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7 Attorney for Defendant,  
8 Martin Martinez

FILED  
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CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS  
BY *Cayse Aguilera* DEPUTY

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

10 The People of the State of California,

Case Number: 1490008

11 Plaintiff,

**NOTICE OF MOTION TO APPOINT  
COUNSEL PURSUANT TO HARRIS  
FOR ALL FURTHER  
PROCEEDINGS**

12 vs

13 Martin Martinez,

Date: 10-7-15  
Time: 8:30am  
Dept: 8

14 Defendant.

15 TO THE DISTRICT ATTORNEY OF STANISLAUS COUNTY:

16 PLEASE TAKE NOTICE that on October 7, 2015, at the hour of 8:30 a.m., or as soon  
17 thereafter as the matter may be heard in the courtroom Department 8 of the above-entitled court, the  
18 defendant will move for an order appointing his counsel (i.e. Stephen L. Foley) to represent the  
19 defendant at public expense pursuant to the provisions of Penal Code § 987.2 (a).

20 The motion will be made on the ground that the defendant's right to counsel under the Sixth  
21 Amendment of the United States Constitution requires such an appointment.

22 The motion will be based on this notice of motion, the attached declarations, the  
23 memorandum of points and authorities served and filed herewith, on all the papers and records on  
24 file in this action, and on such oral and documentary evidence as may be presented at the hearing of  
25 the motion.

26 Dated: October 2, 2015

27 *Stephen L. Foley*  
28 Stephen L. Foley,  
Attorney for Defendant

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**I.**  
**STATEMENT OF FACTS**

This matter arises from the unfortunate death of Christopher Ripley on October 1, 2014, as a result of brain injuries. Dr. Amanda Cruz was the mother of the child and Defendant, Mr. Martinez, was her boyfriend at the time of the incident.

Defendant first consulted his present counsel on October 1, 2014, and retained said counsel the following day, October 2, 2014. Counsel was retained through completion of the preliminary hearing. At this point, Defendant no longer has funds to retain counsel and is indigent. However, after over one year of continuous representation, Defendant wishes to continue being represented by his present counsel, Stephen L. Foley.

This is a complex murder case, for which counsel is qualified. He has represented many clients in complex murder cases in Stanislaus County courts from assignment through post-judgment motion practice. This matter involves complex issues related to neurological injuries, their possible causes, and potential results. Counsel has spent significant time researching and consulting with experts about these issues as they relate to this matter.

Additionally, counsel has interviewed nearly ten percipient, character, and professional witnesses regarding the incident and injuries to Christopher Ripley. Some of the percipient witnesses in this case have subsequently passed away. Further, extensive examination of police, percipient witnesses, and expert witnesses occurred prior to and during the preliminary hearing on this matter.

Defendant has also stated his desire that there be no waiver of his right to a speedy trial.

Assigning new counsel at this juncture would require an extensive duplication of time, effort, and expense, for which the taxpayers of this county will be responsible to pay.

**II.**  
**LEGAL BACKGROUND**

The defendant in a criminal matter has a Constitutional right to the assistance of counsel. Sixth Amendment, United States Constitution; Article 1, Section 15, California State Constitution.

If a defendant who desires counsel is unable to afford counsel, the court must assign counsel to represent the defendant at public expense. Penal Code § 987.2 (a).

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1 Penal Code § 987.2 permits the court, in its discretion, to appoint counsel who previously  
2 represented the defendant and was relieved. As the California Supreme Court stated in People v  
3 Ortiz ((1990) 51 Cal. 3d 975, at 989), "Section 987.2, however, offers no barrier to appointment of  
4 previously discharged counsel." At this point in Mr. Martinez case, although Stephen L. Foley is not  
5 discharged, he is not under contract to represent Mr. Martinez. Additionally, Mr. Martinez who is in  
6 custody on 5 million dollars bail, has no job or money to hire counsel to represent him in this matter.

7 Such an appointment is permitted even if the county has a public defender or contract-  
8 attorney arrangement for criminal defense services. Penal Code § 987.2 (d) provides that the court  
9 may depart from the appointment procedure for such public agencies or contract groups if the court  
10 determines that such a departure is "in the interest of justice" and makes a finding of good cause on  
11 the record.

12 Because of Stephen L. Foley's familiarity with the facts, discovery, persons, and experts in  
13 the present matter, such a departure is warranted.

14 **III.**  
15 **IT IS AN ABUSE OF DISCRETION TO FAIL TO APPOINT**  
16 **DEFENDANT'S CHOICE OF COUNSEL IF THAT COUNSEL**  
17 **HAS EXTENSIVE KNOWLEDGE AND EXPERIENCE**  
18 **RELATING TO THE CASE**

19 In assessing the appointment (or re-appointment) of counsel, the trial court can consider the  
20 subjective wishes of the Defendant and objective factors regarding counsel and the matter itself.  
21 Purely subjective issues, such as a defendant's preference for, trust of, or confidence in, a specific  
22 attorney is insufficient to warrant appointment of requested counsel. See Drumgo v. Superior Court  
23 (1973) 8 Cal. 3d 930.) But such factors can be considered when in conjunction with objective factors  
24 such as counsel's familiarity with the issues, evidence, and prior representation by counsel,  
25 qualification of counsel, support by new counsel, and costs and delays related to duplication of effort  
26 to familiarize new counsel with the case. (See Harris v. Superior Court of Alameda (1977) Cal.3d 19  
27 786.)

28 The trial court does not abuse its discretion by refusing to appoint a particular attorney named  
by the defendant as the defendant's choice for appointed counsel. (People v Daniels (1991) 52 Cal  
3d 815, at 845.) However, the court does abuse its discretion by refusing to appoint counsel who

1 "has extensive experience and knowledge relating to the charged crime." (People v Daniels, supra;  
2 Harris v Superior Court of Alameda County (1977) 19 Cal 3d 786, at 796-799.)

3 The reason for such a limitation on the court's discretion is firmly grounded in judicial  
4 economy. If previous counsel is not appointed, new counsel must spend the time and expense of  
5 acquainting himself or herself with the knowledge of the case already possessed by the previous  
6 counsel. Such a waste of time and money should be avoided.

7 As stated by the California Supreme Court in People v Ortiz ((1990) 51 Cal 3d 975, at 989):

8 [F]requently, as here, it may be a more efficient use of both time and money to appoint  
9 the attorney who represented the defendant in an earlier proceeding than to begin again  
10 with a new attorney.

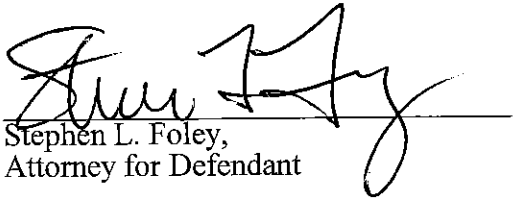
11 In the present matter, Defendant wishes to continue the representation of his counsel, Stephen  
12 L. Foley. This representation has continued for more than a year. Defendant trusts his counsel and  
13 has developed rapport that will assist in the defense of this matter. He is aware of his counsel's  
14 history and experience in criminal law.

15 Counsel has spent the last year conducting significant work on behalf of Defendant. He has  
16 interviewed a number of percipient and expert witnesses, as well as reviewed approximately 25 audio  
17 recordings of various types related to this matter. He has reviewed approximately 1000 pages of  
18 records relating to this matter, including police reports, medical records, and transcripts. He has also  
19 obtained significant knowledge regarding the complex nature of the injuries alleged and their  
20 potential causes. Further, he completed the preliminary hearing on behalf of the Defendant, with its  
21 concomitant insight into the witnesses, evidence, and potential strategies.

22 **IV.**  
**CONCLUSION**

23 Based on the foregoing discussion, the Defendant respectfully requests that this Court appoint  
24 present counsel, Stephen L. Foley, to represent Defendant for all future proceedings in this matter.

25 Dated: October 2, 2015

26   
27 Stephen L. Foley,  
28 Attorney for Defendant

1 Stephen L. Foley, CSB #177718  
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4 Attorney for Defendant,  
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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS  
7

8 The People of the State of California,  
9 Plaintiff,  
10

11 vs

12 Martin Martinez,  
13 Defendant.  
14

Case Number: 1490008

**DECLARATION IN SUPPORT OF  
MOTION TO APPOINT COUNSEL  
WHO IS ALREADY  
REPRESENTING DEFENDANT**

Date:  
Time:  
Dept:

15 I, Stephen L. Foley, declare:

- 16 1. I am the attorney for the defendant in the case number 1490008.
- 17 2. I am informed and believe the defendant is presently indigent and without the financial means  
18 to retain me as counsel.
- 19 3. I have represented the defendant from October 2, 2014, through the recent completion of the  
20 preliminary hearing, including:  
21 Investigation, Witness interviews, Medical research, Discovery, and  
22 the Preliminary Hearing.
- 23 4. I have extensive knowledge regarding the facts of this case in that:
  - 24 A) I have reviewed all the police reports and discovery which is  
over a thousand pages;
  - 25 B) I have viewed all of the photos taken by the Modesto Police  
Department;
  - 26 C) I have listened to approximately twenty five compact discs  
27 containing 911, dispatch, and witness recordings which were  
28 provided in this case;

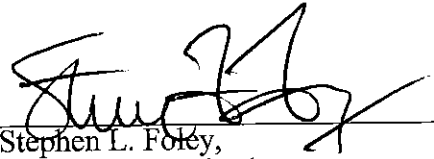
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- D) I have had interviewed by my investigator a number of percipient and expert witnesses to complete our investigation and decide what is the best way to present Mr. Martinez' defense in this case;
- E) I have interviewed Mr. Martinez on numerous occasions and conducted an extensive development of the facts and the defense of Mr. Martinez' case; and
- F) I have recently completed the preliminary hearing in this matter.

5. I have moved the court for an order allowing me to be appointed pursuant to Penal Code § 987.2.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed this 2<sup>nd</sup> day of October, 2015, at Modesto, California.

  
\_\_\_\_\_  
Stephen L. Foley,  
Attorney for Defendant

