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**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE**
**TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

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| **CHRISTA GAIL PIKE,** | ) | |
| | ) | |
| **Plaintiff,** | ) | **CAPITAL CASE** |
| | ) | |
| **v.** | ) | |
| | ) | |
| **JONATHAN SKRMETTI, *et al.*** | ) | **No. 26-0027-III** |
| | ) | |
| | ) | **Chancellor Myles** |
| **Defendants.** | ) | |
| | ) | |

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**MOTION TO COMPEL COUNSEL ACCESS**

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The Plaintiff, Christa Gail Pike, moves this Court for an order compelling the Tennessee Department of Correction (TDOC) to permit the experts retained by her legal team to meet with her without an "attorney of record" present. TDOC has no legal or policy basis to dictate how Christa's counsel conducts her representation, which experts counsel engages to assist with that work, or how counsel delegates tasks within the legal team. TDOC's new policy that a lawyer personally accompany every expert—a requirement found nowhere in its written policies and imposed arbitrarily—directly obstructs counsel's ability to prepare this litigation, including the amended complaint due January 27, 2027.

## Relevant Facts

Less than two months ago, the State of Tennessee tortured Christa Gail Pike by injecting her with two lethal doses of pentobarbital (10g total). The full extent of her injuries is still unknown. To fulfill counsel's obligations in this capital case, and to prepare the litigation pending before this Court, Christa's legal team has engaged two experts to date.[1] Both work at the direction of counsel, as members of the legal team, to assist counsel with legal work.

Dr. Patti van Eys is a clinical psychologist with specialties in complex trauma. Counsel retained Dr. van Eys as a consulting expert to assist counsel in assessing Christa's condition for its effects on her legal position and to report to counsel on those matters. Dr. Kate Porterfield is a clinical psychologist with expertise in torture and trauma. Counsel retained Dr. Porterfield to evaluate Christa in preparing this litigation. Both work under counsel's direction, and their work is protected by the attorney-client privilege and work product doctrine. Counsel has not and need not determine whether either of these experts will testify.

TDOC approved three visits between Christa and Dr. van Eys without counsel present. Then, on November 9, 2026, TDOC informed counsel that any future visits with Christa must be accompanied by an "attorney of record." (*See* Nov. 17, 2026 email from Brittany Hayes to Randy Spivey, attached as Exhibit 1). TDOC cited Policy 105.09 as the basis for its denial. (*See* TDOC Policy 105.09, attached as Exhibit

[1] Counsel intends to engage additional experts to evaluate Christa. To that end, the Plaintiff requests a standing order allowing additional experts retained by the legal team to meet with Christa without an attorney of record present.

2). In the same communications, TDOC characterized Dr. van Eys as a treating provider, demanded information about the purpose of her work, and asked counsel when a complaint related to Dr. van Eys's visits would be filed. (Ex. 1). As this Court and Defendants' counsel know, Christa's amended complaint is due January 27, 2027.

After submitting a request for Dr. Porterfield to evaluate Christa, TDOC likewise informed counsel of the requirement that she be accompanied by "counsel of record" and stated that she would not be permitted to keep her own notes and evaluation materials. (*See* Nov. 18, 2026 email from Brittany Hayes to Megan Kerrigan, attached as Exhibit 3). TDOC cited no policy for this restriction and identified no change in policy since its prior approval of experts retained by Christa's legal team to meet with her without counsel present. (*See* Approvals for Dr. Bethany Brand, attached as Exhibit 4).

**Argument**

Christa is entitled to access to counsel and the expert assistance reasonably necessary for her representation. This right flows not only from counsel's statutory authority, *see* 18 U.S.C. § 3599(f) ("Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant . . . the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant . . . ."); but also from the United States Constitution, *see Ake v. Oklahoma*, 470 U.S. 68 (1985). Capital post-conviction counsel has an ethical obligation to "continually monitor the client's mental, physical and emotional condition for effects on the client's legal position." *See* ABA Guidelines for the Appointment and

Performance of Defense Counsel in Death Penalty Cases, Guideline 10.15.1(E)(2) , 31 Hofstra L. Rev. 913, 1079–80 (2003). Fulfilling these duties requires engaging experts who can assess Christa and report to counsel. How counsel ultimately uses those experts—and whether a lawyer attends a given session—is a matter of professional judgment that belongs to counsel and to Christa, not to the custodian that is a defendant in this litigation.

## I. TDOC Policy 105.09 does not grant TDOC the power to arbitrarily impose restrictions on Christa's access to counsel.

TDOC Policy 105.09 does not support the arbitrary limitations placed on Christa's access to counsel. First, the policy defines "Attorney" to include "any person working for, on behalf of, or under the direction of an attorney." (*See* Ex. 2). Dr. van Eys and Dr. Porterfield fall squarely within that definition and are entitled to the same access as counsel. Second, the policy mandates that Attorneys "shall be granted liberal access to inmates in all [TDOC] facilities for the purpose of providing legal services to such inmates, including necessary interviewing, and consulting." (*Id.*). Third, the policy contains no requirement than an attorney of record accompany a person working under counsel's direction. Finally, the only grounds that the policy recognizes for limiting counsel's access is if a visitor would "pose a threat to the safety and security of the facility or would otherwise unduly disrupt the orderly management and operation of the facility." (*Id.*). But TDOC already approved Dr. van Eys for three unaccompanied visits before arbitrarily changing its policy, and previously granted access to other experts retained by Christa's legal team to visit without counsel present. (*See* Ex. 4). What is more, TDOC has not cited any policy for

the restriction placed on Dr. Porterfield's visit. An agency's departure from its own rules and past practice, without explanation, is the definition of arbitrary action.

## II. TDOC's restrictions unlawfully obstruct Christa's access to her counsel and legal team.

Incarcerated individuals have a right to access courts that arise under multiple provisions of the United States and Tennessee Constitutions. *See Hughes v. Tennessee Bd. of Prob. & Parole*, 514 S.W.3d 707, 714 (Tenn. 2017) (citing authority under the Privileges and Immunities Clause, First Amendment, Due Process and Equal Protection provisions of the Fourteenth Amendment and Tennessee Constitutional corollaries). Prison officials may not adopt regulations or practices that "unjustifiably obstruct the availability of professional representation." *Procunier v. Martinez*, 416 U.S. 396, 419 (1974), *overruled on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989). In *Martinez*, the Supreme Court struck down a prison rule barring law students and legal paraprofessionals from conducting attorney-client interviews, recognizing that the right of access to counsel necessarily extends to those who work on the lawyer's behalf. *Id.* at 419–22. TDOC's rule is the same obstruction in a different form: it forbids the legal team's experts from doing their work unless a lawyer is physically in the room, effectively requiring counsel to personally perform—or personally supervise—every task of the representation. TDOC has offered no security or operational justification for that requirement, and none exists for experts it previously approved to visit alone.

Nor may TDOC intrude into the attorney-client relationship or demand disclosure of counsel's work. TDOC has not merely restricted access but has inserted

itself into the substance of Christa's representation. The attorney-client privilege exists "to encourage full and frank communication between attorneys and their clients," and it extends to the professionals who help counsel render legal advice. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); *see* Tenn. Code Ann. § 23-3-105. Counsel must be able to "work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel." *Hickman v. Taylor*, 329 U.S. 495, 510–11 (1947). TDOC is a defendant in this case. It has no right to know why counsel engaged an expert, what that expert is doing, or when counsel intends to file a pleading—and the Rules of Civil Procedure would not permit it to obtain that information through discovery. *See* Tenn. R. Civ. P. 26.02(3)–(4). The fact that Christa already must disclose the identity and general purpose of her experts to an opposing party is a substantial intrusion.

TDOC's recharacterization of Dr. van Eys as a treating provider compounds the intrusion. Counsel—not TDOC—defines the role of the professionals counsel retains. By recasting a consulting expert as a treating physician, TDOC seeks to strip her work of its privileged character, subject it to TDOC's medical and administrative oversight, and use that label to justify conditions on access found nowhere in its policy. Its questions about when Christa's complaint will be filed confirm the point: the inquiry has nothing to do with institutional security and everything to do with the litigation strategy of an opposing party. Conditioning access to Christa on answers to those questions forces counsel to choose between surrendering protected information and abandoning necessary legal work. The Court should not permit

TDOC to use its custodial control over Christa to gain a litigation advantage it could not otherwise obtain from this Court.

## III. Principles of agency allow counsel to delegate legal work to experts without being present.

Nothing in law requires an attorney to accompany a legal team member acting at counsel's direction. Under settled agency principles, an agent carries out the work of the principal under the principal's authority and control. *See Jack Daniel Distillery, Lem Motlow, Prop. v. Jackson*, 740 S.W.2d 413, 416 (Tenn. 1987); *White v. Revco Disc. Drug Ctrs., Inc.*, 33 S.W.3d 713, 723 (Tenn. 2000). When an agent acts within the scope of delegated authority, it is as if the principal has acted. *Cartwright v. Thomason Hendrix, P.C.*, No. W2022-01627-SC-R11-CV, 2025 WL 3523045, at *6 (Tenn. Dec. 9, 2025) (citing Joseph Story, *Commentaries on the Law of Agency* § 2 (1839) ("[W]hatever a man *sui juris* may do of himself, he may do by another; and. . . what is done by another is to be deemed done by the party himself.")). A consulting expert meeting with Christa at counsel's direction is, in law, counsel's own visit.

The work product doctrine confirms the point. It protects materials "prepared by the attorney, *or some other person in his behalf*," in anticipation of litigation. *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 783 (Tenn. Ct. App. 1999) (emphasis added); Tenn. R. Civ. P. 26.02(3) (protecting materials prepared "by or for that other party's representative (including attorney, consultant, . . . or agent)"). Because "attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial," the doctrine protects the agent's work as fully as the attorneys. *United States v. Nobles*, 422 U.S. 225, 238–39 (1975).

TDOC's demand that a lawyer attend every session second-guesses how counsel allocates work within the team—a decision the law commits to counsel and not to the opposing party in ongoing litigation.

## Conclusion

TDOC has no legal or policy authority to control how Christa's counsel conducts her representation or which experts counsel uses to do so. Accordingly, Christa Gail Pike requests that this Court enter an order:

(1) directing TDOC to permit the experts retained by her legal team, including Dr. van Eys and Dr. Porterfield, to meet her without counsel present and with standard materials required to conduct their evaluations[2];

(2) prohibiting TDOC from reviewing, retaining, or restricting legal team members' notes and work materials; and

(3) requiring TDOC to promptly process requests for access by any experts subsequently retained by counsel.

[2] Dr. Porterfield specifically requested to bring in a computer to access her testing materials.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By: */s/ Luke P. Ihnen*
Luke P. Ihnen (TN BPR No. 035190)
Assistant Federal Defender
800 S. Gay Street, Suite 2400
Knoxville, TN 37929
Phone: (865) 637-7979
Fax: (865) 637-7999
Luke_Ihnen@fd.org

**Certificate of Service**

I, Luke P. Ihnen, certify that on November 23, 2026, a true and correct copy of the foregoing was served via the Court's electronic filing system and electronic mail to opposing counsel, Will Ayers, Asst. Attorney General.

*/s/ Luke P. Ihnen*