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7 Attorney for Defendant
8 JONES DOE

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 **THE PEOPLE OF THE STATE OF CALIFORNIA,**)

12 Plaintiff,)

13 v.)

14 **JONES DOE,**)

15 Defendant.)

16 Case No. _____

17 EX PARTE MOTION TO
18 APPOINT COUNSEL (Pen.
19 Code, § 987.2.)

20 DATE:
21 TIME:
22 LOCATION:

23 PLEASE TAKE NOTICE, that on _____, 2010, at 8:30 a.m. or as soon
24 as the matter can be heard in Department B of the court located at 11701 S. La
25 Cienega Blvd., Los Angeles, CA 90045, the defendant will move the court to appoint
26 Fay Arfa as defendant's attorney.

27 This motion is based on the attached memorandum of points and authorities,
28 and all evidence and other matters to be presented at the hearing.

Dated: May 16, 2010

FAY ARFA
Attorney for Defendant

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO
2 APPOINT FAY ARFA AS COUNSEL

3 **I. PENAL CODE SECTION 987.2 SUBD. (d) PERMITS THIS**
4 **COURT TO APPOINT COUNSEL IN THE INTERESTS OF**
5 **JUSTICE**

6 Penal Code section 987.2 subdivision (d) provides:

7 (d) . . . [T]he court shall first utilize the services of the public
8 defender to provide criminal defense services for indigent
9 defendants. In the event that the public defender is unavailable and
10 the county and the courts have contracted with one or more
11 responsible attorneys or with a panel of attorneys to provide criminal
12 defense services for indigent defendants, the court shall utilize the
13 services of the county-contracted attorneys prior to assigning any
14 other private counsel. Nothing in this subdivision shall be construed
15 to require the appointment of counsel in any case in which the
16 counsel has a conflict of interest. *In the interest of justice, a court*
17 *may depart from that portion of the procedure requiring appointment*
18 *of a county-contracted attorney after making a finding of good cause*
19 *and stating the reasons therefor on the record. (Italics added.)*

20 **II. THIS COURT HAS THE DISCRETION, PURSUANT TO**
21 **PENAL CODE SECTION 987.2, TO APPOINT FAY ARFA**
22 **AS COUNSEL**

23 Cases addressing the issue of whether an indigent defendant is entitled to
24 private counsel of his or her choice have held that the appointment of
25 counsel under section 987.2 rests within the sound discretion of the trial
26 court and the court's discretion may not be restricted by any fixed policy. (See
27 *People v. Horton* (1995) 11 Cal.4th 1068, 1098.)

28 **III. JUDICIAL DISCRETION PERMITS A COURT TO DECIDE A**
QUESTION BY HER VIEWS OF EXPEDIENCY OR OF THE
DEMANDS OF EQUITY AND JUSTICE

" 'Judicial discretion is that power of decision exercised to the necessary
end of awarding justice based upon reason and law but for which decision there
is no special governing statute or rule. Discretion implies that in the absence
of positive law or fixed rule the judge is to decide a question by his view of
expediency or of the demand of equity and justice . . . The term implies absence

1 of arbitrary determination, capricious disposition or whimsical thinking. It
2 imports the exercise of discriminating judgment within the bounds of reason.
3 Discretion in this connection means a sound judicial discretion enlightened by
4 intelligence and learning, controlled by sound principles of law, of firm
5 courage combined with the calmness of a cool mind, free from partiality, not
6 swayed by sympathy or warped by prejudice or moved by any kind of influence
7 save alone the overwhelming passion to do what is just.' " (*Harris v. Superior*
8 *Court* (1977) 19 Cal.3d 786, 796.)

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10 **IV. IN EXERCISING ITS DISCRETION, THE TRIAL COURT**
11 **SHOULD CONSIDER SUBJECTIVE FACTORS AS WELL AS**
12 **OBJECTIVE FACTORS**

13 In exercising its discretion, the trial court should take into account not only
14 the foregoing subjective factors, but also objective factors such as previous
15 representation of defendant by the requested attorney in the underlying or in any
16 other proceeding, any extended relationship between defendant and the
17 requested attorney, the familiarity of the requested attorney with the issues and
18 witnesses in the case, the duplication of time and expense to the county of
19 appointing an attorney other than the requested attorney, and the timeliness of
20 the request. (*People v. Chavez* (1980) 26 Cal.3d 334, 346; *Harris v. Superior*
21 *Court, supra*, 19 Cal.3d at pp. 797-799.)
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1 **DECLARATION OF FAY ARFA**

2 I, Fay Arfa, declare:

3 That I am currently retained as the attorney of record for the defendant.

4 That I have been defendant's attorney for nearly a year.

5 That I have reviewed all the discovery, including several audio tapes and
6 police reports. I have also reviewed the police reports in connection with Ms.
7 Jones's prior felony conviction.

8 That there is a substantial issue involving whether the wounds to Kevin
9 Jones accidentally or intentionally inflicted.

10 That I have spent numerous hours studying the case and interviewing
11 witnesses.

12 That I have worked with my court appointed investigator who is also familiar
13 with the case.

14 That I have spent numerous hours investigating this case.

15 That I have spent numerous hours interviewing the defendant as well as
16 members of her family and other witnesses.

17 That I tried the case over a period of six days and I am familiar with the facts
18 and issues in the case.

19 That I have developed a special relationship of trust and respect with the
20 defendant and her family.

21 I declare, under penalty of perjury that the foregoing is true and correct to
22 the best of my knowledge.

23 Executed this March 10, 2003 at Los Angeles, California.

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25 _____
26 Fay Arfa, Attorney for Defendant
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DECLARATION OF JONES DOE

I, JONES DOE declare as follows:

That I am the defendant in the case.

That I am indigent and I have no money or assets.

That I would like Fay Arfa to be appointed to represent me in my case.

That Fay Arfa has been my attorney for about eight months, since July 2002.

That I feel safe and comfortable with Fay Arfa as my attorney.

That Fay Arfa has communicated with me regularly since and I have explained my case in detail to her.

That I trust Fay Arfa completely and I have developed a close bond with her.

That I feel that Fay Arfa understands my case and works for my best interests.

That I would feel very abandoned and afraid if Fay Arfa did not remain as my attorney.

That we have been working together on my defense for nearly eight months.

That Fay Arfa has helped me psychologically adjust to the mental strain and pressure of facing serious criminal charges and dealing with the criminal justice system.

Based on my relationship with Fay Arfa, I would not be able to place my confidence and trust in another attorney.

That I really want Fay Arfa to remain as my attorney. I declare, under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this th day of March 2002 at Hawthorne, California.

JONES DOE, DEFENDANT

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