

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)	CRIMINAL NUMBER FE-2017-1245
VERSUS)	
DARWIN MARTINEZ TORRES)	INDICTMENT - CAPITAL MURDER

**ORDER WITH REGARD TO DEFENDANT'S MOTION FOR LEAVE TO FILE
INVOICES UNDER SEAL (DEFENSE MOTION #7)**

Before the Court is the Defendant's Motion for Leave to File Invoices Under Seal. The Court heard argument on the motion on December 14, 2017 and took the matter under advisement. Upon review of the motion and opposition, and after consideration of the applicable authority, the Motion is GRANTED in part and DENIED in part.

Invoices – specifically, Form DC-40 “List of Allowances” – are typically submitted following the conclusion of a trial. However, in a capital case, monthly submissions are authorized by statute. See Virginia Code Section 19.2-163, which provides, in pertinent part, that “[c]ounsel representing a defendant charged with a Class 1 felony ... may submit to the court, on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month.” Such statements must be accompanied by “a detailed accounting of the time expended for that representation.” *Id.* In the usual case, these detailed statements are submitted along with the Form DC-40 after the case has concluded. In the instant case, however, the detailed statements will be submitted while the case is still pending and before the case is actually tried. Defense counsel has articulated a concern that the detailed statements will reveal both attorney-client privileged material and work product privileged material. In order to protect against disclosure of confidential information during the pendency of this proceeding, defense counsel seeks the following relief: Defendant “requests that this Honorable Court issue an Order permitting DC-40 forms, invoices, and related materials submitted by Mr. Martinez Torres’s counsel and members of his defense team to be filed under seal and to remain under seal until completion of the case.” While the Court understands the Defendant’s concern with regard to supporting documents, the Court does not agree that the

DC-40 forms themselves need to be filed under seal. Therefore, the Court issues the following instructions with regard to the Defendant's periodic submissions:

- (1) The DC-40 Forms shall not be filed under seal, with one exception. That exception is in the event that the DC-40 Form is submitted by an expert appointed by the Court pursuant to the *ex parte* provisions of 19.2-264.4:1.3.
- (2) The "detailed accounting" submitted in support of the DC-40 Forms, including invoices for trial counsel, investigators, and appointed experts and mitigation specialists, may be filed under seal, but only if the submission is made prior to the entry of the Final Order.
- (3) All material authorized to be sealed pursuant to this ORDER shall be unsealed upon entry of the Final Order.

SO ORDERED, this 3 day of January, 2018.


JUDGE RANDY I. BELLOWS