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4 5	Attorney for Defendant JONES DOE	
6 7	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
8	FOR THE COUNTY OF LOS ANGELES	
9	THE PEOPLE OF THE STATE OF CALIFORNIA,	Case No
10 11	Plaintiff, v.) EX PARTE MOTION TO APPOINT COUNSEL (Pen. Code, § 987.2.)
12 13	JONES DOE, Defendant.	DATE: TIME: LOCATION:
14 15 16 17 18 19 20 21	PLEASE TAKE NOTICE, that on, 2010, at 8:30 a.m. or as soon as the matter can be heard in Department B of the court located at 11701 S. La Cienega Blvd., Los Angeles, CA 90045, the defendant will move the court to appoint Fay Arfa as defendant's attorney. This motion is based on the attached memorandum of points and authorities, and all evidence and other matters to be presented at the hearing. Dated: May 16, 2010	
22 23 24 25 26 27 28	FAY ARFA Attorney for Defend	lant
	1	
	EX PARTE MOTION TO APPOINT COUNSEL (Pen. Code, § 987.2.)	

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

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

Penal Code section 987.2 subdivision (d) provides:

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

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

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

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

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

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

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