

Examples of Successful Expert Service Requests

Example 1

Request for Psychological Evaluation without Prior Diagnosis (1)

Example 2

Request for Psychological Evaluation without Prior Diagnosis (2)

Example 3

“Classic/Thorough” Request for Psychological Evaluation

Example 4

“Short & Sweet” Request for Psychological Evaluation

Example 5

Request for Supplemental Neuropsychological Evaluation

Example 6

Request for “Basic Youthfulness” Psychological Evaluation

Example 7

Successful Example Provided by Expert Master (1)

Example 8

Successful Example Provided by Expert Master (2)

Example 1

Request for Psychological Evaluation without Prior Diagnosis

1 682 P.2d 312 (1984); *State v. Moon*, 45 Wn. App. 692, 696, 726 P.2d 1263 (1986); *State v.*
 2 *Taylor*, 50 Wn. App. 481, 749 P.2d 181 (1988); and *State v. Poulson*, 45 Wn. App. 706 (1986).

3 DATED this 20th day of November, 2018.

4 Respectfully submitted,

5 [REDACTED]
 6 Attorney for [REDACTED]

7 **DECLARATION OF COUNSEL**

8 I, [REDACTED] hereby declare and state as follows:

9
 10 1. I am the attorney appointed to represent the defendant in the above-entitled
 11 action.

12
 13 2. Mr. [REDACTED] is charged with Failure to Register as a Sex Offender. The State
 14 alleges that Mr. [REDACTED] has been convicted of this crime twice previously and one time for
 15 Attempted Failure to Register as a Sex Offender. The State believes that Mr. [REDACTED] faces a
 16 standard range sentence of 43-57 months of incarceration if convicted as charged.

17
 18 3. Mr. [REDACTED] has been something of an enigma to counsel, as he is non-
 19 communicative, invariably answering most questions with "yes" or "no" responses along with
 20 frequent "I don't know" answers. He makes minimal eye contact, has never called counsel or
 21 asked to review the discovery. Recently, the State proposed a resolution of a plea to a second
 22 Attempted Failure to Register, which has a sentence range of 75% of the completed offense.
 23 Counsel explained to Mr. [REDACTED] the offer and discussed the strengths and weaknesses of his
 24 case. When asked what he wanted to do, Mr. [REDACTED] replied that he wanted a jury trial. Through
 25 prolonged discussion, counsel learned that Mr. [REDACTED] claimed that he was relying on the legal
 26 advice of one of his prior attorneys from the predicate sex offense conviction in 1991, [REDACTED]
 27 [REDACTED]. Mr. [REDACTED] also reported that Mr. [REDACTED] advised him to go to trial on failure to register

1 cases as the most he could get is five years. Counsel pointed out that this information was
2 incorrect and that his particular FTR is a Class B felony, punishable up to 10 years. Counsel also
3 displayed the WSBA website indicating that Mr. [REDACTED] was previously disbarred for a variety of
4 reasons, including his own criminal conduct. Mr. [REDACTED] could not explain why he had
5 previously plead guilty to this offense on multiple prior occasions, if it was against prior counsel's
6 instructions. Mr. [REDACTED] then reported that another former counsel, [REDACTED] had
7 advised him that the State of Washington will have him removed from the state because people
8 will come after him. Counsel advised that the State does not have the power to remove its
9 citizens and generally protects individuals from mob violence. To this, Mr. [REDACTED] simply
10 reiterated that he was doing what his attorneys advised.

11 4. Counsel had previously raised competency in this case. Due to his unwillingness
12 to speak with the WSH evaluator at the jail, he was sent to Western State Hospital for a 15 day
13 observation period. WSH reported that he did not display any overt signs of psychosis, however
14 noted repeatedly that he was guarded, participated only minimally with activities, and did not
15 engage with other residents. Following a fairly perfunctory evaluation where he was permitted to
16 respond with primarily yes/no answers, he was found competent to stand trial. Counsel did not
17 challenge that finding based upon the responses in the evaluation. Competency was found on
18 October 8, 2018.

19 5. In preparation for trial, counsel recently received a large amount of material from
20 the DOC regarding its supervision of Mr. [REDACTED] from 2016 to the present, the charging period at
21 issue here. The information is replete with near constant violations for failing to abide with any
22 of the DOC requirements, primarily to remain in contact and remain current with registration
23 obligations. It appears to counsel that the only times in which Mr. [REDACTED] has contact with the
24 DOC is when he is in custody at a violation hearing. This disengagement from the DOC in
25 particular and society in general appears to be consistent with the relationship he has with present
26 counsel and the observations from WSH staff. Counsel believes that this might not be intentional
27 but the symptom of a previously unrecognized mental illness and/or a significant learning

1 disability. Significantly, although he is told repeatedly that he must register, there is no evidence
2 that anyone has ever explained to him where and how to do so or even taken him to the Sheriff's
3 office. The only evidence of successful registration was from the 1990s when he was living with
4 his parent and mailed Change of Address forms to the KCSO. If there is evidence that Mr.
5 [REDACTED] does not understand how to comply with his obligation, then this evidence would provide
6 Mr. [REDACTED] with a potential defense to this charge, as the State must demonstrate that Mr. [REDACTED]
7 "knowingly" failed to register as a sex offender. The only evidence that the State has is
8 circumstantial, inferring that Mr. [REDACTED] had constructive knowledge of his registration
9 obligation. However, it is well settled in Washington that this inference may be refuted through
10 evidence that a particular defendant did not have actual knowledge. *State v. Shipp*, 93 Wn.2d 510
11 (1980).

12 6. Defense counsel needs the assistance of a local psychologist who can quickly
13 meet with Mr. [REDACTED] evaluate him for any mental illness (and competency) and administer
14 standardized testing for evidence of a learning disability. Counsel has spoken with Dr. Mark
15 Stanfill, PhD, who is available on short notice to meet with Mr. [REDACTED] at the jail. Dr. Stanfill
16 reported that he would need no more than 14 hours for records review, evaluation, and
17 consultation with counsel and report preparation, if needed. His hourly rate is \$250.00.

18 7. Dr. Michael Stanfill is a well-respected and experienced psychologist with
19 extensive experience in clinical and forensic psychology. His CV should be on file with DPD. If
20 needed, a copy can be supplied. His hourly rate is reasonable and consistent with DPD's
21 guidelines. This request is exclusive of time needed for testimony. If that is needed, a
22 supplemental request will be submitted separately.

23 8. Counsel believes that the services of Dr. Stanfill are necessary in order to provide
24 effective assistance of counsel.

25 9. The Washington Supreme Court has followed the long line of federal cases
26 finding defense counsel ineffective for failing to timely and properly investigate mitigating
27 evidence, including evidence of mental health issues. *See In re Brett*, 142 Wn.2d 868, 880, 16

1 P.3d 601 (2001), where the Court held that counsel was ineffective for his failure to conduct a
2 timely and proper investigation into relevant evidence. It would be ineffective of counsel to fail
3 to have Mr. [REDACTED] evaluated for a potential mental health-related defense to this offense.
4 Counsel believes that the services of Dr. Stanfill are necessary in order for Mr. [REDACTED] to receive
5 adequately prepared counsel to which he is entitled under the Sixth and Fourteenth Amendments
6 of the United States Constitution.
7

8 I declare under penalty of perjury under the laws of the State of Washington that upon
9 information and belief the foregoing is true and correct.

10 Signed at Seattle, Washington, this 20th day of November 2018. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

Example 2

Request for Psychological Evaluation without Prior Diagnosis

1 This motion is based also upon the declaration of counsel, ER 702, the Fifth, Sixth and
2 Fourteenth Amendments to the United States Constitution, Article 1, Sections 3 and 22 of the
3 Washington State Constitution, and the files and records herein; and further relies upon
4 Washington State case law, including, but not limited to: *State v. Allery*, 101 Wn.2d 591, 596,
5 682 P.2d 312 (1984); *State v. Moon*, 45 Wn. App. 692, 696, 726 P.2d 1263 (1986); *State v.*
6 *Taylor*, 50 Wn. App. 481, 749 P.2d 181 (1988); and *State v. Poulson*, 45 Wn. App. 706 (1986).

7 DATED this 19th day of September, 2017.

8 Respectfully submitted,

9 /s/ [REDACTED]
10

11 [REDACTED] WSBA # [REDACTED]
12 Attorney for [REDACTED]

13 **DECLARATION OF COUNSEL**

14 I, [REDACTED] hereby declare and state as follows:

15 1. I am the attorney appointed to represent the Defendant in the above-entitled
16 action.

17 2. Mr. [REDACTED] is charged with Trafficking in Stolen Property – First Degree and
18 Possessing Stolen Property – Second Degree. Based on his criminal history, Mr. [REDACTED] faces
19 63-84 months if convicted of Trafficking in Stolen Property and 22-29 months if convicted of
20 Possessing Stolen Property.
21

22 3. The State alleges that Mr. [REDACTED] knowingly sold stolen property belonging to
23 [REDACTED] with the intent to sell or transfer that stolen property to another person.
24 Specifically, the State alleges that Mr. [REDACTED] sold stolen jewelry to a pawn shop knowing that
25

1 the jewelry was stolen. Additionally, the State alleges that at the time of his arrest by Bellevue
2 police, Mr. [REDACTED] possessed a stolen Sears's account card issued to [REDACTED], knowing that
3 such property was stolen. Both the jewelry and Sears's card were stolen in a residential burglary
4 in Kingston, Washington on July 19, 2016. [REDACTED] and [REDACTED] were convicted
5 of this residential burglary. Mr. [REDACTED] was not implicated in the burglary itself in any way. At
6 the time of Mr. [REDACTED] arrest, he told officers that the property in his vehicle belonged to
7 [REDACTED].

8 4. Mr. [REDACTED] has a long history of serious chemical dependency issues – namely
9 intravenous methamphetamine use for at least ten years. His family has reported that he has
10 struggled to maintain any period of sobriety in the community. Mr. [REDACTED] also reports a history
11 of head injuries and mental health symptoms that include depression. Mr. [REDACTED] reports he was
12 previously evaluated by Dr. Young to assess these issues, but that his mental health symptoms
13 have gone untreated since that evaluation.

14 5. In counsel's interactions with Mr. [REDACTED] it is apparent that he is experiencing
15 some kind of impaired mental health functioning. He is difficult to redirect and has trouble
16 focusing on specific topics. He perseverates on tangential issues, becomes easily agitated when
17 counsel attempts to redirect him, and exhibits signs of paranoia around specific people involved
18 in his case. Although he reports prior treatment in the community, he has not sustained
19 meaningful treatment while out of custody and is currently not receiving any medications in the
20 jail setting to counsel's knowledge.

21 6. I am requesting funding for the services of a forensic psychologist in order to
22 evaluate Mr. [REDACTED] for a possible diminished capacity defense, as well as a mitigation report.
23
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7. Dr. Delton Young is a well-qualified expert in clinical and forensic psychology. His *Curriculum Vitae* is on file with DPD. Dr. Young estimates that he will require up to 16 hours to interview Mr. [REDACTED] consult with counsel, review discovery and treatment records and prepare a report if requested. Dr. Young's hourly rate is \$250. The total amount requested is therefore \$4,000. This amount is reasonable and is comparable to the amount charged by other experts with similar background and expertise.

8. This amount does not include Dr. Young's testimony or preparation. In the event that the defense determines that Dr. Young's testimony at trial or at a hearing, the defense will submit an additional request for funding.

9. Counsel believes that the services of Dr. Young are necessary in order to provide effective assistance of counsel.

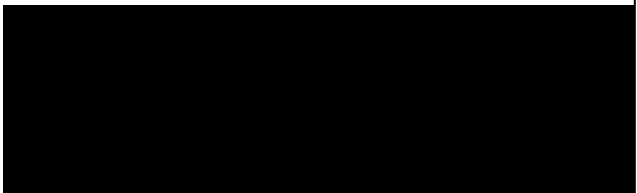
I declare under penalty of perjury under the laws of the State of Washington that upon information and belief the foregoing is true and correct.

Signed at Seattle, Washington, this 19th day of September, 2017.

THE DEFENDER ASSOCIATION

/s/ [REDACTED]

[REDACTED] WSBA # [REDACTED]
Attorney for defendant



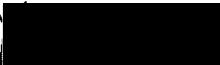


Example 3

“Classic/Thorough” Request for Psychological Evaluation


1 This motion is based also upon the declaration of counsel, ER 702, the Fifth, Sixth and
2 Fourteenth Amendments to the United States Constitution, Article 1, Sections 3 and 22 of the
3 Washington State Constitution, and the files and records herein; and further relies upon
4 Washington State case law, including, but not limited to: *State v. Allery*, 101 Wn.2d 591, 596,
5 682 P.2d 312 (1984); *State v. Moon*, 45 Wn.App. 692, 696, 726 P.2d 1263 (1986); *State v.*
6 *Taylor*, 50 Wn.App. 481, 749 P.2d 181 (1988); and *State v. Poulson*, 45 Wn.App. 706, 726 P.2d
7 1036 (1986).

8
9 DATED this 2nd day of November, 2018.


10 Respectfully submitted,

11 
12  WSBA 
13 Attorney for the Defendant


14 **DECLARATION OF COUNSEL**

15 I,  hereby declare and state as follows:

16 1. I am the attorney in the above-entitled action and am competent to make this
17 declaration.

18 2. Mr.  has been found indigent by the King County Office of Public
19 Defense and possesses no funds with which to retain the services of experts necessary to assist
20 counsel in preparing or presenting his defense.

21 3. There have been no prior funding requests on this case.

22 4. At this time, Mr.  is charged by Information with one count of felony
23 Violation of a No Contact Order – Domestic Violence. Trial is currently set for January 16,
24 2019.
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1 5. Mr. [REDACTED] is [REDACTED] years old, and he is facing a standard range of 60 to 60
2 months due to his prior criminal history. Mr. [REDACTED] has six prior domestic violence convictions
3 as to this same complainant for incidents occurring between [REDACTED] and [REDACTED]
4 Defense counsel represented Mr. [REDACTED] on three felony cases between [REDACTED] and
5 [REDACTED] each was initially filed as a felony Violation of a No Contact Order – Domestic
6 Violence, and each was reduced or substantially mitigated through plea bargains with the State.
7 Each time, despite conviction and incarceration, Mr. [REDACTED] violated the no contact order again
8 within only a handful of months.
9

10 6. In November 2017, Mr. [REDACTED] pled to Malicious Mischief in the Second Degree
11 – Domestic Violence by way of an *In re Barr* plea and was ordered to a residential drug offender
12 sentencing alternative (DOSA). Mr. [REDACTED] has been addicted to methamphetamine since he was
13 eighteen years old. While in inpatient treatment, he reported hearing voices and was medicated
14 with Fluoxetine, Quetiapine, and Sertraline. His treatment case manager also noted that he is
15 “influenced easily by others.” Mr. [REDACTED] was released from inpatient treatment in February
16 2018; however, he did not report to probation, and his DOSA was revoked. Mr. [REDACTED] was
17 arrested for the current charge in June 2018. He is alleged to have violated the no contact order
18 at least three times between [REDACTED] 2018.
19

20 7. In *State v. O'Dell*, 183 Wash.2d 680, 358 P.3d 359 (2015), the Washington
21 Supreme Court recognized that a defendant's youthfulness is a mitigating factor that may
22 diminish his criminal culpability. As a result, defense counsel believes a psychological
23 evaluation is necessary for the purposes of mitigation and/or an exceptional downward sentence.
24 Defense counsel believes that Mr. [REDACTED] may lack developmental maturity based on a variety of
25 factors, including his age, his drug and alcohol history, and his mental health history. Many of
26
27

1 Mr. [REDACTED] violations – including the current allegations – were invited by the complainant; as
2 a result, Mr. [REDACTED] repeated contacts seem to reflect impulsivity, inducement by others, and a
3 lack of understanding of consequences. Additionally, while defense counsel believes Mr. [REDACTED]
4 is competent at this time, it is unclear to counsel whether [REDACTED] exhibits cognitive delays.

5 8. Robert Eden Deutsch, Ph.D., is a licensed psychologist in the State of
6 Washington. See Attachment A – Curriculum Vitae of Robert Eden Deutsch, Ph.D. He has over
7 thirty years of experience in conducting clinical and forensic evaluations, and he is very qualified
8 to conduct a psychological evaluation in this case. He is willing and able to assist Mr. [REDACTED]

9 9. Dr. Deutsch charges \$250 per hour for his services, and he estimates that he will
10 need 20 hours to complete the services requested. He anticipates 6 hours to review discovery
11 and records, 5 hours to interview Mr. [REDACTED] 2.5 hours to perform testing, 0.5 hours for attorney
12 consultation, and 6 hours to complete a report if needed. This is reasonable in light of his
13 experience and expertise, and it is consistent with the fee schedules of other experts. Given the
14 importance of the mental health issues in this case, defense counsel will be unable to
15 competently and effectively represent Mr. [REDACTED] without Dr. Deutsch's assistance.

16 10. Based on Dr. Deutsch's estimate, defense requests \$5,000.00 be approved for his
17 expert assistance. This request does not include trial testimony in the event that counsel
18 determines Dr. Deutsch will be called as a witness. A separate funding request will be made if
19 that occurs.

20 11. The Washington Supreme Court has followed the long line of federal cases
21 finding defense counsel ineffective for failing to timely and properly investigate mitigating
22 evidence. See *In re Brett*, 142 Wn.2d 868, 880, 16 P.3d 601 (2001). In *Brett*, the Court further
23 held that counsel was ineffective for his failure to conduct a timely and proper investigation into
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1 relevant evidence. Defense counsel believes that the services of Dr. Deutsch are necessary in
2 order for Mr. [REDACTED] to receive adequately prepared counsel to which he is entitled under the
3 Sixth and Fourteenth Amendments of the United State's Constitution.

4 I declare under penalty of perjury under the laws of the State of Washington that upon
5 information and belief the foregoing is true and correct.
6

7 Signed in Kent, Washington, this 2nd day of November, 2018.
8

9 **KING COUNTY DEPT. OF PUBLIC DEFENSE**
10 **THE DEFENDER ASSOCIATION DIVISION**

11 [REDACTED]
12 [REDACTED], WSBA [REDACTED]
13 Attorney for the Defendant
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Example 4

“Short & Sweet” Request for Psychological Evaluation

682 P.2d 312 (1984); *State v. Moon*, 45 Wn. App. 692, 696, 726 P.2d 1263 (1986); *State v. Taylor*, 50 Wn. App. 481, 749 P.2d 181 (1988); and *State v. Poulson*, 45 Wn. App. 706 (1986).

DATED this 9th day of November, 2018.

Respectfully submitted,

/s/

WSBA

Attorney for

DECLARATION OF COUNSEL

I, [REDACTED] hereby declare and state as follows:

1. I am the attorney appointed to represent the defendant in this matter.

2. [REDACTED] is charged with three counts of Assault in the Third Degree, as outlined in the accompanying Certification for Determination of Probable Cause. **Attachment A.** The prosecutor has also threatened bail jumping charges. He is also charged with Assault – DV in Seattle Municipal court stemming from this same incident.

3. There have been no prior expert funding requests in this matter.

4. Mr. [REDACTED] was employed as a King County Sheriff Deputy at the time of this incident (June 1, 2018), but had been on leave for several [REDACTED] for mental health reasons. He reports that a fitness for duty assessment recommended antipsychotic medications. Mr. [REDACTED] Sergeant at the time reported that Mr. [REDACTED] had been “acting strange.”

5. On July 6, 2018, Seattle Police Department detectives sought to serve Mr. [REDACTED] with a no contact order. Detective Hamlin reports the following: “We knocked on his door and heard him scream for help from us. He screamed he was locked in his closet. We got the manager and went in. We found him naked with tin foil booties on, huddled in his unlocked closet...” Mr. [REDACTED] was subsequently involuntarily committed.

6. Mr. [REDACTED] has mental health issues that pre-date 2018. He was on active duty in the Army and spent a year in Iraq where he endured close-calls with mortars every day and

1 eventually was hit by a rocket. He was honorably discharged from active service in 2011, but
2 continued in the reserves. He has a PTSD diagnosis.

3 7. An experienced mental health professional is required to assist the defense in this
4 case. Dr. Michael Stanfill is a well-respected and experienced psychologist with extensive
5 experience in clinical work and forensics. His Curriculum Vitae is on file with DPD. Counsel has
6 spoken with Dr. Stanfill regarding this case and he is interested in working with the defense on
7 this matter. He is also he is available to conduct a forensic evaluation towards in early
8 December.

9 8. Dr. Stanfill estimates that he will require approximately 16 hours to complete his
10 evaluation. This includes approximately 6 hours to review records, 6 hours to interview Mr.
11 [REDACTED] and conduct any testing, and 4 hours to write a report and consult with counsel.

12 9. Dr. Stanfill bills at a rate of **\$250/hour**. This is a reasonable rate and is
13 consistent with DPD's guidelines. I am therefore requesting **\$4000** for the evaluation.

14 10. The amount requested does not include Dr. Stanfill's testimony or preparation. In
15 the event that the defense determines that Dr. Stanfill's testimony is needed for trial or another
16 hearing, the defense will submit an additional request.

17 11. Counsel believes that the services of Dr. Stanfill are necessary in order to provide
18 effective assistance of counsel.

19 I declare under penalty of perjury under the laws of the State of Washington that upon
20 information and belief the foregoing is true and correct.

21 Signed at Seattle, Washington, this 9th day of November, 2018.

22
23 /s/ [REDACTED]
24 [REDACTED] WSBA [REDACTED]
25 Attorney for [REDACTED]
26
27

Example 5

Request for Supplemental Neuropsychological Evaluation

682 P.2d 312 (1984); *State v. Moon*, 45 Wn. App. 692, 696, 726 P.2d 1263 (1986); *State v. Taylor*, 50 Wn. App. 481, 749 P.2d 181 (1988); and *State v. Poulson*, 45 Wn. App. 706 (1986).

DATED this 27th day of December, 2018.

Respectfully submitted,

Attorney for [REDACTED]

DECLARATION OF COUNSEL

I, [REDACTED] hereby declare and state as follows:

1. I am the attorney appointed to represent the defendant in the above-entitled action.

2. Mr. [REDACTED] is charged with Failure to Register as a Sex Offender. The State alleges that Mr. [REDACTED] has been convicted of this crime twice previously and one time for Attempted Failure to Register as a Sex Offender. The State believes that Mr. [REDACTED] faces a standard range sentence of 43-57 months of incarceration if convicted as charged.

3. Defense previously requested funding for the retention of Dr. Michael Stanfill, a local psychologist in private practice. Dr. Stanfill was retained for the purpose of assessing a potential mental defense for trial. Dr. Stanfill met with Mr. [REDACTED] engaged in a clinical interview and administered a number of IQ and personality tests. Dr. Stanfill also reviewed the discovery, the materials from a recent Western State Hospital evaluation and documents from the Jail Health Services. Based upon Dr. Stanfill's evaluation thus far, he is unable to untangle Mr. [REDACTED]'s complicated presentation.

4. As discussed in the previous funding request, Mr. [REDACTED] has been something of an enigma to counsel, as he is non-communicative, invariably answering most questions with "yes" or "no" responses along with frequent "I don't know" answers while avoiding eye contact.

1 Mr. [REDACTED] perseverates on a desire to go to trial based upon a claim that a prior attorney advised
2 him to do so. This is in contrast to the fact that his prior FTR charges resulted in guilty pleas and
3 he is turning down an offer for a reduced charge. When asked to explain his reasoning or even
4 acknowledge the apparent contradiction, Mr. [REDACTED] reverts to his "I don't know" response and
5 looks away without further comment. His lack of engagement is profound and troubling. This
6 does not appear to counsel to be volitional. After review of the DOC materials related to his
7 supervision, it appears that Mr. [REDACTED] has never engaged in any aspect of his supervision. The
8 only times he has ever met a CCO is when he is in custody or physically brought to the DOC
9 offices upon release from prison.

10 5. Mr. [REDACTED] made the same presentation to Dr. Stanfill. The tests results Dr.
11 Stanfill obtained raised more questions than they answered. He does not endorse any classic
12 psychotic symptoms and none have been noted by the jail or WSH. The abbreviated IQ test
13 demonstrated generally low normal ranges for areas such as problem solving or spatial reasoning,
14 however he was in the impaired range for all of the verbal IQ scales. Effort testing reported no
15 feigned results and reported no atypical symptoms, which would be an indication of malingering.
16 In the end, all Dr. Stanfill could conclude is that it appears Mr. [REDACTED] has some sort of cognitive
17 deficit when it comes to understanding and processing information. Dr. Stanfill's
18 recommendation is that a trained neuropsychologist be engaged to perform a full, standard battery
19 of tests in order to provide the data necessary to complete his evaluation.

20 6. The tests utilized in a neuropsychological examination are specifically designed to
21 probe potential damages or deficits in particular areas of the brain. These tests look for areas of
22 weaknesses with an individual's executive functioning, which is controlled by the brain's frontal
23 lobe. The tests employed in a standard neuropsychological battery are well accepted in the
24 professional community, have been thoroughly validated and are routinely used throughout the
25 country whenever there is a suspicion of potential brain damage. Dr. Stanfill suspects that such
26 damage might be present here, whether congenital, achieved through a traumatic event, or the
27

1 result of deterioration of some part of his brain. Dr. Stanfill cannot complete his evaluation
2 without the assistance of a qualified neuropsychologist to administer tests and grade the results.

3 7. Dr. Stanfill's evaluation, together with the assistance of a neuropsychologist, is
4 likely the only defense available to Mr. [REDACTED]. The evidence that Mr. [REDACTED] failed to record
5 his address or report as homeless is overwhelming. The only issue is whether the State can prove
6 beyond a reasonable doubt that he did so willfully. A person acts "willfully" when he acts
7 "knowingly." RCW 9A.08.010(4). At trial, Court will instruct the jury on the definition of
8 "knowledge" which will include "A person knows or acts knowingly or with knowledge when: he
9 or she has information which would lead a reasonable person in the same situation to believe that
10 facts exist which facts are described by a statute defining an offense." RCW 9A.08.010(b)(ii).
11 The pattern instruction will inform the jury, in part: "If a person has information that would lead a
12 reasonable person in the same situation to believe that a fact exists, the jury is permitted but not
13 required to find that he or she acted with knowledge of that fact." WPIC 10.02. Therefore, the
14 defense is permitted to challenge whether the defendant has actual knowledge of a fact, i.e., the
15 obligation to register. "[T]he jury must still be allowed to conclude that he was less attentive or
16 intelligent than the ordinary person... The jury must still find subjective knowledge." *State v.*
17 *Shipp*, 93 Wn.2d 510, 516-17, (1980).

18 8. Defense has contacted Dr. Paul Connor, a local neuropsychologist about his
19 availability to assist with the administration of the needed tests. Dr. Connor is available and
20 believes that he would need no more than 10 hours to administer the tests, score the results, and
21 consult with Dr. Stanfill. Dr. Connor is not being requested to prepare a written report. Dr.
22 Connor has a fee schedule of [REDACTED] per hour. Dr. Connor has been retained many times by
23 attorneys in King County to provide this type of expert assistance. His CV should be on file. One
24 can be provided upon request.

25 9. Counsel believes that the services of Dr. Connor are necessary in order to provide
26 effective assistance of counsel. Dr. Stanfill cannot complete his evaluation without the
27 administration of neuropsychological testing and he is not qualified to conduct such testing. The

1 results of the testing are expected to demonstrate significant cognitive impairment, localized in
2 the area of the frontal lobes which affect verbal skills. These skills are precisely the sort of
3 functions necessary for Mr. [REDACTED] to understand and follow the instructions of the Court and the
4 DOC.

5 10. The Washington Supreme Court has followed the long line of federal cases
6 finding defense counsel ineffective for failing to timely and properly investigate mitigating
7 evidence, including evidence of mental health issues. See *In re Brett*, 142 Wn.2d 868, 880, 16
8 P.3d 601 (2001), where the Court held that counsel was ineffective for his failure to conduct a
9 timely and proper investigation into relevant evidence. It would be ineffective of counsel to fail
10 to have a neuropsychologist perform the tests required by Dr. Stanfill in order to complete his
11 evaluation in preparation for a potential mental health-related defense at trial. Counsel believes
12 that the services of Dr. Connor are necessary in order for Mr. [REDACTED] to receive adequately
13 prepared counsel to which he is entitled under the Sixth and Fourteenth Amendments of the
14 United States Constitution.
15

16 I declare under penalty of perjury under the laws of the State of Washington that upon
17 information and belief the foregoing is true and correct.

18 Signed at Seattle, Washington, this 12th day of December, 2018 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 Attorney for [REDACTED]
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25
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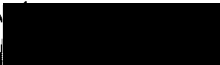


Example 6

Request for “Basic Youthfulness” Psychological Evaluation


1 This motion is based also upon the declaration of counsel, ER 702, the Fifth, Sixth and
2 Fourteenth Amendments to the United States Constitution, Article 1, Sections 3 and 22 of the
3 Washington State Constitution, and the files and records herein; and further relies upon
4 Washington State case law, including, but not limited to: *State v. Allery*, 101 Wn.2d 591, 596,
5 682 P.2d 312 (1984); *State v. Moon*, 45 Wn.App. 692, 696, 726 P.2d 1263 (1986); *State v.*
6 *Taylor*, 50 Wn.App. 481, 749 P.2d 181 (1988); and *State v. Poulson*, 45 Wn.App. 706, 726 P.2d
7 1036 (1986).

8
9 DATED this 2nd day of November, 2018.


10 Respectfully submitted,

11 
12  WSBA 
13 Attorney for the Defendant


14 **DECLARATION OF COUNSEL**

15 I,  hereby declare and state as follows:

16 1. I am the attorney in the above-entitled action and am competent to make this
17 declaration.

18 2. Mr.  has been found indigent by the King County Office of Public
19 Defense and possesses no funds with which to retain the services of experts necessary to assist
20 counsel in preparing or presenting his defense.

21 3. There have been no prior funding requests on this case.

22 4. At this time, Mr.  is charged by Information with one count of felony
23 Violation of a No Contact Order – Domestic Violence. Trial is currently set for January 16,
24 2019.

1 5. Mr. [REDACTED] is [REDACTED] years old, and he is facing a standard range of 60 to 60
2 months due to his prior criminal history. Mr. [REDACTED] has six prior domestic violence convictions
3 as to this same complainant for incidents occurring between [REDACTED] and [REDACTED]
4 Defense counsel represented Mr. [REDACTED] on three felony cases between [REDACTED] and
5 [REDACTED] each was initially filed as a felony Violation of a No Contact Order – Domestic
6 Violence, and each was reduced or substantially mitigated through plea bargains with the State.
7 Each time, despite conviction and incarceration, Mr. [REDACTED] violated the no contact order again
8 within only a handful of months.
9

10 6. In November 2017, Mr. [REDACTED] pled to Malicious Mischief in the Second Degree
11 – Domestic Violence by way of an *In re Barr* plea and was ordered to a residential drug offender
12 sentencing alternative (DOSA). Mr. [REDACTED] has been addicted to methamphetamine since he was
13 eighteen years old. While in inpatient treatment, he reported hearing voices and was medicated
14 with Fluoxetine, Quetiapine, and Sertraline. His treatment case manager also noted that he is
15 “influenced easily by others.” Mr. [REDACTED] was released from inpatient treatment in February
16 2018; however, he did not report to probation, and his DOSA was revoked. Mr. [REDACTED] was
17 arrested for the current charge in June 2018. He is alleged to have violated the no contact order
18 at least three times between [REDACTED] 2018.
19

20 7. In *State v. O'Dell*, 183 Wash.2d 680, 358 P.3d 359 (2015), the Washington
21 Supreme Court recognized that a defendant's youthfulness is a mitigating factor that may
22 diminish his criminal culpability. As a result, defense counsel believes a psychological
23 evaluation is necessary for the purposes of mitigation and/or an exceptional downward sentence.
24 Defense counsel believes that Mr. [REDACTED] may lack developmental maturity based on a variety of
25 factors, including his age, his drug and alcohol history, and his mental health history. Many of
26
27

1 Mr. [REDACTED] violations – including the current allegations – were invited by the complainant; as
2 a result, Mr. [REDACTED] repeated contacts seem to reflect impulsivity, inducement by others, and a
3 lack of understanding of consequences. Additionally, while defense counsel believes Mr. [REDACTED]
4 is competent at this time, it is unclear to counsel whether [REDACTED] exhibits cognitive delays.

5 8. Robert Eden Deutsch, Ph.D., is a licensed psychologist in the State of
6 Washington. See Attachment A – Curriculum Vitae of Robert Eden Deutsch, Ph.D. He has over
7 thirty years of experience in conducting clinical and forensic evaluations, and he is very qualified
8 to conduct a psychological evaluation in this case. He is willing and able to assist Mr. [REDACTED]

9 9. Dr. Deutsch charges \$250 per hour for his services, and he estimates that he will
10 need 20 hours to complete the services requested. He anticipates 6 hours to review discovery
11 and records, 5 hours to interview Mr. [REDACTED] 2.5 hours to perform testing, 0.5 hours for attorney
12 consultation, and 6 hours to complete a report if needed. This is reasonable in light of his
13 experience and expertise, and it is consistent with the fee schedules of other experts. Given the
14 importance of the mental health issues in this case, defense counsel will be unable to
15 competently and effectively represent Mr. [REDACTED] without Dr. Deutsch's assistance.

16 10. Based on Dr. Deutsch's estimate, defense requests \$5,000.00 be approved for his
17 expert assistance. This request does not include trial testimony in the event that counsel
18 determines Dr. Deutsch will be called as a witness. A separate funding request will be made if
19 that occurs.

20 11. The Washington Supreme Court has followed the long line of federal cases
21 finding defense counsel ineffective for failing to timely and properly investigate mitigating
22 evidence. See *In re Brett*, 142 Wn.2d 868, 880, 16 P.3d 601 (2001). In *Brett*, the Court further
23 held that counsel was ineffective for his failure to conduct a timely and proper investigation into
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1 relevant evidence. Defense counsel believes that the services of Dr. Deutsch are necessary in
2 order for Mr. [REDACTED] to receive adequately prepared counsel to which he is entitled under the
3 Sixth and Fourteenth Amendments of the United State's Constitution.

4 I declare under penalty of perjury under the laws of the State of Washington that upon
5 information and belief the foregoing is true and correct.
6

7 Signed in Kent, Washington, this 2nd day of November, 2018.
8

9 **KING COUNTY DEPT. OF PUBLIC DEFENSE**
10 **THE DEFENDER ASSOCIATION DIVISION**

11 [REDACTED]
12 [REDACTED], WSBA [REDACTED]
13 Attorney for the Defendant
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Example 7

Successful Example
Provided by Expert Master

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NO. [REDACTED]

**DEFENDANT'S EX PARTE MOTION
FOR EXPERT FEES PURSUANT TO CrR
3.1(f)**

Defendant.

I. MOTION.

[REDACTED], through undersigned counsel, moves this Court for an order authorizing reasonable compensation for expert (psychological evaluation) services, pursuant to CrR 3.1(f). Under CrR 3.1(f)(2), this motion is made ex parte.

Defendant's Request

Defense requests that this Court provide expert witness fees, pursuant to CrR 3.1(f). This rule provides for fees for services other than a lawyer:

- 1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in the case may request them by a motion to the court.

- 2) Upon finding the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to whom the administration of the program may have been delegated by local court rule, shall authorize the services. **The motion may be made ex parte . . .**

financial need

has screened and qualified for the services of the Public Defender. Ms. case is an OPD Panel Case and has no financial ability to pay for Expert Services in this case. been incarcerated since this incident with bail in the 6 figures. She does not work and has no means to fund her own expert services.

The necessary services required in defense of this case

Ms. is currently charged with Assault 2, but the State has already indicated an intent to rearraign her to add a Deadly Weapon Enhancement. Additionally, based on information obtained from medical records related to the event, Defense expects the charges could easily be increased to Assault 1 or Attempted Murder for trial. Apparently, the Victim nearly bled out and required emergency surgery.

Ms. is currently charged with Assault 2, but the State has already indicated an intent to rearraign her to add a Deadly Weapon Enhancement. Additionally, based on information obtained from medical records related to the event, Defense expects the charges could easily be increased to Assault 1 or Attempted Murder for trial. Apparently, the Victim nearly bled out and required emergency surgery.

Defendant has significant cognitive impairment and it is suspected

functions at at best a 4th grade level. Defendant has extensive diagnosed serious Mental Health Issues, including Schizophrenia, PTSD, Anxiety, and suspected Fetal Alcohol Syndrome. Ms. [REDACTED] has had several recent hospitalizations at Harborview and despite the Jail being provided with active prescriptions, Ms. [REDACTED] was not medicated for months after her incarceration. She significantly decompensated and though she is now receiving some medications, that condition has not improved much and there is still significant competency concerns by Counsel as well as requiring additional time to evaluate due to her mental status and her cognitive impairments. Defendant has history of mental health issues and was exhibiting delusional behaviors at the time of this event and has no memory of allegedly stabbing a 16 year old girl. Ms. [REDACTED] also experiences paranoia and beliefs that “people” are after her and she’s consistently believing she is being watched and mean her harm. She is unable to even participate when she goes to Court because she is so afraid, sobs hysterically, and believes terrible things will happen to her. She generally has no understanding of what happens in Court even after time to calm down and Counsel making efforts to explain the procedures.

Dr. Milner has done extensive evaluations already but the Testing and evaluation process has been a slow go due to the limitations and difficulties noted above. Additionally, we received over 3,000 pages of medical records from Harborview regarding Ms. [REDACTED] and Dr. Milner had to review those as

[REDACTED]

well. Therefore, we are in need of additional funds to complete the Testing and
prepare a report for a Diminished Capacity defense.

The need of an expert for a psychological evaluation

Dr. Milner has been approved many times previously by OPD for psychological
services. Defense has consulted with Dr. Milner and she is available to work on this
case. Dr. Milner has experience in the areas of Fetal Alcohol Syndrome as well as co-
occurring disorders such as serious MH issues and has completed the Competency
portion of her evaluation but additional testing is needed for Diminished Capacity.
Defendant's cognitive impairments as well as her untreated mental health issues and
thousands of pages of records have made this portion of the evaluation take more time
and additional time is needed to complete testing and write a report. Dr. Milner
estimates she will need an additional 10 hours to accomplish this. At her rate of
\$250/hour we are requesting an additional \$2,500.00

Legal authority for request

A recent *en banc* Supreme Court decision clarified that the provision of expert
fees by the Court is not restricted to those defendants who have appointed counsel:

The Sixth Amendment right to effective assistance of counsel includes
expert assistance necessary to an adequate defense. See Ake v. Oklahoma,
470 U.S. 68, 72, 84 L. Ed. 2d 53, 105 S. Ct. 1087 (1985). Washington
discharges its obligation to provide indigent criminal defendants necessary
expert assistance under CrR 3.1(f). See State v. Kelly, 102 Wn.2d 188,
201, 685 P.2d 564 (1984) (holding CrR 3.1(f)(1) "incorporates

constitutional requirements"). Under CrR 3.1(f)(1), "a defendant is entitled to the appointment of experts if financially unable to obtain them and if the services are necessary to the defense." State v. Hoffman, 116 Wn.2d 51, 90, 804 P.2d 577 (1991).

The plain language of CrR 3.1(f) makes no distinction between appointed and private counsel. [Emphasis added]

Conclusion

It is imperative for the adequate preparation of the defense of this case that the described expert be retained not only to offer his opinion as to Ms. [REDACTED] competency to stand trial, but also to provide an opinion as to any mental health defenses available in this case. Time is of the essence and preparation by the expert needs to begin now. Pursuant to both case law and court rule, it is appropriate for this Court provide the necessary funds for the expert services of Dr. Milner.

Respectfully submitted, on this 14th day of August, 2017

[REDACTED]

[REDACTED]

Example 8

Successful Example
Provided by Expert Master

1 2. Mr. [REDACTED] was found eligible for assigned counsel by the King County Department
2 of Public Defense. He is unemployed.

3 3. Mr. [REDACTED] is unable to pay the cost of obtaining a psychological evaluation
4 necessary to preparing his defense.
5

6 **B. Factual and Legal Basis for Appointment of Defense Expert**
7

8 1. Mr. [REDACTED] has been charged by Information with one count of Possession of a
9 Stolen Vehicle, one count of Driving While Under the Influence, and one count of Hit
10 and Run – Attended Vehicle. A copy of the Certification For Determination of Probable
11 Cause accompanies this motion. If convicted as charged, Mr. [REDACTED] faces a prison sentence,
12 loss of driving privileges, and high-risk insurance. A trial date has been set for [REDACTED]
13 [REDACTED].
14
15

16 2. There are issues surrounding Mr. [REDACTED]'s mental state at the time of the incident.
17 Immediately following his arrest, Mr. [REDACTED] was taken to Harborview, due to his mental
18 state. While at the jail, he continued to manifest symptoms of mental illness. He was
19 transferred from the jail to Navos, where he was committed pursuant to RCW 71.05.
20 While at Navos, he was diagnosed with “Bipolar I Disorder, Most Recent Episode Mixed,
21 Severe; Posttraumatic Stress Disorder; and polysubstance abuse.” He was discharged on
22 a less restrictive order, and continues to receive psychiatric treatment and medication
23 through Navos’ outpatient services. He was assessed for competency by Western State
24 Hospital. Western State Hospital. The evaluator diagnosed him with “Unspecified
25 Schizophrenia Spectrum and Other Psychotic Disorder, currently in remission” and
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1 “Posttraumatic Stress Disorder (per NAVOS Inpatient), as well as several unspecified
2 substance use disorders. Western State Hospital opined that Mr. [REDACTED] was currently
3 competent. That opinion was and is not currently contested, and an order finding Mr. [REDACTED]
4 competent was entered on July 19, 2017.
5

6 3. I contacted Delton W. Young, Ph.D., a psychologist with whom I have worked
7 before, to see if he would be available and willing to conduct a psychological evaluation
8 of Mr. [REDACTED]. Dr. Young has been approved as an expert by DPD in the past. He has
9 conducted evaluations where issues regarding mental state were addressed.
10
11

12 4. Dr. Young indicated that he is available to take the case. His current hourly
13 rate is \$ 290 per hour, but he is willing to accept the DPD hourly rate of \$250 per hour.
14 He believes that he can complete his evaluation in 16 hours. This includes time to review
15 discovery; review Harborview, Jail Health, Navos, and Western State Hospital records;
16 interview Mr. [REDACTED]; interview collateral contacts; analyze test data; consult with counsel;
17 and write a report.
18
19

20 5. Defense counsel believes Dr. Young’s appointment is necessary for effective
21 assistance of counsel and a fair proceeding. A psychologist is necessary to fully explore
22 whether there is a mental health defense or mitigation. Defense counsel believes that this
23 is necessary in order to provide Mr. [REDACTED] with effective assistance of counsel and due
24 process. Dr. Young’s services are necessary in order for counsel to prepare for
25 negotiation and/or trial.
26
27
28

29 **C. The Expert Services Requested at Public Expense**

30 Expert Motion--3

[REDACTED]

1 1. Counsel is requesting authorization in the amount of \$ 4,000 to Delton W.
2 Young, Ph.D., for a psychological evaluation.

3 2. I have based these figures on information provided by Dr. Young.

4 3. But for his indigence, Mr. [REDACTED] would pay for these services to assist counsel in
5 preparing his defense.
6

7
8 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE
9 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE
10 BEST OF MY INFORMATION AND BELIEF.

11 Date: August 14, 2017 /s/attorney Attorney
12 Place: Seattle, WA for Defendant

13
14 **MEMORANDUM**

15 The right to services necessary to an adequate defense is founded on the rights to
16 due process and effective assistance of counsel:

17
18 The Sixth Amendment right to effective assistance of counsel advances the
19 Fifth Amendment's right to a fair trial. That right to effective assistance
20 includes a "reasonable investigation" by defense counsel. *See Strickland v.*
21 *Washington*, 466 U.S. 668, 684, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674
22 (1984); *In re Pers. Restraint of Brett*, 142 Wash.2d 868, 873, 16 P.3d 601
(2001). It also guarantees expert assistance if necessary to an adequate
defense. *State v. Punsalan*, 156 Wash.2d 875, 878, 133 P.3d 934 (2006).

23 *State v. Boyd*, 160 Wn.2d 424, 434, 158 P.3d 54 (2007).

24
25 Under the court rules, an indigent defendant is entitled to necessary expert services
26 at public expense:

27
28 (1) A lawyer for a defendant who is financially unable to obtain
29 investigative, expert, or other services necessary to and adequate defense in
the case may request them by a motion to the court.

1 (2) Upon finding the services are necessary and that the defendant is
2 financially unable to obtain them, the court, or a person or agency to whom
3 the administration of the program may have been delegated by local court,
4 rule , shall authorize the services. The motion may be made ex parte, and,
5 upon a showing of good cause, the moving papers may be ordered sealed
6 by the court, and shall remain sealed until further order of the court. The
7 court, in the interest of justice and on a finding that timely procurement of
8 necessary services could not await prior authorization, shall ratify such
9 services after they have been obtained.

10 CrR 3.1(f).

11 A psychological evaluation is necessary to an adequate defense for Mr. [REDACTED].
12 Without such services, he will be denied his right to due process, his right to effective
13 assistance of counsel, and his right to a fair trial. The amount requested is reasonable, and
14 should be approved under the circumstances of this case.

15 Respectfully submitted this 14th day of August, 2017.

16
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]