

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA

CASE NO. 04-14-0382

V.

SECTION 28

CHRISTOPHER FINISTER, DEMARCUS SMITH, KYDRIS WOMACK, JOHN GOZA, DAVONTAY RICKS, ERIC ROBERTSON, DAX CARTER, RASHEEDAH BELONEY, CANDICE WILSON, TRACY SANCHEZ, LACHOY SLAN, DONNAR WILLIS, JR., TIMOTHY PRATER, MARCUS CARTER, MARQ WOODRUFF, NATHANIEL TURNER, QUINNTON WALKER, DYREAL DANIELS, AND DARIOUS OLALEKAN

ORDER AND REASONS

Before this Court is the Motion to Determine Source of Funds to Provide Competent Defense brought by defendant NATHANIEL TURNER, and similar Motions to Determine Source of Funds brought or joined in by defendants DAVONTAY RICKS, JOHN GOZA, LACHOY SLAN, CHRISTOPHER FINISTER, DEMARCUS SMITH, and ERIC ROBERTSON (collectively the "Indigent Defendants").

The Indigent Defendants are indicted in the same case number 04-14-0382 for charges related to and including Racketeering; Racketeering Conspiracy; Distribution of/Possession with Intent to Distribute Marijuana; Distribution of/Possession with Intent to Distribute Hydrocodone; Distribution of/Possession with Intent to Distribute Cocaine; Distribution of/Possession with Intent to Distribute Promethazine with Codeine; Conspiracy to Distribute Marijuana; Conspiracy to Distribute Hydrocodone; Conspiracy to Distribute Cocaine; Conspiracy to Distribute Promethazine with Codeine; Attempted 2nd Degree Murder; Obstruction of Justice; Accessory after the Fact to 2nd Degree Murder; Possession of a Firearm with a Controlled Dangerous Substance; Felon in Possession of a Firearm; Illegal Possession of Stolen Firearms; and Introducing Contraband into a Penal Institution (Felony). The Indigent Defendants all requested that the State of Louisiana provide each defendant with competent counsel as required by both the Louisiana Constitution and the United States Constitution.



EBR2475239

I. THE STATE'S OBLIGATION TO PROVIDE FOR INDIGENT DEFENSE

The Motion to Determine the Source of Funds filed by the Indigent Defendants asks that this Court, pursuant to the 5th, 6th, 8th and 14th Amendments to the United States Constitution and Article 1, Sections 2, 3, 13,14, 16,17, 19, 20, 22, and 24 of the Louisiana Constitution, as amended, to determine a source of funds that will provide for competent and compensated defense counsel and litigation assistance for the Indigent Defendants in the charges brought against each defendant.

A. The Legislature is Tasked to Adequately Fund Indigent Defense

The United States Supreme Court held in *Ake v. Oklahoma* that "...justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." 470 U.S. 68, 84 (1985). Where issues of funding equity clash with the constitutional rights of the accused, the "State's interest in its fisc" must yield to its interest in fairness. *Id.*, at 83. Aside from contravening the Sixth Amendment, this right is grounded, the Court has said, in the Fourteenth Amendment's Due Process Clause. *Id.* at 76-77.

Louisiana Constitution Art. I, § 13 vests the responsibility of securing and compensating adequate counsel for indigents with the legislature. This Court, in the exercise of its constitutional and supervisory jurisdiction, "has the power to take corrective measures to ensure that indigent defendants are provided with their constitutional and statutory rights." *State v. Citizen*, 2004-1841 (La. 4/1/05), 898 So. 2d 325, 336. This power includes the inherent authority "to fashion a remedy which will promote the orderly and expeditious administration of justice." *State v. Mims*, 329 So.2d 686, 688 (La. 1976). "The legislature has clearly determined through statutory enactments that the State, not the parishes, will pay for indigent defense pursuant to the constitutional mandate of La. Const. Art. I, § 13." *Id.* The State enacted the Louisiana Public Defender Act of 2007 (Act 307) with the adoption of La. R.S. 14:142 creating and funding the Louisiana Public Defender Board (LPDB), tasked with ensuring the provision of effective legal representation to indigent defendants and the availability of adequate resources to those representing indigents. La. R.S. 15:142.

Uncompensated representation of indigents when reasonably imposed is a professional obligation burdening the privilege of practicing law in this state and does not violate the constitutional rights of attorneys. *State v. Clifton*, 172 So.2d 657, 667 (La. 1965). Due to the

changing environment in the practice of law, some burdens constitute an abusive extension of an attorney's professional obligations. Requiring an attorney to represent an indigent defendant beyond reasonable *pro bono* commitment without assurances of compensation for reasonably incurred expenses, including costs and overhead, is unreasonable and oppressive and, violates an attorney's right to substantive due process. *State v. Wigley*, 624 So.2d 425, 427 (La. 1993); La. Const. art. I, § 13; U.S.Const.amend. XIV, § 1. Furthermore, if the requirements placed on appointed counsel are unreasonable this results in an unconstitutional taking of the appointed counsel's property rights. La. Const. art. I, § 4; U.S.Const.amend. V. *See e.g. Ex Parte Brown*, 711 S.E. 2d 899, 904-905 (S.C. 2011).

B. Procedure to Determine Source of Funds

State v. Wigley dictates the procedures this court must follow in this case. *Wigley* held that private counsel appointed to represent indigents are (1) entitled to recoup their overhead expenses and (2) are entitled to receive payment of a fee when the services provided exceed the customary *pro bono* expectation of all counsel. *Wigley*, 624 So.2d at 428. The *Wigley* Court found that once this Court determines a reasonable figure, then this Court must determine the source of funds for counsel. *Id.* In the context of these proceedings, adequate funds refer to only those which will provide indigents "adequate opportunity to present their claims fairly within the adversary system." *State v. Craig*, 637 So2d. 437, 446 (La. 1994).

The *Wigley* court emphasized "...that in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out of pocket expenses and overhead costs." *Id.* at 429. Additionally, the State is obligated to pay a fee beyond the overhead costs if the defense is required to provide more than a number of hours deemed to be a reasonable amount of *pro bono* work each year. *Id.*

It is appropriate for this Court to appoint counsel from the private bar to represent an indigent defendant from that defendant's first appearance, even if this Court cannot immediately determine the necessity of reimbursement of counsel or the source of funds to compensate representation. However, the appropriate procedure allows the appointed attorney to interrupt proceedings by filing a Motion to Determine Source of Funds. *State v. Citizen*, 898 So.2d 325, 338 (La. 2005). If during the course of the hearing on the motion this Court determines that funding for representation is not readily available, counsel may file a motion to halt prosecution

in the case until such adequate funding is made available. *Citizen*, 898 So.2d at 338-339. Upon receipt of the motion, this Court may at its discretion prohibit the State from going forward until the court determines the source of funding. *Id.* “Implicit in these defendants' constitutional right to assistance of counsel is the State's inability to proceed with their prosecution until it provides adequate funds for their defense.” *Id.*, at 338.

II. FACTUAL FINDINGS

This matter came before this Court for an initial hearing on July 3rd, 2014. At that hearing, the Court heard testimony from three witnesses presented by the Indigent Defendants. The witnesses were: (1) John Wesley Hall, an expert in ethics in criminal defense matters, (2) Jean Faria, Capital Case Coordinator for the Louisiana Public Defender Board (“LPDB”), and (3) Michael A. Mitchell, District Defender/Supervisor with the East Baton Rouge Parish Public Defender’s Office. The State was represented by Assistant District Attorney Adam Haney.

Thereafter, counsel for each of the Indigent Defendants submitted budgets to this Court for *in camera* inspection. *See State v. Touchet*, 642 So.2d 1213, 1219-1221 (La. 9/6/94). Each budget was preliminary, but did set forth a rough estimate of the fees, costs, and expenses that counsel for the Indigent Defendants believes will be required to try this matter. These budgets were based, at least in part, on the fact that each of the Indigent Defendants has been indicted for racketeering and racketeering conspiracy and, at this time, there are nineteen (19) defendants.

Based on the argument and testimony heard by this Court, the Court has determined that counsel for the indigent defendants will be required to expend a great deal of time to defend this matter as currently positioned. The estimates range between 750 to 1,000 hours per attorney with a number of defendants having multiple attorneys assigned to the case. After reviewing the estimates, the Court find that each estimate was reasonable based on the information available at this time. Moreover, the Court notes that a number of attorneys appointed to this matter do not routinely practice criminal law. Thus, the Court finds that it is reasonable for these attorney to have estimates that include time for education on issues germane to this case. Based on the estimates the Court has determined that a reasonable amount of money to allocated to the defense of the Indigent Defendants is \$3,000,000.00.

Each Indigent Defendant has also indicated that investigators and experts are likely to be necessary for a proper defense of these cases, and, based on the evidence presented, this Court also finds that the use of experts and investigators is necessary in order to prepare a competent

and proper defense in this case. See *State v. Kyle*, 117 So.3d 498, 499 (La. 6/14/13) (citing *State v. Madison*, 345 So.2d 485, 490 (La. 1977)). The fees and costs associated with experts and investigators are included in the \$3,000,000.00 in fees that this Court believes is a reasonable amount to fund the defense of this action.

As discussed above, the State is obligated to pay a fee beyond the overhead costs if appointed counsel are required to provide more than a number of hours deemed to be a reasonable amount of *pro bono* work each year. *State v. Wigley*, 624 So.2d 425, 427 (La. 1993). Counsel for the Indigent Defendants included as part of their estimates their overhead cost calculations for this case. The Court, having considered these cost estimates, finds that the estimated hours to defend this matter greatly exceed the *pro bono* obligations of the appointed counsel. Thus, appointed counsel are entitled to a fee in addition to overhead costs.

Again, counsel for the indigent defendants estimated between 750-1,000 hours will be required of each of the attorneys or firms appointed by this Court. As the testimony of John Wesley Hall established, requiring the appointed counsel to perform this volume of work without sufficient compensation creates ethical dilemmas on appointed counsel, which this Court is unwilling to do. See *State v. Kyle*, 117 So.3d 498, 498 (La. 6/14/13). Also, this Court finds that for the State to require private counsel to perform 750-1,000 hours of legal services without a fee violates an attorney's right to substantive due process and violates La. Const. art. I, § 13, pursuant to the Supreme Court's opinion in *Wigley*. See also, *State v. Green*, 631 So.2d 11, 13 (La. App. 2d Cir. 12/22/93). This also constitutes a taking under the federal constitution and an abridgement of the right to due process under the federal constitution. La. Const. art. I, § 4; U.S.Const.amend. V. See e.g. *Ex Parte Brown*, 711 S.E. 2d 899, 904-905 (S.C. 2011).

Pursuant to La. R.S. 15:141, *et seq.*, there are two potential sources of funding for indigent defense representation: the district defender and the Louisiana Public Defender Board. After hearing the testimony of Ms. Faria and Mr. Mitchell, as well as the argument at the various hearings conducted by this Court on the issue, the Court finds that the State of Louisiana, and specifically the Legislature of the State of Louisiana, has not sufficiently allocated funds to provide for the defense of the Indigent Defendants in this matter. Ms. Faria testified that the budget of the LPDB has been fully allocated for fiscal year 2014-2015, and there are no funds to provide for the defense of the Indigent Defendants. Additionally, she testified that the LPDB asks for additional funds from the legislature each year, but has yet to

receive adequate funding to handle special cases, such as the one at issue here. Moreover, Mr. Mitchell testified that the East Baton Rouge Parish Public Defender's Office does not have the funds to compensate the appointed counsel for (1) fees, (2) overhead costs, or (3) any expert or investigator expenses incurred in the defense of this matter.

In sum, the Court has determined that it is the State's obligation to fund the defense of the Indigent Defendants. This Court has appointed counsel to represent the Indigent Defendants. However, to adequately defend this matter would exceed the *pro bono* obligation of appointed counsel. Thus, appointed counsel are entitled to be compensated by a reasonable fee, including but in addition to their overhead costs, paid by the State. At this time, the State through the legislature has failed to adequately appropriate sufficient funds to pay the attorneys' fees for counsel for the Indigent Defendants, as required by Art. 1, § 13 of the Louisiana Constitution. Additionally, the State, through the legislature, has failed to adequately appropriate sufficient funds to pay for investigators, experts, and other expenses or costs required by the Indigent Defendants to defend this case. Accordingly, the Court stays the prosecution of this case with respect to the Indigent Defendants for 60 days to allow the State to appropriate the required funds. If after 60 days the State has failed to appropriate the required funds, this Court will take further action in accordance with the Supreme Court's decision in *Wigley* and *Citizen*, which may include releasing the Indigent Defendant without a bond obligation.

III. ORDER

CONSIDERING THE FOREGOING, it is:

ORDERED that the prosecution of the Indigent Defendants, NATHANIEL TURNER, DAVONTAY RICKS, JOHN GOZA, LACHOY SLAN, CHRISTOPHER FINISTER, DEMARCUS SMITH, and ERIC ROBERTSON (collectively the "Indigent Defendants") is HEREBY STAYED for 60 days, or until such time as this Court sees fit to lift the stay. If, during that time, the State of Louisiana deposits or allocates \$3,000,000.00 to either the Louisiana Public Defender Board or the District Defender's office for the purpose of providing sufficient funding for this case, the stay will be dissolved and prosecution of the Indigent Defendants can move forward.

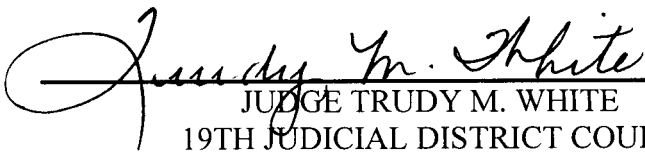
IT IS FURTHER ORDERED that the State has two weeks to notify the Court that it seeks to put on evidence in an adversarial hearing of other available funds sufficient to provide for the defense of the Indigent Defendants. The State's delay for seeking a writ on this Order

runs from the day of said hearing, or if no hearing is held, begins to run two weeks from the entry of this Order.

IT IS FURTHER ORDERED that if sufficient funds are not appropriated for the defense of the Indigent Defendants within 60 days, or if it becomes clear that the State will fail or refuse to appropriate necessary funds, the stay will remain in effect. This Court will thereafter promptly hold a hearing at which time the State, through the Legislature, will be ordered to show cause why the Indigent Defendants should not be released without bond until such time as sufficient funds are made available to fund the defense of this case.

Baton Rouge, Louisiana this 12th day of August, 2014.

2014 AUG 12 AM 9:54
 DEPUTY CLERK OF COURT
 EAST BATON ROUGE PARISH


 JUDGE TRUDY M. WHITE
 19TH JUDICIAL DISTRICT COURT

PLEASE SERVE:

Speaker Chuck Kleckley
Speaker of the House
 Office of the Speaker of the House
 State Capitol Building, First Floor
 900 N. Third Street
 Baton Rouge, LA 70804

Sen. John A. Alario, Jr.
President of the Senate
 Office of the President of the Senate
 State Capitol Building
 900 N. Third Street
 Baton Rouge, LA 70804

Sen. Jack Donahue
Chair, Senate Finance Committee
 Senate Finance Committee
 P.O. Box 94183
 Baton Rouge, LA 70804

Rep. James R. Fannin
Chair, House Appropriations Committee:
 House Appropriations Committee
 State Capitol Building
 900 N. Third Street
 Baton Rouge, LA 70804

Governor Bobby Jindal
Office of the Governor
 State Capitol Building, Fourth Floor
 900 N. Third Street
 Baton Rouge, LA 70804

Kristy Nichols
Commissioner of Administration
Division of Administration
Claiborne Building
1201 N. Third St., Suite 7-210
Baton Rouge, LA 70802

James T. Dixon, Jr.
State Public Defender
Louisiana Public Defender Board
500 Laurel Street, Suite 300
Baton Rouge, LA 70801