

STATE OF INDIANA            )                    IN THE CARROLL CIRCUIT COURT  
  )ss:  
COUNTY OF CARROLL        )                    CAUSE NO. 08C01-2210-MR-000001  
  
STATE OF INDIANA            )  
  )  
vs.                                    )  
  )  
RICHARD M. ALLEN            )

**MOTION FOR CONTINUANCE**

Comes now Attorney, Bradley A. Rozzi, and respectfully requests that this Court continue the February 12, 2024, hearing on the Verified Information of Contemptuous Conduct filed by Prosecutor, Nicholas C. McLeland, on January 29, 2024. In support of said Motion, Counsel states as follows:

1. On January 29, 2024, Prosecutor McLeland filed a Verified Information of Contemptuous Conduct. Within said Information, Prosecutor McLeland alleged that Attorney Rozzi engaged in conduct that amounted to indirect contempt of this Court's Orders;
2. Three days later, this Court scheduled the State's Information for hearing on February 12, 2024, at 9:00 a.m. in the Allen Superior Court;
3. The February 12<sup>th</sup> hearing was scheduled by the Court without any consultation with Attorney Rozzi's Office regarding Attorney Rozzi's availability. Attorney Rozzi is scheduled to be out of the State of Indiana, on personal matters, and is therefore, unavailable to attend;
4. Because of the timing of the State's filing, Attorney Rozzi has only eleven days to prepare for said hearing;
5. Attorney Rozzi has yet to consult with an attorney as of the date of the filing of this Motion;
6. The accelerated scheduling of the hearing prohibits Attorney Rozzi and/or his future legal representative from conducting any meaningful discovery regarding the State's allegations which appear to have stemmed from a "side-investigation" into leaked photos (see paragraphs 12-25 of the contempt pleading), that was conducted by the same investigative team that investigated the crimes in this case. It seems only fair that Attorney Rozzi would be entitled to conduct discovery

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on such a matter before facing sanctions that could result in Attorney Rozzi's imprisonment;

7. Attorney Rozzi would further report that the moving party, Prosecutor McLeland, has communicated to Attorneys Rozzi and Baldwin that he will no longer engage in telephonic communications with Attorneys Rozzi and Baldwin in this case. Prosecutor McLeland has limited all communications through email correspondence. Therefore, the flow of information between the State and Attorneys Rozzi and Baldwin is limited;

8. A plain reading of I.C. 34-47-3-6, the statute articulating the potential punishment to be handed down by the Court in a contempt finding, authorizes the Court to punish indirect contempt by way of a fine, imprisonment, or both a fine and imprisonment. As such, Attorney Rozzi is entitled to obtain representation for purposes of defending against the allegations of contempt. "[An] indirect contempt, which is at issue here, requires an array of due process protections, including notice and the opportunity to be heard." *In re Nasser*, 644 N.E.2d 93-95 (Ind. 1994). Surely, these protections would amount to more than eleven days of advance notice;

9. The allegations in the State's Information fail to accurately categorize the contemptuous behavior as being grounded in either *civil contempt* or *criminal contempt*. However, the pleading was filed within the "MR" cause number and not in an unrelated civil miscellaneous ("MI") cause. Moreover, the allegation is couched as an "Information" for contemptuous behavior as opposed to a "Citation" for contempt and therefore, it is logical to conclude that the relief sought by Prosecutor McLeland is akin to that associated with criminal contempt. And, while the Information does not specifically contain a prayer for relief, the pleading does reference the "revictimization" of the victims families which is "immeasurable and incurable." This verbiage is grounded in criminal contempt. Therefore, Attorney Rozzi is entitled to the appointment of a Special Judge pursuant to I.C. 34-47-3-7 and logically, the process of selecting the Special Judge should occur before any hearing on the allegations takes place;

10. Attorney Rozzi would also note that on January 28, 2024, Defendant Richard Allen, by and through his Attorneys Rozzi and Baldwin, filed a Verified Motion to Disqualify Judge Francis C. Gull. "It is well settled that when an Affidavit for Change of Judge is filed in a proper case, based on the bias and prejudice of the

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Judge, the Court has no discretion in the matter.” State ex rel Ballard v. Jefferson Circuit Court of Jefferson County, 225 Ind. 174 (Sup. Ct. Ind. 1947). Moreover, in Ballard, the Court cited the Defendant for contempt for failure to comply with an order issued by the court prior to the filing of the request for the change of judge. This factual scenario is nearly identical to the one that exists in this case. Attorney Rozzi asserts that at the present time, this Court has no authority to conduct a contempt proceeding of any nature;

11. Attorney Rozzi would further note that there remains pending, the issuance of a full and final Opinion stemming from the Indiana Supreme Court’s Published Order of January 18, 2024 (Case # 23S-OR-311). It seems only logical that no further action regarding the allegations of misconduct should occur until the Court issues the full opinion giving further guidance regarding its order reinstating Attorneys Rozzi and Baldwin, and the procedural circumstances surrounding this case. Ironically, the anticipated opinion in this case stems from the filing of an Original Action, which was also the case in Ballard, referenced above. Therefore, there is precedent that the conduct of a trial court judge in the face of a pending motion to disqualify is appealable in the form of an original action; and

12. There is no harm in awaiting the opinion of the Indiana Supreme Court, affording Attorney Rozzi the opportunity to consult with and retain counsel, allowing Attorney Rozzi an opportunity to conduct discovery on the State’s allegations, and most importantly, adjudicating Richard Allen’s Motion to Disqualify.

Wherefore, Attorney Rozzi respectfully requests that this Court continue the February 12, 2024, hearing on the State’s Verified Information of Contemptuous Conduct and reset the matter on a date and time convenient for all parties and the Court.

Respectfully Submitted,



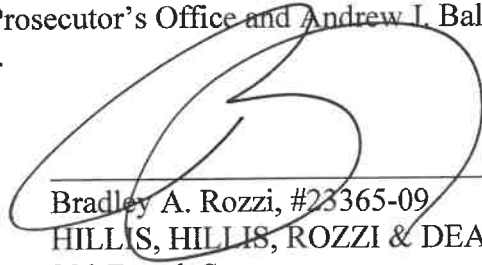
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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of this document by the County e-filing system upon the Carroll County Prosecutor's Office and Andrew J. Baldwin the 2nd day of February, 2024.



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