private counsel. The defense is invited to contact Gina Rogers, the courthouse financial evaluator. Ms. Rogers will prepare a detailed report for the Court's consideration in deciding whether or not to grant any requests for experts." (Exh. I.)
25. In accordance with the Judge Charles's October 16, 2009

order, I contacted Ms. Rogers who, on November 3, 2009, faxed me a financial statement for Mr. Doe to complete. (Exh. L.)

26. On November 10, 2009, Mr. Doe completed and signed the financial statement and I faxed the statement back to Ms. Rogers. (Exh. M.)
27. On December 11, 2009, Judge Charles denied my request for the appointment of experts at county expense because Mr. Doe failed to establish his indigency. Judge Charles noted that the financial report showed that Mr. Doe's parents paid Attorney Arfa \$00,000 in attorney's fees. (Exh. O.)
28. I have never seen Ms. Rogers' financial report. On December 17, 2009, my office contacted Department A-20, and requested a copy of the report but never received the report.
29. I have not been paid \$00,000 in attorney's fees to handle the evidentiary hearing.
30. I am certified as a specialist in Criminal Law and Appellate law by the California Board of Legal

Specialization. I am also a national Board Certified Criminal Trial Advocate.

31. I have tried hundreds of cases and written hundreds of appeals. I have also handled evidentiary hearings.
32. Unless the court agrees to appoint the experts, I will likely have to withdraw as Mr. Doe's attorney.
33. I charge \$300 per hour for legal services.
34. I have expended about 12.5 hours on this petition for writ of mandate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 19, 2009 at Los Angeles, California.

/s/ Fay Arfa

Fay Arfa, Attorney at Law

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, Fay Arfa, am the attorney for the petitioner in the proceeding. I have read the petition and know the contents. The same is true of my knowledge, except as to those matters which are alleged on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 19, 2009 at Los Angeles, California.

/s/ Fay Arfa

Fay Arfa, Attorney at Law

CERTIFICATE OF COMPLIANCE

Counsel certifies that the Petition for Writ of Mandate is proportionately spaced, in 14 point Arial typeface, and contains 4935 words.

Dated: December 19, 2009

Respectfully submitted,
FAY ARFA, A LAW CORPORATION

/s/ Fay Arfa

By: _____
Fay Arfa, Attorney at Law

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