CAUSE NO. 103083

CITY OF MEADOWS	X	IN THE CITY OF MEADOWS
V.S.	X	MUNICIPAL COURT NUMBER 1
Barbara Ann Martin Alleged Accused.	X	FORT BEND COUNTY, TEXAS

RESPONDENT'S MOTION
FOR RIGHT TO CHOICE OF COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

1. This Motion and Memorandum of Law seeks the Courts recognition of Respondents choice of Counsel, CLIFFORD F. WILLIAM, J.D., as secured to respondent by the Unalienable / Inalienable Sixth Article of the Bill of Rights 1791, and in amendment to the United States Constitution 1789.

2. The terms "attorney" and "assistance ~~to~~ of counsel" are Common Law terms and: "It has been held, and is undoubtedly the law, that where common law phrases are used in an indictment of information, such phrases must have common law interpretation." Chapman vs. People, 39 Mich. 357-359; in re richter (D.C.) 100 Fed, 295-297. (1878) oct. term

3. The meaning of the Common Law terms is quite clear and the term "Assistance of Counsel" does not necessarily mean that "Counsel" will be a licensed attorney. Certainly a licensed attorney may be a counselor, but all counselors may not be licensed attorneys. "Barristers or counselors-at -law, in England, were never

called or appointed by the courts at Westminster, but were called to the bar by the inns of the court." Cooper's Case, 22 N.Y. 67, 90. (1860) Apl 7.

4. "They are voluntary societies,....." King vs. Benchers of Gray's Inn "Of advocates, or (as we generally call them) counsel, there are two species.....; barristers and serjeants... serjeants and barristers indiscriminately...may take upon them the protection and defense of any suitors, whether plaintiff of defendant; who are therefore called their clients, like the defendants upon the ancient Roman orators. Those indeed practiced gratis, for honor merely, or at most for the sake of gaining influence; and so likewise it is established that a counsel can maintain no action for his fees; which are given, not as 'location vel conduction, but as guiddam honorarium; not as salary or hire, but as a mere gratuity...' " 3 BL. Com. 26-29 "In early times, personal communication between counsel and client 'was necessary'; for there were no attorneys..." It was not until after the statutes of Merton (20 H. III, c. 10), Westminster (3 E. I, c. 33), and Gloucester (6 E. I, c. 1), that suitors were allowed to appear at pleasure by attorneys. The counselor was for many centuries the only person known as a 'lawyer' " Kennedy vs. Broun, 13 C. B. N. S. 667, 698. "Physicians and counsel usually perform their duties without having a legal title to remuneration. Such has been the general understanding." - 12 Law J. Rep. (N.S.) QB 13. Veitch vs. Russell, 3 A., E. N. S. 928, 936. Attorneys are responsible to their clients for negligence or unskillfulness; but no action lies against the counsel for his acts, if done bona fide for his clients. In this respect therefore, the counsel stands in a different position from the attorney." Swinfen vs. Swinfel, 1 C. B. N. S. 364,

403." An advocate at the English bar, accepting a brief in the usual way, undertakes a duty, but does not enter into any contract or promise, express or implied. Cases may indeed occur where on an express promise (if he made one) he would be liable in assumpsit; but we think a barrister is to be considered, not as making a contract with his client, but as taking upon himself an office or duty, in the proper discharge of which not merely the client, but the court in which the duty is to be performed, and the public at large, have an interest.... A counsel has complete authority over the suit, the mode of conducting it, and all that is incident to it. No action will lie against counsel for any act honestly done in the conduct or management of the cause." Swinfen vs. Chelmsford, 5 H. & N. 890, 920, 922, 923.

5. English attorneys-at-law (called solicitors since the judicature act of 1873 took effect) were not members of the bar, and were not heard in the superior courts, and the power of admitting them to practice and striking them off the roll had not been given to the inns of the court. That part of the profession which is carried on by attorneys is liberal and reputable, as well ~~as an attorney~~ useful to the public when they conduct themselves with honesty and integrity. Yet no one will say that a counsel who has been mistaken shall be charged with the debt. The counsel, indeed, is honorary in his advise, and does not demand a fee: The attorney may demand a compensation, but neither of them ought to be charged with the debt for a mistake." Pitt vs. Yalden, 4 Burr. 2,060, 2,061. "An attorney-at-law.... is one who is put in the place, stead, or turn of another, to manage his matters of law. Formerly every suitor was obliged to appear in person, to prosecute or defend his

suit, ... unless by special license under the King's letters-patent... But... it is now permitted in general. By drivers ancient statutes, whereof the first is statute Westm. 3, c. 10, that attorneys may be made to prosecute of defend any action... These attorneys are now formed into a regular corps; they are admitted to the execution of their office by the superior courts of Westminster Hall, and are in all points officers of the respective courts of which they are admitted.... No man can practice as an attorney in any of those courts, but such as is admitted and sworn an attorney of that particular court: An attorney of the court of king's bench cannot practice in the courts of common pleas; nor vice versa. To practice in the court of chancery, it is also necessary to be admitted a solicitor therein. " 3 Bl. Com. 25, 26. " Attorney in English law, signifies, in its widest sense, any substitute of agent appointed to act in 'the turn, stead, or place of another.' The term is now commonly confined to a class of qualified agents who undertake the conduct of legal proceedings for their clients. By the common law the actual presence of the parties to a suit was considered indispensable, but the privilege of appearing by attorney was conceded in certain cases by special dispensation, until the statute of Merton and subsequent enactment's made if competent for both parties in all judicial proceedings to appear by attorney.

6. Solicitors appear to have been at first distinguished from attorneys, as not having the attorney's power to bind their principles, but latterly the distinction has been between attorneys as the agents form ally appointed in actions at law, and solicitors who take care of proceedings in parliament, chancery, privy council, etc. In practice, however, and in ordinary language, the terms are synonymous... The

qualification necessary for admission on the rolls of attorneys and solicitors are fixed by statute. "They may act as advocates in certain of the inferior courts. Conveyancing, formerly considered the exclusive business of the bar, is now often performed by attorneys. Barristers are understood to require the intervention of an attorney in all cases that come before them professionally, although in criminal cases the prisoner not infrequently engages a counsel directly by giving him a fee in open court." 3 Enc. Brit. 62; also see Co. Lit. 51 b, 52 a.

7. The intent of our founding fathers was pretty clear and it is also axiomatic in law that it is the intent of lawmakers that is law; not the interpretations of others. " The intention of the lawmaker constitutes the law." Stewart vs. Kahn, 11 Wall, 78 U.S. 493, 504 "As the meaning of the lawmaker is the law, so the meaning of the contracting parties is the agreement." Whitney vs. Wyman, 11 Otto, 101 U.S. 392 at 396

8. It has been repeatedly upheld in the courts that: "The framers of the statute are presumed to know and understand the meaning of the words used, and where the language used is clear and free from ambiguity, and not in conflict with other parts of the same act, the courts must assume the legislative intent to what the plain meaning of the words used import." First National Bank vs. United States, 38 F (2^{nd}) 925 at 931 (March 3, 1930). " A legislative act is to be interpreted according to the intention of the legislature, apparent upon its face. Every technical rule, as to the construction or force of particular terms, must yield to the

clear expression of the paramount will of the legislature." 2 Pet. 662 "The intention of the legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding." 4 Dall 14 "The intention of the law maker constitutes the law." U.S. vs. Freeman, 3 HOW 565; U.S. vs. Babbit, 1 Black 61; Slater vs. Cave, 3 Ohio State 80.

9. Then, what was the intent of our founding fathers? Our founding fathers wrote the Constitution in plain, simple language and used words that everyone of that day could understand. The Constitution was also written with common words to insure that all of the people could understand its meaning. Otherwise, there was no way the people would submit themselves to it. Hadn't they just rid themselves of a tyrant King.

10. Therefore, each word was chosen very carefully and we need only understand the meaning of the words used in those days. In referring to the American Dictionary of the English Language, First Edition, Noah Webster, 1825, are the following definitions: "COUNSEL, n.... which is probably from the Heb... Those who give counsel in law; any counselor or advocate, or any number of counselors, barristers, or serjeants; as the plaintiff's counsel, or the defendant's counsel...." We need to remember that many of the authors of the Constitution were members of the legal profession and isn't it interesting that Webster's definition clearly "*OMITS*" any reference to "lawyer" or "attorney" as being

"counsel." Whatever "COUNSEL" is, counsel can represent both a plaintiff and a defendant.

11. The word advocate was defined as: "ADVOCATE", n.... To call for, to plead for;.... In English and American courts, advocates are the same as counsel, or counselors...." American Dictionary of the English Language, First Edition, Noah Webster, 1825.

12. The word Barrister was defined as: "BARRISTER", n. (from bar) A counselor, learned in the laws, qualified and admitted to plead at the bar, and to take upon him the defense of clients;..." American Dictionary of the English Language, First Edition, Noah Webster, 1825.

13. In neither definition are there any references to "lawyers" or "attorneys." Nor is anything specifically mentioned about qualification other than "learned in the laws," and "qualified." Nothing is Mentioned about being approved by the Supreme Court nor any other agency or entity.

14. The word attorney was defined as: "ATTORNEY, n. One who takes the turn or place of another...One who is appointed or admitted in the place of another, to manage his matters in law. The word formerly signified any person who did business for another;... The word answers to the procurator, (proctor) of the civilians..." "Attorneys are not admitted to practice in courts, until examined, approved, licensed and sworn by direction of some court; after which they are proper officers of the court."

15. It is important to notice that attorney could act "FOR" or "IN PLACE OF" an individual. Whereas counselors were restricted to "PLEADING FOR" and

"GIVING" of "ADVICE AND COUNSEL" in the presence of the accused or client. Counselors had no authority to "ACT FOR" of "IN PLACE OF" any client.

16. In those days it was commonplace to handle one's own case, thereby, acting (In Propria Personal) in one's behalf in court. However the court room is an awesome and lonely place when everyone else in the room is a member of the court. Whenever desired, the accused or the plaintiff could have a friend in the court—A counselor. A friendly person who could and would "SPEAK FOR HIM" OR "ADVISE HIM" in court proceedings and matters of law.

17. Counselors were persons who took pride in their knowledge of the law and used it to the good of the people. They were advisors of the people and, as such, may or may not have been able to collect fee for their services. Under the Common Law, they could charge for their services but could not use the force of law to collect a fee.

18. Attorneys, on the other hand, were agents of the court, an "officer of the court," who could be "appointed or admitted in place of another to manage his matters in law." Attorneys were schooled in the law, "examined, approved, licensed and sworn, by the direction of some court." As such, they could charge for their services and demand payment under force of law.

19. Without doubt, our founding fathers knew well the meaning of the word "COUNSEL," and they used that word so the people would be "FREE" to choose counsel of their choice, who may be an attorney. It has only been the rulings of the monopolistic American jurisprudence system that has continuously denied individuals the RIGHT of "ASSISTANCE OF COUNSEL" to the American public.

20. It has long been recognized under the Common Law that attorneys were different from "counselors." The New York Code recognized the words as having different meanings as it states:"...by an attorney, solicitor, "OR" counselor, or ..."NY Code, 4th Ed. Rev., 1885, Article 179, Page 272 In title 10, Article 303, page 465, I find the same usage as it stated: "... the right of a party to agree with an attorney, solicitor, "OR" counsel..." (Emp. Added)

21. This usage clearly upholds the Common Law meanings as the words solicitor, attorney, are separated by a comma and attorney, solicitor are separated from counselor by the conjunction "OR".

22. In the rules of the Supreme Court of New York, it stated:"...shall be alleged, or by his attorney, OR counsel." Rules of Procedure, 1855, Supreme Court of New York, Rule 37, page 666.

23. And in a footnote (same page):"...by the parties "OR" their attorney "OR" counsel..."

24. On a trial before Pollock, C.B., it stated: "...The plaintiff, who was in custody, did not appear by either counsel "OR' attorney, "OR" in person;..." Corbett V Hudson (Emp. Added)

25. From the Rules of Procedure in the Supreme Court of Pennsylvania comes the following:"... That counselors shall not practice as attorney, not attorneys as counselors in this court." Rules of Procedure, February term, 1790

26. The Supreme Court of the United States recognizes that there were separate functions and responsibilities for "attorneys" and "counselors" as the two different rolls were maintained by the court. "His name should be taken from the

roll of attorneys, and placed on the list of counselors." Ex Parte Hallowell, 3 Dal 411, Feb. 1799

27. The usage of these words clearly separates functions and responsibilities of attorneys from counselors.

28. Interestingly enough, when Idaho was founded, the state's founding fathers also recognized the Common Law, and therefore they understood the language and meaning of the Common Law when they wrote: "The Common Law of England, so far as it is not repugnant to, or inconsistent with the Constitution or laws of the United States, in all cases not provided for in these Revised Statutes, is the rule and decision in all the courts of this Territory." Idaho Revised Statutes, 1887, Section 18, Page 63.

29. The Revised Statutes do provide that: "If any person shall practice law in any court, except a Justice Court, without having received a license as attorney and counselor, he is guilty of a contempt of court." Idaho Revised Statutes, 1887, Title IV, Section 3996, page 430.

30. The question now becomes, does this statute apply to criminal or civil cases or both and to whom does it apply? Therefore, in Common Law criminal cases, there is no written Law. The Law is then void, and where the Law is void there can be no arbitrary rule making by any court that can deny an accused the right to "assistance of counsel" of his choice. "Under both our Federal and State Constitutions, a defendant has the right to defend in person or by COUNSEL of his own choosing," People v Price, 262 N.Y. 410, 412, 187 N.E. 298, 299 "This fundamental right is denied to a defendant unless he gets reasonable time and a fair

opportunity to secure counsel of his own choice and, with that counsel's assistance, to prepare for trial." People v McLaughlin, 53 N.E. 2d Series 356, 357 "Justice requires that a party should be permitted to conduct his cause in person (subject to reasonable requirements of propriety), or by any agent of good character, and that the test of the agent's character should not be so rigorously applied as to imperil the constitutional right to a fair trial." Concord Mfg. Co., v Robertson, ante, pp. 1,6,7; State v Saunders, ante, pp. 39, 72, 73 :It is the responsibility of the court to insure that the court indulge every reasonable presumption against the waiver of fundamental rights." Aetna Ins. Co. v Kennedy, 301 US 389: Ohio Bell Tel. V Public Util. Comm., 301 US 292 "Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused." Glasser v US, 315 US 68, 70

31. The trial court must protect the right of an accused to have the assistance of counsel. "This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.: Johnson v Zerbst, 304 US 458, 465

32. The constitutional right of Assistance to Counsel is not qualified to only someone who has received a license from some supreme court or other alleged authority. The Constitution says absolutely nothing about a "licensed attorney." But simply says: "In all criminal prosecutions, the accused shall enjoy the right ...to

have Assistance of Counsel for his defense." United States Constitution, Bill of Rights, Article VI.

33. Since the United States Constitution was ordained and established by the people for their protection, not for the protection of a legal society, and since it may not be superseded or amended by any act of Congress or by any other "law" of this or any other state, this defendant demands the right to exercise such right, and will choose either Counsel or Co-counsel, or both, to help him with his defense.

34. The language of the Sixth Amendment quoted above is quite clear, unambiguous, and is very precise, and the men who were responsible for its form, very learned and skilled in the Law, and in fact, many were attorneys. Therefore, the conspicuous lack of the words "attorney" or "attorney-at-law" is notable indeed!

35. While the Bill of Rights was being debated and argued, the same members of Congress were in the process of passing the First Judiciary Act of September 24, 1789. The very same day the President signed this bill, the House and Senate were finally coming to an agreement on the express and explicit language and form of the Bill of Rights. Therefore, their meanings are to be compatible. Williams v Florida, 399 US 78; 90 S. Ct. 1895, 1904. Therefore, it is absolutely clear that the explicit language and form of the First Judiciary Act states in part: "Sec. 35. And be it further enacted, That in all the courts in the United States, the parties may plead and manage their own causes personally OR by the assistance of such counsel OR attorneys at law as by the rules of the said courts respectfully shall be permitted to manage and conduct causes therein." First Congress, Session I, Chapter 20, Page 20. Also Section 30, page 89, also refers to

counsel as:"...not being of counsel or attorney to either of the parties..." It is the individual who has the absolute Constitutional RIGHT to "ASSISTANCE OF COUNSEL" under the Sixth Amendment and it is the "Will of the Sovereign People" who reign supreme---not the courts! Numerous court cases support the individual's right to counsel. Some are: "The fundamental right of the accused to representation by counsel must not be denied or unreasonably restricted." Poindexter v. State, 191 S.W. 2d 445. "While the Constitution guarantees to a defendant in a criminal case, the right to be heard by counsel., it also allows him to be heard "by himself and where he elects to appear for himself rather than by an attorney, he cannot be compelled to employ counsel, or to accept services assigned by the court." People V. Shapirio, 188 Misc 363. Defendant, in this case, has certainly made a timely and proper demand for "COUNSEL OF CHOICE" ---not necessarily a licensed attorney recognized by the Court. Since one cannot be compelled to accept an assigned attorney, the individual has the basic unalienable right to select "COUNSEL" from among any one he chooses, because:

36. "The right of counsel is not formal but substantial." Snell v. U.S., 174 F. 2d 580, US ex rel; Mitchell v. Thompson, (DC-NY), 56 F. Supp 683; Johnson V. U.S., 71 App DC 400, 110 F. 2d 562. This defendant claims and demands the "RIGHT' to Assistance of Counsel" as imperative, necessary, essential, and the prerequisite to a proper defense of his life, liberty, and property that have been endangered by the fruitful, however unlawful, apprehension and restraint of said defendant. The "RIGHT" to "Assistance of Counsel" may not be limited to any condition, because: "...it is one of the fundamental rights of life and liberty."

Robinson v. Johnson, (DC-CAL) 50 F. Supp 774. And finally, "The right to effective "Assistance of Counsel" in a criminal proceeding guaranteed by this amendment is a basic and fundamental right secured to every person by the Due Process Clause of the Fourteenth Amendment." Armine V. Times, (CCA 10), 131 F. 2d 827. This defendant has the "RIGHT" of the people as defined in the "Will of the Sovereign People's" Constitution, this defendant here and now asserts his "RIGHT" and takes it back. No governmental entity was ever properly given power or authority, by the "Will of the Sovereign People", to take such a "RIGHT" away. Inasmuch as Defendant believes and knows he cannot receive proper, fair, effective, and conscientious representation from a licensed member of the bar and officer of this court that is trying this Defendant, and because it has become apparent to this Defendant that attorneys neither care to understand nor defend Christian Common Law, nor that which they have sworn a hallowed oath to uphold --- The Constitution of the United States, and therefore; this Defendant must refrain from using, nor can he be forced to use, against his will, a so-called "licensed attorney" because: "If the state should deprive a person the benefit of counsel, it would not be due process of law." Powel v. Alabama, 287 U.S. 45, 70.

37. And, "If this requirement of the Sixth Amendment is not complied with the court no longer has jurisdiction to proceed." Johnson v. Zerbst, 304 U.S. 458 468.

WHEREFORE, Plaintiff and Counsel respectfully request that her choice of Counsel, CLIFFORD F. WILLIAM, J.D., as secured to plaintiff by the Unalienable / Inalienable Sixth Article of the Bill of Rights 1791, and in amendment to the United States Constitution 1789, be granted .

Respectfully Submitted,

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AFFIDAVIT

STATE OF TEXAS {}

COUNTY OF FORT BEND {}

TO THE HONORABLE JUDGE OF SAID COURT:

My name is Barbara Ann Martin. I am over 18 years of age, and my place of abode is 23rd Judicial District, 12906 West Bellfort, Houston, Fort Bend County, Texas U.S.A. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein.

I fully understand that I have a Right to my choice of counsel, in accordance with the Constitution. Therefore, I am hereby evoking that Right and I hereby choose Clifford William, J.D. as my counsel, because I know he is well qualified. I am aware of his educational background and experience and I fully understand that he is not a member of the State Bar of Texas. I absolutely refuse to have an attorney who is a member of the Texas State Bar because:

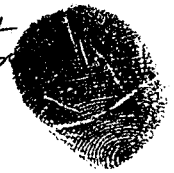
1. I know the Texas State Bar is unconstitutional
2. I know the Texas State Bar is not an agency of the government.
3. I know the Texas State Bar is a Corporation.
4. I know the Texas State Bar is not a Public Corporation.

5. I know that a vast majority of the public cannot afford to hire attorneys who are members of the Texas State Bar.

FURTHER AFFIANT SAITH NOT.

Subscribed, sealed and affirmed this 22nd day of June, in the year of our Lord and Savior, Nineteen Hundred and Ninety Eight, in the County of Fort Bend, State of Texas, U.S.A.

Barbara Ann Martin



Barbara Ann Martin
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Ph: 281-495-4539

We, the undersigned, witness this day that the one known to us to be the above signator did personally appear before us in the County of Fort Bend, and upon affirmation did execute and affix the above signature and seal hereto.

Betty Preston, a Citizen of the State of Texas
Betty Preston
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Glenn Washburn II, a Citizen of the State of Texas
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CERTIFICATE OF SERVICE

My signature below certifies that on this 23rd day of June, 1998, a true copy of the foregoing Motion to Substitute Attorney was served by certified mail, facsimile or hand delivery to Firman Hickey, Prosecutor for City of Meadows Municipal Court Number 1, One Troyan Drive, Meadows Place, Texas 77477

By:

Clifford F. William — Signed with permission by Barbara Ann Martin

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