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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed AUG 12 2013 CLERK OF THE COMBINED COURTS ARAPAHOE COUNTY, COLORADO σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 26
MOTION FOR EXTENSION OF TIME TO FILE CAPITAL MOTIONS [D-140]	

CERTIFICATE OF CONFERRAL

The defense has conferred with the prosecution and they have responded that they do not object to the request for additional time, as long as they have a commensurate extension to file replies for the motions that are filed after the original deadline.

James Holmes, through counsel, hereby moves to extend the deadline to file capital motions from August 16, 2013 until August 30, 2013. In support of this motion, he states the following:

1. This Court originally set a deadline of September 27, 2013, for the filing of capital motions in this case. On June 25, 2013, to accommodate the needs of the Colorado Mental Health Institute at Pueblo, which is conducting a sanity examination of Mr. Holmes, the Court rearranged a number of court dates and deadlines in this case, and accelerated the deadline for capital motions to August 16, 2013. Counsel expressed concern over their ability to complete these motions within the scheduled time frame at that time, and the Court informed counsel that if they required more time they should notify the Court.

2. As explained in D-139, counsel have been working as quickly and as diligently as possible to complete as many capital motions as possible by the Court's revised deadline of August 16, 2013 but will be unable to complete all of the capital motions they intend to file in this case by that date.

3. This is a complex and extremely large capital case. Counsel have an explicit duty

pursuant to the Sixth Amendment and sections 16 and 25 of the Colorado Constitution to provide Mr. Holmes with the effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Rodriguez*, 914 P.2d 230, 294 (Colo. 1996) (“A defendant’s right to effective assistance of counsel is guaranteed by the United States and Colorado Constitutions.”); see also ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, commentary, rev. ed. 2003 (“Because of the possibility that the client will be sentenced to death, counsel must be significantly more vigilant about litigating all potential issues at all levels in a capital case than in any other case.”).

4. Moreover, pursuant to ABA Guideline for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, counsel must “consider all legal claims potentially available; and thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and evaluate each potential claim in light of the unique characteristics of death penalty law and practice and . . . [among other things] the importance of protecting the client’s rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited.”

5. As noted in the preceding paragraph, filing these capital motions is not as simple as sitting down and drafting them. It takes a significant amount of time to thoughtfully consider and thoroughly research all potential capital issues in this case and to evaluate how best to litigate those issues. It then takes an additional amount of time to draft the motions themselves. Nothing about the capital trial process can be rushed or performed in a perfunctory, pro forma manner. All of this time is necessary in order for counsel to perform these duties and obligations in a constitutionally satisfactory manner and to give these matters the serious, thoughtful attention they deserve. The constitutional issues implicated in these pleadings could not be more important. These capital motions, by their very definition, address issues that are literally life and death matters for Mr. Holmes. See, e.g., U.S. Const. amends. IV, V, VI, VIII, XIV; Colo. Const. art. II, §§ 7, 16, 18, 20, 23, 25.

6. An extension of time until August 30, 2013 is further necessitated by the heightened reliability this Court is required to provide at all phases of this capital case. While the parties have disputed the application of this heightened standard to other issues that have arisen, there is no question that this heightened standard applies to all issues that involve the penalty proceeding in this case. See, e.g., *Beck v. Alabama*, 447 U.S. 625, 637 (1980) (risk of unreliable conviction “cannot be tolerated” in case where defendant’s life is at stake); *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977); *People v. Young*, 814 P.2d 834, 846 (Colo. 1991); *People v. Rodriguez*, 786 P.2d 1079 (Colo. 1989).

7. For these reasons, counsel respectfully request that this Court allow them until August 30, 2013 to file capital motions in this case.

8. Finally, counsel reiterate that while they expect to be able to file the capital motions that they believe they need to file at this point in the proceedings by August 30, 2013, it is all but certain that they will need to file additional motions beyond the deadlines that have been heretofore imposed by the Court as the case progresses, including after receiving the anticipated report from CMHIP.


Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



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Dated: August 12, 2013

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ORDER RE: MOTION FOR EXTENSION OF TIME TO FILE CAPITAL MOTIONS [D-140]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ JUDGE

_____ Dated

I hereby certify that on August 12, 2013, I

mailed, via the United States Mail,

faxed, or

hand-delivered

a true and correct copy of the above and foregoing document to:

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