

DECLARATION OF KEVIN McNALLY REGARDING THE WITHDRAWAL OF THE AUTHORIZATION DUE TO CONCERNS REGARDING RELATIVE CULPABILITY

1. I currently serve as the Director of the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Office of Defender Services of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases.¹

3. In order to carry out the duties entrusted to us, I maintain a comprehensive list of federal death penalty prosecutions and information regarding Criminal Justice Act appropriations in these cases. I accomplish this by reviewing dockets and by downloading and obtaining indictments, pleadings of substance (including sealed documents), notices of intent to seek or not seek the death penalty, and by telephonic or in-person interviews with experts, defense counsel or consultation with chambers. This information is regularly updated, and is checked for accuracy with defense counsel. The Project's information regarding federal capital prosecutions has been

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report "urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases" *Id.* at 50.

relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

4. The following cases have had authorization withdrawn due to concerns regarding relative culpability: *United States v. Kevin Wyrick* (W.D. MO CR No. 94-00194-01-12-CR-W-9) and *United States v. Aaron Demarco Foster* (D. MD CR No. 02-CR-410-ALL).

5. The information detailed herein is maintained in the ordinary course of business of the Federal Death Penalty Resource Counsel Project, was not prepared in anticipation of its being used in litigation, and is accurate to the best of my knowledge, ability and belief.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this ____ day of _____, 2007.

Kevin McNally

x:\rcp starter kit pre-NOI materials\litigation guides\mitigation\declarations\dp withdrawn relative culpability.wpd