

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	DATE FILED: June 2, 2020
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH, Defendant	
MEGAN A. RING, Colorado State Public Defender Kathryn Strobel (No. 42850) Deputy State Public Defender 30 E Pikes Peak Ave Suite 200 Colorado Springs, Colorado 80903 C. Colette LeBeau (No. 43164) Deputy State Public Defender 132 W B St #200 Pueblo, CO 81003 Phone (720) 475-1235 Fax (719) 7475-1476 E-mail: Kathryn.strobel@coloradodefenders.us Colette.LeBeau@coloradodefenders.us	Case No. 20CR1358 Division 15S Ctrm: S403
D-13 Response to the Court's Order (D-10) regarding Defense investigation	

Letecia Stauch, through counsel, files this response to the Court's order (D-10) issued on May 19, 2020 inquiring about the Defense's inability to conduct investigation in the case.

I. Procedural Background

1. On May 12, 2020, the Defense filed a motion to continue the preliminary hearing scheduled on June 5, 2020. The Defense cited the volume of discovery (19,902 pages of paper discovery and over 250 items of media discovery), the barriers in meeting with Ms. Stauch at the jail due to the COVID-19 virus and the El Paso County Sheriff's Office jail policy, and the inability to interview witnesses in Colorado and out of state due to the COVID-19 virus.
2. This Court's May 19, 2020 order continuing the preliminary hearing (D-10) states that Defense Counsel should be prepared to address their inability to travel to conduct investigation in Colorado and out of state due to "Stay at Home" orders and states that investigations can be conducted over the phone or by other electronic methods.

II. Attorneys at the Colorado Public Defenders Office must provide representation in accordance with the American Bar Association Standards.

3. By statute, the Colorado Public Defender must provide counsel in accordance with the American Bar Association Guidelines and provide services “commensurate” with retained counsel:

The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interests, provide legal services to indigent persons accused of crime that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado rules of professional conduct and with the American bar association standards relating to the administration of criminal justice, the defense function. § 21-1-101(1), (2020).

4. The American Bar Association (ABA) provides guidelines for Defense Counsel’s representation and performance in Death Penalty Cases. See “*ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*” (2003). These Guidelines apply in any circumstance in which a detainee of the government may face a possible death sentence, regardless of whether formal legal proceedings have been commenced or the prosecution has affirmatively indicated that the death penalty will be sought. *Id. at Guideline 1.1, History of Guidelines*. Defense Counsel must continue to treat the case as a capital case “until the imposition of the death penalty is no longer a legal possibility.” *Id. at cmt. to Guideline 10.2*.

5. Ms. Stauch is charged with two counts of murder in the first degree, class one felonies, child abuse resulting in death, a class two felony, tampering with a deceased human body, a class three felony, tampering with physical evidence, a class six felony, and eight crime of violence sentence enhancing counts. If Ms. Stauch is convicted of a class one felony, the punishment could be life imprisonment or death. C.R.S. §18-1.3-401(1)(a)(V)(A.1), (2020).

6. The Supreme Court has accepted the American Bar Association guidelines for determining what practices are “reasonable” under the Sixth Amendment’s guarantee of effective assistance of counsel in addressing defense counsel’s duties and minimum standards of practice in capital cases. *Wiggins v.*

Smith, 539 U.S. 510, 524 (2003). In addition, Colorado courts have relied on the ABA standards in assessing defense counsel's effectiveness. *Morse v. People*, 501 P.2d 1328, 1330 (Colo. 1972).

7. "Counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty." *ABA guidelines for Defense Counsel in death penalty cases guideline 10.7(A)*.

8. "...the defense lawyer's obligation includes not only finding, interviewing, and scrutinizing the backgrounds of potential prosecution witnesses, but also searching for any other potential witnesses who might challenge the prosecution's version of events, and subjecting all forensic evidence to rigorous independent scrutiny." *Id. at cmt. to Guideline 1.1*.

9. "...Barring exceptional circumstances, counsel should seek out and interview potential witnesses, including, but not limited to... (3) witnesses familiar with aspects of the client's life history that might affect the likelihood that client committed the charged offenses, and the degree of culpability for the offense including: (a) members of the client's immediate and extended family (b) neighbors, friends, and acquaintances who knew the client or his family, (c) former teachers, clergy, employers, co-workers, social service providers, and doctors, (d) correctional, probation, or parole officers; (4) members of the victim's family *Id. at cmt. to Guideline 10.7*.

III. In the instant case, the ABA guidelines require Defense Counsel to investigate sentencing issues early in their representation of Ms. Stauch.

10. In addition to Defense Counsel's trial investigation, the ABA guidelines require Defense Counsel to begin investigating mitigation immediately, "even before the prosecution has affirmatively indicated that it will seek the death penalty." *ABA Guideline for the Appointment and Performance of Defense Counsel in Death Penalty Cases cmt to Guideline 10.7*. The *ABA Criminal Justice Standards for the Defense Function, Standard 4-8.3(a)* (2017) also requires Counsel to begin investigating sentencing issues early in their representation. This duty requires Counsel to investigate the client's background. *Id.*

11. The mitigation investigation should begin as quickly as possible because it can affect the investigation of first phase defenses, the retention of experts and evaluations, motions practice, and potential plea negotiations. *ABA guideline for the Appointment and Performance of Defense Counsel in Death Penalty Cases cmt. to Guideline 10.7*. “The defense team must conduct an ongoing, exhaustive and independent investigation of every aspect of the client’s character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death.” *ABA Mitigation Supplement, Guideline 10.11(B) (2008)*.

12. To effectively carry out her duties, Defense counsel’s investigation requires counsel and team members to “conduct in-person, face-to-face, one-on-one interviews with the client, the client’s family, and other witnesses who are familiar with the client’s life, history, or family history or who would support a sentence less than death. Multiple interviews will be necessary to establish trust, elicit sensitive information and conduct a thorough and reliable life-history investigation. Team members must endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a capital sentencing proceeding.” *ABA Mitigation Supplement, Guideline 10.11(C)*. To do this effectively, a defense team must establish a rapport with the client and mitigation witnesses. This has not happened in Ms. Stauch’s case due to the COVID-19 virus and the stay at home order.

13. Pretrial mitigation investigation is a critical stage of proceedings guaranteeing a defendant facing potential capital punishment full and effective investigation into potential mitigation. *See Wiggins v. Smith*, 539 U.S. 510, 523-25 (2007). In *Wiggins*, defense counsel was ineffective because they did not conduct an adequate investigation of client’s life history and social history for mitigating evidence for the penalty phase. *Id.* at 534-535.

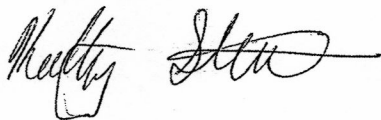
14. Under the Colorado Rules of Professional Conduct Rule 1.6(a), Confidentiality of Information, “a lawyer shall not reveal information relating to the representation of a client...” A comment to

this rule emphasizes that confidentiality is a fundamental principle in the client-lawyer relationship and contributes to the trust that is the hallmark of the relationship. *Colorado Rules of Professional Conduct Rule 1.6 cmt. 2* (2018). A lawyer is prohibited from revealing information relating to the representation of a client. *Id. at cmt. 4*. This prohibition applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. *Id.*

15. Thus, Defense Counsel is not able to provide any additional information about conducting investigation in Colorado, South Carolina, and Florida. The information included in this response is the extent to which Counsel may ethically disclose regarding the status of the Defense's investigation or strategy in the case. The guidelines stated above from the American Bar Association outline Defense Counsel's requirement to conduct in-person interviews that Counsel has not been able to conduct due to the COVID-19 virus and the stay at home orders.

Wherefore, Ms. Stauch files this response to the Court's D-10 order that requests that Defense Counsel address the claims about their inability to conduct investigation in Colorado and out of state. Ms. Stauch, through Counsel, files this motion pursuant to the Due Process Clause, the Right to a Fair Trial, and the right to effective assistance of Counsel, under the United States Constitution Fifth, Sixth, and Fourteenth Amendments and the Colorado Constitution article II, sections sixteen and twenty-five.

RESPECTFULLY SUBMITTED,



/ _____
Kathryn Strobel (No. 42850)
Deputy State Public Defender



/ _____
C. Colette LeBeau (No. 43164)
Deputy State Public Defender

Dated: June 4, 2020