

No.

CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

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RICHARD TABLER,

Petitioner,

-v-

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECITONAL INSTITUTIONS DIVISION ,

Respondent.

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**MOTION TO PROCEED *IN FORMA PAUPERIS***

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Petitioner Richard Tabler, through undersigned counsel, moves pursuant to Supreme Court Rule 39.1 for leave to proceed *in forma pauperis* in his concurrently filed Petition for Writ of Certiorari to the Court of Appeals for the Fifth Circuit. Mr. Tabler is indigent and has received appointed counsel in the courts below.

On July 10, 2012, the United States District Court for the Western District of Texas appointed attorneys David A. Schulman and John G. Jasuta to represent Mr. Tabler for federal habeas proceedings. *See* Exhibits 1 and 2. On May 1, 2012, the district court appointed Marcia A. Widder to substitute for Mr. Schulman and Mr. Jasuta as counsel. *See* Exhibit 3. Finally, on March 31, 2015, the court appointed the Federal Community Defender Office for the Eastern District of Pennsylvania to

represent Mr. Tabler “throughout all available post-conviction processes.” *See* Exhibit 4. On appeal, on February 25, 2022, the Court of Appeals for the Fifth Circuit appointed Ms. Widder as additional counsel for Mr. Tabler pursuant to the Criminal Justice Act, 18 U.S.C. § 3599.

Undersigned counsel hereby certify that Mr. Tabler remains indigent. Mr. Tabler requests that this Court allow him to proceed *in forma pauperis*.

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Respectfully submitted,

/s/ Claudia Van Wyk

Claudia Van Wyk

*Counsel of Record*

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

Capital Punishment Project

201 W. Main St. Suite 402,

Durham, NC 27701

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cvanwyk@aclu.org

*Counsel for Petitioner-Applicant*

Dated: April 11, 2024

# EXHIBIT 1

## CJA 30 DEATH PENALTY PROCEEDINGS: APPOINTMENT OF AND AUTHORITY TO PAY COURT-APPOINTED COUNSEL (Rev.12/03)

1. CIR/DIST./DIV. CODE		2. PERSON REPRESENTED Richard Lee Tabler		VOUCHER NUMBER <b>3012 003729</b>	
3. MAG. DKT./DEF. NUMBER		4. DIST. DKT./DEF. NUMBER 6:10-cv-00034-WSS		5. APPEALS DKT./DEF. NUMBER	
6. OTHER DKT. NUMBER		7. IN CASE/MATTER OF (Case Name) Tabler v. Thaler		8. TYPE PERSON REPRESENTED <input type="checkbox"/> Adult Defendant <input type="checkbox"/> Appellant <input type="checkbox"/> Other <input checked="" type="checkbox"/> Habeas Petitioner <input type="checkbox"/> Appellee	
9. REPRESENTATION TYPE <input checked="" type="checkbox"/> D1 28 U.S.C. § 2254 Habeas (Capital) <input type="checkbox"/> D3 28 U.S.C. § 2255 (Capital) <input type="checkbox"/> D2 Federal Capital Prosecution <input type="checkbox"/> D4 Other (Specify)		10. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) <i>If more than one offense, list (up to five) major offenses charged, according to severity of offense.</i> <b>Capital Murder - Death Sentence Imposed</b>			
11. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS  David A. Schulman Post Office Box 783 Austin, Texas 78767-0783  Telephone Number: (512) 474-4747		12. COURT ORDER: <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel <input type="checkbox"/> Y Standby Counsel  Prior Attorney's _____ Appointment Date: _____ (A) Because the above-named person represented has testified under oath or has otherwise satisfied this Court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 11, who has been determined to possess the specific qualifications by law, is appointed to represent the person in this case. (B) The attorney named in Item 11 is appointed to serve as: <input checked="" type="checkbox"/> LEAD COUNSEL <input type="checkbox"/> CO-COUNSEL Name of Co-Counsel _____ Appointment Date: 2/25/2010 or Lead Counsel: John G. Jasuta (C) If you represented the defendant or petitioner in any prior proceeding related to this matter, attach to your initial claim a listing of those proceedings and describe your role in each (e.g., lead in counsel or co-counsel). <input type="checkbox"/> (D) Due to the expected length of this case, and the anticipated hardship on counsel in undertaking representation full-time, for such a period without compensation, interim payments of compensation and expenses are approved pursuant to the attached order.  Signature of Presiding Judge or By Order of the Court: <i>Walter S. Ly</i> Date of Order: 7/10/12 Nunc Pro Tunc Date: 2-25-10 (E) Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO			

**FILED**

JUL 10 2012

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY *me*  
DEPUTY CLERK

## CLAIM FOR SERVICES AND EXPENSES

14. STAGE OF PROCEEDING Check the box which corresponds to the stage of the proceeding during which the work claimed at Item 15 was performed even if the work is intended to be used in connection with a later stage of the proceeding. CHECK NO MORE THAN ONE BOX. Submit a separate voucher for each stage of the proceeding.					
CAPITAL PROSECUTION		HABEAS CORPUS		OTHER PROCEEDING	
a. <input type="checkbox"/> Pre-Trial	e. <input type="checkbox"/> Appeal	g. <input checked="" type="checkbox"/> Habeas Petition	k. <input type="checkbox"/> Petition for the U.S. Supreme	l. <input type="checkbox"/> Stay of Execution	a. <input type="checkbox"/> Other
b. <input type="checkbox"/> Trial	f. <input type="checkbox"/> Petition for the U.S. Supreme Court	h. <input type="checkbox"/> Evidentiary Hearing	U.S. Supreme	m. <input type="checkbox"/> Appeal of Denial of Stay	
c. <input type="checkbox"/> Sentencing	Writ of Certiorari	i. <input type="checkbox"/> Dispositive Motions	Writ of Certiorari	n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court Regarding Denial of Stay	
d. <input type="checkbox"/> Other Post Trial		j. <input type="checkbox"/> Appeal			

## HOURS AND COMPENSATION CLAIMED

## FOR COURT USE ONLY

15. CATEGORIES (Attach itemization of services with dates)	HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH. ADJUSTED HOURS	MATH/TECH. ADJUSTED AMOUNT	ADDITIONAL REVIEW
a. In-Court Hearings (RATE PER HOUR = \$ 178.00)	2.00	356.00			IN COURT TOTAL
b. Interviews and Conferences with Client	3.50				TOTAL Category a
c. Witness Interviews					0.00
d. Consultation with Investigators & Experts					
e. Obtaining & Reviewing the Court Record					
f. Obtaining & Reviewing Documents and Evidence	0.90				OUT OF COURT TOTAL
g. Consulting with Expert Counsel	3.20				Categories b-j
h. Legal Research and Writing	6.20				0.00
i. Travel	13.60				
j. Other (Specify on additional sheets)	13.90				
TOTALS: Categories b thru j (RATE PER HOUR = \$ 178.00)	41.30	7,351.40	0.00		

## CLAIM FOR TRAVEL AND EXPENSES (Attach itemization of expenses with dates)

16. Travel Expenses (lodging, parking, meals, mileage, etc.)					
17. Other Expenses (other than expert, transcripts, etc.)					
<b>GRAND TOTALS (CLAIMED AND ADJUSTED):</b>		7,707.40		0.00	

18. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM: 2/8/2010 TO: 4/5/2012		19. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION	20. CASE DISPOSITION
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21. CLAIM STATUS <input checked="" type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ <input type="checkbox"/> Supplemental Payment	
Have you previously applied to the court for compensation and/or reimbursement for this representation? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Other than from the Court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, give details on additional sheets.	
I swear or affirm the truth or correctness of the above statements.	
Signature of Attorney <i>[Signature]</i>	Date 7/5/2012

## APPROVED FOR PAYMENT — COURT USE ONLY

22. IN COURT COMP.	23. OUT OF COURT COMP.	24. TRAVEL EXPENSES	25. OTHER EXPENSES	26. TOTAL AMT. APPROVED <b>\$6.00</b>
27. SIGNATURE OF THE PRESIDING JUDGE				27a. JUDGE CODE

## EXHIBIT 2

## CJA 30 DEATH PENALTY PROCEEDINGS: APPOINTMENT OF AND AUTHORITY TO PAY COURT-APPOINTED COUNSEL (Rev.12/03)

1. CIR/DIST./DIV. CODE		2. PERSON REPRESENTED Richard Lee Tabler		VOUCHER NUMBER <u>3012-003728</u>	
3. MAG. DKT./DEF. NUMBER		4. DIST. DKT./DEF. NUMBER 6:10-cv-00034-WSS		5. APPEALS DKT./DEF. NUMBER	
6. OTHER DKT. NUMBER		7. IN CASE/MATTER OF (Case Name) Tabler v. Thaler		8. TYPE PERSON REPRESENTED <input type="checkbox"/> Adult Defendant <input type="checkbox"/> Appellant <input type="checkbox"/> Other <input checked="" type="checkbox"/> Habeas Petitioner <input type="checkbox"/> Appellee	
9. REPRESENTATION TYPE <input checked="" type="checkbox"/> D1 28 U.S.C. § 2254 Habeas (Capital) <input type="checkbox"/> D3 28 U.S.C. § 2255 (Capital) <input type="checkbox"/> D2 Federal Capital Prosecution <input type="checkbox"/> D4 Other (Specify)		10. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) If more than one offense, list (up to five) major offenses charged, according to severity of offense. <b>Capital Murder - Death Sentence Imposed</b>			
11. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix), AND MAILING ADDRESS  John G. Jasuta Post Office Box 783 Austin, Texas 78767-0783  Telephone Number: <u>(512) 547-6858</u>		12. COURT ORDER: <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> F Subs For Federal Defender <input type="checkbox"/> R Subs For Retained Attorney <input type="checkbox"/> P Subs For Panel <input type="checkbox"/> Y Standby Counsel  Prior Attorney's _____ Appointment Date: _____ (A) Because the above-named person represented has testified under oath or has otherwise satisfied this Court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 11, who has been determined to possess the specific qualifications by law, is appointed to represent the person in this case. (B) The attorney named in Item 11 is appointed to serve as: <input type="checkbox"/> LEAD COUNSEL <input checked="" type="checkbox"/> CO-COUNSEL Name of Co-Counsel: <u>David A. Schulman</u> Appointment Date: <u>2/25/2010</u> or Lead Counsel: _____ (C) If you represented the defendant or petitioner in any prior proceeding related to this matter, attach to your initial claim a listing of those proceedings and describe your role in each (e.g., lead in counsel or co-counsel). <input type="checkbox"/> (D) Due to the expected length of this case, and the anticipated hardship on counsel in undertaking representation full-time, for such a period without compensation, interim payments of compensation and expenses are approved pursuant to the attached order. <div style="text-align: center;"> Signature of Presiding Judge or By Order of the Court <u>7/12/12</u> Date of Order <u>2-25-10</u> Nunc Pro Tunc Date (E) Repayment or partial repayment ordered from the person represented for this service at time of appointment. <input type="checkbox"/> YES <input type="checkbox"/> NO</div>			
13. NAME AND MAILING ADDRESS OF LAW FIRM (Only provide per instructions) <div style="text-align: center;"><b>FILED</b> <b>JUL 10 2012</b> <b>CLERK, U.S. DISTRICT COURT</b> <b>WESTERN DISTRICT OF TEXAS</b> <b>BY: [Signature] DEPUTY CLERK</b></div>					
<b>CLAIM FOR SERVICES AND EXPENSES</b>					
14. STAGE OF PROCEEDING Check the box which corresponds to the stage of the proceeding during which the work claimed at Item 15 was performed even if the work is intended to be used in connection with a later stage of the proceeding. CHECK NO MORE THAN ONE BOX. Submit a separate voucher for each stage of the proceeding.					
CAPITAL PROSECUTION		HABEAS CORPUS		OTHER PROCEEDING	
a. <input type="checkbox"/> Pre-Trial	e. <input type="checkbox"/> Appeal	g. <input checked="" type="checkbox"/> Habeas Petition	k. <input type="checkbox"/> Petition for the U.S. Supreme Writ of Certiorari	l. <input type="checkbox"/> Stay of Execution	o. <input type="checkbox"/> Other
b. <input type="checkbox"/> Trial	f. <input type="checkbox"/> Petition for the U.S. Supreme Court Writ of Certiorari	h. <input checked="" type="checkbox"/> Evidentiary Hearing	m. <input type="checkbox"/> Appeal of Denial of Stay	n. <input type="checkbox"/> Petition for Writ of Certiorari to the U.S. Supreme Court Regarding Denial of Stay	
c. <input type="checkbox"/> Sentencing		i. <input type="checkbox"/> Dispositive Motions			
d. <input type="checkbox"/> Other Post Trial		j. <input type="checkbox"/> Appeal			
<b>HOURS AND COMPENSATION CLAIMED</b>					
15. CATEGORIES (Attach itemization of services with dates)		HOURS CLAIMED	TOTAL AMOUNT CLAIMED	MATH/TECH. ADJUSTED HOURS	MATH/TECH. ADJUSTED AMOUNT
a. In-Court Hearings (RATE PER HOUR = \$ 178.00 )		2.00	356.00		IN COURT TOTAL Category a
b. Interviews and Conferences with Client		6.00			
c. Witness Interviews					0.00
d. Consultation with Investigators & Experts					
e. Obtaining & Reviewing the Court Record					
f. Obtaining & Reviewing Documents and Evidence		4.00			OUT OF COURT TOTAL Categories b-j
g. Consulting with Expert Counsel		15.60			
h. Legal Research and Writing		74.00			
i. Travel		29.50			0.00
j. Other (Specify on additional sheets)		11.50			
TOTALS: Categories b thru j (RATE PER HOUR = \$ 178.00 )		140.60	25,026.80	0.00	
<b>CLAIM FOR TRAVEL AND EXPENSES (Attach itemization of expenses with dates)</b>					
16. Travel Expenses (lodging, parking, meals, mileage, etc.)			833.28		
17. Other Expenses (other than expert, transcripts, etc.)			68.37		
<b>GRAND TOTALS (CLAIMED AND ADJUSTED):</b>			26,284.45		0.00
18. CERTIFICATION OF ATTORNEY/PAYEE FOR THE PERIOD OF SERVICE FROM: <u>2/5/2012</u> TO: <u>3/3/2012</u>			19. APPOINTMENT TERMINATION DATE IF OTHER THAN CASE COMPLETION		20. CASE DISPOSITION
21. CLAIM STATUS <input checked="" type="checkbox"/> Final Payment <input type="checkbox"/> Interim Payment Number _____ <input type="checkbox"/> Supplemental Payment Have you previously applied to the court for compensation and/or reimbursement for this representation? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO Other than from the Court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney: <u>[Signature]</u> Date: <u>7/5/2012</u>					
<b>APPROVED FOR PAYMENT — COURT USE ONLY</b>					
22. IN COURT COMP.	23. OUT OF COURT COMP.	24. TRAVEL EXPENSES	25. OTHER EXPENSES	26. TOTAL AMT. APPROVED <u>\$0.00</u>	
27. SIGNATURE OF THE PRESIDING JUDGE			DATE	27a. JUDGE CODE/	

# EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE WESTERN DISTRICT OF TEXAS**

**WACO DIVISION**

**RICHARD LEE TABLER,**  
**Petitioner,**

**vs.**

**RICK THALER, Director,**  
**TDCJ-CID,**  
**Respondent,**

§  
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§  
§  
§  
§  
§  
§

**Civil No. W-10-CA-034**

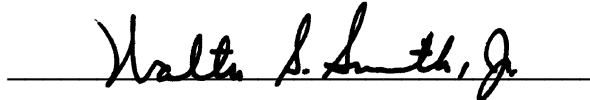
**ORDER**

Before the Court is the Renewed Motion to Withdraw as Counsel and for Appointment of New Counsel and the Unopposed Motion for Substitution and Appointment of Counsel and Request for Expedited Ruling. The Court, having considered these pleadings finds that they have merit and should be granted. Accordingly, it is

**ORDERED** that David A. Schulman and John G. Jasuta are allowed to withdraw as attorneys of record in this case. It is further

**ORDERED** that Marcia A. Widder is appointed to represent Petitioner in this case.

**SIGNED** on this 1<sup>st</sup> day of May, 2012.

A handwritten signature in black ink, reading "Walter S. Smith, Jr.", is written over a horizontal line.

WALTER S. SMITH, JR.  
UNITED STATES DISTRICT JUDGE



# EXHIBIT 4

United States District Judge