

## RESOLUTION 05-01-2021

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 730, to read as follows:

1 § 730  
2 When it appears to the court, at any time before or during the trial of an action, that  
3 expert evidence is or may be required by the court or by any party to the action, the court on its  
4 own motion or on motion of any party may appoint one or more experts to investigate, to render  
5 a report as may be ordered by the court, and to testify as an expert at the trial of the action  
6 relative to the fact or matter as to which the expert evidence is or may be required. The court  
7 may fix the compensation for these services, if any, rendered by any person appointed under this  
8 section, in addition to any service as a witness, at the amount as seems reasonable to the  
9 court. When an indigent criminal defendant moves the court for appointment of an expert, the  
10 fact that a motion has been made or that an order has been issued is confidential and shall be  
11 sealed by the court upon the request of the defense without having to comply with the procedure  
12 contained in Rules of Court 2.551. Any hearing to be held on an indigent criminal defendant's  
13 motion shall be ex parte, in camera, and the transcript of the proceeding shall be sealed.  
14 Nothing in this section shall be construed to permit a person to perform any act for which  
15 a license is required unless the person holds the appropriate license to lawfully perform that act.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Los Angeles County Bar Association

### STATEMENT OF REASONS

The Problem (including Existing Law): Indigent defendants are entitled to effective assistance of counsel, which includes appointment of confidential experts to assist in their defense. (*Torres v. Municipal Court* (1975) 50 Cal.App.3d 778, 783-4.) In order for the court to cover the cost of such an expert, the defense must make an adequate showing to the judge. Historically, this showing was made by way of a motion filed ex parte and under seal, which the judge would either grant or deny. In either case, the prosecution was not given notice of the request for the expert.

Recently, judges have begun citing California Rule of Court 2.551 which has various requirements for filing documents under seal. One of the requirements is that all of the parties receive notice of the request for sealing. This forces indigent defendants to reveal aspects of their defense to the prosecution. Not only does that violate the work product privilege, it violates equal protection. It results in indigent defendants being forced to choose between effective assistance of counsel and the confidentiality of defense strategy, when wealthy defendants – who pay for expert assistance on their own – do not.

The Solution: This clarifies that defense expert appointment motions are confidential, and states explicitly that California Rules of Court 2.551 does not apply.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known

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