

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

NOS. 07-S-1394 – 95

STATE OF NEW HAMPSHIRE

V.

MICHAEL V. BENTON

ORDER

The court has carefully reviewed the Defendant's Motion to Exceed # 7 Re: Authorizing Appointment of Third Attorney. Initially, the court notes that this motion was filed on an ex parte basis and under seal. While the court recognizes that some motions filed by a defendant legitimately may be submitted ex parte and under seal, the court is not satisfied that the subject matter of the instant motion is of this character. The defendant has not asserted, nor is it obvious to the court, why the defendant should be permitted to withhold from the State -- and especially from the public -- disclosure of the fact that he desires to have a third attorney assigned to work on his case and be compensated with public funds. Unlike, say, a request to retain an expert, where a defendant may have legitimate reasons for not disclosing that he has sought the services of an expert unless and until a determination has been made that the expert will be called as a witness at trial, there appears to be no similar reason for non-disclosure of the fact that an indigent defendant has sought the services of counsel. Indeed, if the defendant's motion was granted, presumably the new attorney would enter his appearance in the case, and that would surely be a public record. The public obviously has a strong interest in knowing how its funds are being spent. Accordingly, it

is hereby ordered that the instant motion and this order shall both be entered on the docket as public records and shall be fully accessible by the public and the State.¹

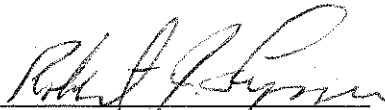
Turning to the merits, the court denies defendant's motion for the appointment of a third attorney to represent him in this case. Although this is undoubtedly a serious case, the court is not satisfied that it is of such complexity as to justify the appointment of three attorneys. The defendant is already represented by two experienced and highly competent practitioners. The court notes that this defendant is not charged with capital murder and is not facing a potential sentence of death. The court is not persuaded by the defendant's argument that he should be given a third attorney because some or all of the defendants in the related cases may have three attorneys working on their cases. These defendants have all retained private counsel and the arrangements between them and their attorneys therefore is not a matter for the court's scrutiny. However, the court does have the responsibility to insure that public funds are expended in an appropriate manner. While the court also must of course insure that the defendant is not denied his right to the effective assistance of counsel because of indigency, this right cannot be measured simply by a comparison of how many attorneys may be working on the co-defendants' cases. Here, the court is not satisfied that appointment of a third attorney is necessary to insure that defendant receives fully effective and

¹ The court notes that both the State (in the related John Brooks case) and the defendant in this case have taken it upon themselves to submit documents purportedly under seal without filing an accompanying motion seeking leave to make the filing under seal. All parties are hereby notified that this practice is to stop immediately. Henceforth, if a party believes there is a legitimate basis to file a pleading under seal, that party shall accompany such pleading with a motion to seal setting forth the grounds for such relief. In the absence of such a motion, all filings made by any party shall be treated by the clerk as a public records and shall be entered on the docket as such.

adequate representation.

So ordered.

December 28, 2007


ROBERT J. LYNN
Chief Justice