

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

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SUPERIOR COURT

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ROCKINGHAM, SS.

DECEMBER, 2007

STATE OF NEW HAMPSHIRE

v.

MICHAEL V. BENTON

07-S-1394 & 1395

EX PARTE

DEFENDANT'S MOTION TO EXCEED #7
RE: AUTHORIZING APPOINTMENT OF THIRD ATTORNEY

NOW COMES the accused, MICHAEL V. BENTON, by and through his attorneys, Joseph E. Welsh and Richard E. Samdperil, and respectfully requests this honorable court authorize the appointment of a third attorney to work on Mr. Benton's case. This is a reasonable expense given the type of case, the extensive nature of discovery, and is consistent with the resources and number of lawyers involved in the co-defendants' cases.

As further grounds for this motion, the following is

stated:

1. Michael Benton is indicted for First Degree Murder, and Conspiracy to Commit Capital Murder.
2. The defendant is one of a number of co-defendants in a capital murder case. The investigation in this case covers four states and a period of almost two years.
3. To date, defense counsel has received more than twenty-two thousand (22,000) pages of discovery, as well as over 100 discs of other investigation material.
4. Mr. Benton has been found to be indigent. The Court previously appointed Sandperil & Welsh, PLLC to represent Mr. Benton.
5. Given the nature of the charge and the extensive investigation and discovery, defense counsel has employed a part-time attorney to assist with organizing discovery, assisting with legal research, and performing other legal work related to the case. The attorney, Molly Brizgys, was formerly employed by the New Hampshire Public Defender, and approximately 90% of her work for the firm is related to Mr. Benton's case. Without the assistance of Attorney Brizgys, defense counsel would be unable to keep up with the flow of discovery and/or organize this material in any meaningful way. To be clear,

Attorney Brizgys' role is not that of a paralegal, and she is relied upon to evaluate, prioritize, and summarize discovery materials. Attorney Brizgys routinely prepares memoranda related to the case and participates fully in meetings regarding investigation and litigation strategy.

6. Upon information and belief, at least five attorneys have entered appearances on behalf of defendant Jay Brooks. Defendant Robin Knight is represented by a firm of three lawyers, Jeffco, Starbranch and Soldati, all of whom are believed to have some involvement in the case. Recently indicted co-conspirator Jesse Brooks is also believed to be represented by three attorneys.

7. Defense counsel seeks the authorization of the court for a third attorney to work on the case, and for each attorney to bill the hourly attorney rate for his or her respective time.

8. Pursuant to Supreme Court Rule 47, "[a]ll bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case...." Assigned defense counsel is authorized to charge a rate of \$60.00 per hour.

9. When an accused person is indigent and cannot afford to hire legal counsel or the expert services necessary to his defense in a criminal case, statutory and constitutional law require that the State provide him with funds sufficient to

defend himself. The New Hampshire Constitution guarantees an accused person due process, equal protection, the effective assistance of counsel, and the right to present all proofs favorable. N.H. Const. pt. 1, art. 1, 2 & 15. The federal constitution also guarantees the accused a right to the effective assistance of counsel, due process, and equal protection under the law. U.S. Const. amends. V, VI & XIV. See also, Gideon v. Wainwright, 372 U.S. 335 (1963) (the Sixth Amendment's guarantee of counsel is one of the fundamental and essential rights made obligatory upon the states by the Fourteenth Amendment, and requires courts to provide counsel for defendants unable to employ counsel).

10. The authorization of a third attorney to represent Mr. Benton is a reasonable expense in this case, and is necessary to guarantee the constitutional protections referenced above.

WHEREFORE, the defendant, Michael Benton, respectfully prays this honorable Court authorize:

a) authorize Attorney Molly Brizgys as a third attorney on the case; and

b) authorize defense counsel to seek reimbursement for all attorneys at the designated rate of \$60.00 per hour; and

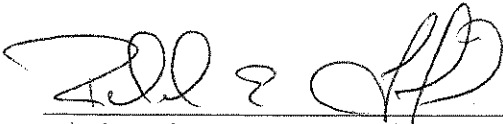
c) authorize defense counsel to seek reimbursement for

work already performed by Attorney Brizgys.

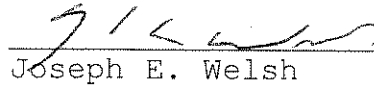
Should the court request additional information or bases for granting this motion, it is respectfully requested that an ex parte hearing be scheduled.

DATED: December 17, 2007.

Respectfully submitted
on behalf of the defendant,
by:



Richard E. Samdperil



Joseph E. Welsh

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