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Carroll Circuit Court
Carroll County, Indiana

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT 1
	)SS:	
COUNTY OF CARROLL	)	CAUSE NO.08C01-2210-MR-000001
STATE OF INDIANA	)	
	)	
v.	)	
	)	
RICHARD ALLEN	)	

ACCUSED'S RESPONSE TO THIS COURT'S MAY 31, 2024 "ORDER OR JUDGEMENT OF THE COURT" AND NOTICE OF CONFLICT

Comes now the accused, Richard Allen, by and through counsel, and files his response to this Court's May 31, 2024 "Order or Judgment of the Court" and Notice of Conflict. In support of said motion, Mr. Allen states the following:

Introduction

1. On May 31, 2024, this Court issued its Order or Judgment of the Court concerning the defense's request to have Judge Gull disqualified.

2. Contained in said order were several errors. The defense is filing this motion to preserve those errors for future courts, if needed, and to notify the Court that due to new information learned in her order, a conflict has been revealed which has caused Judge Gull to become a witness.

3. The defense files this response and notice for purposes of maintaining a record and does not wish for this pleading to delay future hearings from taking place, particularly hearings related to the defense's request to transfer Richard Allen out of the Department of Corrections, which is the most urgent of the pending matters that need litigated. Also, the defense's response is intended to provide correct information to Judge Gull as she continues to self-evaluate her obligation to recuse herself from the case should she believe that bias or the appearance of bias exists.[1]

[1] "A judge's obligation not to hear or decide matters in which disqualification is required applies **regardless of whether a motion to disqualify is filed**." (*Abney v.State*, 79 N.E.3rd 942, 951 (Ind.Ct.App. 2017)(Emphasis added).

Judge Gull failed to inform the defense that Carroll County Sheriff's Office fabricated facts in a report filed in her court

4. In his Motion to Disqualify, Mr. Allen noted that, according to a June 14, 2023, report filed by the Carroll County Sheriff's Office (hereinafter "CCSO"), Judge Gull advised the CCSO that it could ignore a valid defense subpoena for Westville Correctional facility inmate Robert Baston, and refuse to transport him to the June 15, 2023, hearing on Mr. Allen's Emergency Motion to Modify Safekeeping Order. The defense further alleged in its motion to disqualify that because of Judge Gull's actions, the defense was without a key witness for the hearing.

5. It was anticipated that at the June 15, 2023, hearing, Mr. Baston would testify as to the harsh, abusive and unconstitutional treatment of Richard Allen at Westville Correctional Facility.

6. The failure of the CCSO to transport the witness from Westville left Mr. Allen without crucial evidence for the hearing, thereby subverting justice for him.

7. However, in her May 31, 2024, order, Judge Gull claims that she <u>never</u> advised the CCSO to ignore the subpoena and leave Baston behind.

8. Judge Gull's claim contradicts the CCSO report that this Court received on June 20, 2023.

9. The June 14, 2023, report, which was ordered by the Court, stated the following:

> *On June 14, 2023, I special Deputy, Wysocki Brian while on duty was conducting transport from Westville Correctional Facility to the Carroll County Jail.*
> *Upon my arrival I was escorted to Baston, Robert DOC#209210 segregation unit to conduct the pickup. After waiting, a Corrections Officer approached and told me Baston is refusing to come out of his cell, and told the Corrections Officer "Fuck you, you can't make me go!" The Corrections Officer told me they will do a cell extraction to get him to my transport vehicle. I told the Corrections Officer to standby [sic] let me make a few phone calls.*
> *I was escorted back to the main gate where I was greeted by John Galipeau. I called Carroll County Jail Commander Lori Sustarsic who [sic] I explained the situation to. She then*

> *made a phone call to Chief Deputy, Tobe Leazenby who contacted Judge, Frances Gull's office to inform them of the situation.* ***Judge Gull's office advised to leave Baston there if he did not want to attend the court hearing that is scheduled for 6/15/23.*** *(Emphasis added)*
> *I then spoke with Warden Galipeau and asked if he could provide me with a letter stating that Baston refused to come out of his cell that he did not want to go. Warden Galipeau agreed he would. He later advised he would bring me the letter on 6/15/23 to Carroll County Courthouse. So, I could attach it to his report.*
> *Nothing further at this time.*

10. The report was approved by Tobe Leazenby, who is a key witness in this case.

11. Juxtaposed to the CCSO report is Judge Gull's May 31, 2024, Order, in which she stated, "The decision by the Deputy to leave without the witness was his **and was not directed by the Court.**" (Emphasis added)

12. The first time that Richard Allen's counsel learned of these contradictory stories was in Judge Gull's May 31, 2024 "Order of Judgement of the Court".

13. Judge Gull has possessed this report since June 20, 2023.

14. Upon receiving this report nearly a year ago, Judge Gull never notified Mr. Allen's attorneys of the misrepresentation contained in the report as it related to her purported involvement in the failure to transport Mr. Baston to the hearing.

15. At the very moment of learning that CCSO filed a report with fabricated facts concerning Judge Gull, she should have immediately alerted Mr. Allen's attorneys of the misrepresentation contained in the report.

16. Further, upon Judge Gull learning of the misrepresentation contained in the report, which undermined the evidence Mr. Allen was able to present, Judge Gull never re-set the hearing so Mr. Allen could present the very evidence Judge Gull said was lacking when she denied Mr. Allen's Emergency Motion to Vacate Safekeeping Order.

17. Additionally, as this Court is aware, Mr. Allen has filed four Franks motions indicating that law enforcement has acted intentionally or in bad faith.

18. Also, as this Court is aware, Mr. Allen has filed two separate motions to dismiss based upon law enforcement's destruction of evidence. One of those motions was heard on March 18, 2024, with the court denying said motion on April 2, 2024.

19. To prevail on a motion to dismiss as it relates to the destruction of potentially useful evidence, the motion to dismiss requires the defense to prove that law enforcement acted in bad faith. *Pimentel v. State*, 181 N.E.3d 474, 481 (Ind. Ct. App. 2022)

20. At the March 18, 2024, hearing, defense counsel was attempting to provide evidence to the Court that law enforcement has acted in bad faith over the course of this case. At that time, this Court was aware that law enforcement had fabricated facts contained in the June 14, 2023, report (thereby acting in bad faith), yet this Court never alerted the defense and therefore law enforcement's bad faith was not made part of the record.

21. Even if this Court would still claim that such a fabrication in a report would not have changed her ruling on the motion to dismiss, the fact is that the defense was not able to include that information on the record for the court of appeals (should it be necessary).

22. Additionally, had Judge Gull alerted Mr. Allen's attorneys of Carroll County Sheriff's fabricated statement in that report, the defense could have used that fabricated statement when pursuing their Franks motions and motions to dismiss in order to provide additional evidence of intentionality and bad faith on the part of CCSO.

23. Furthermore, by failing to provide this information to Mr. Allen's attorneys, Judge Gull prevented the defense from investigating this fabricated story, including through depositions.

24. Judge Gull should have alerted Mr. Allen's attorneys of CCSO's fabricated facts written in their police report well before the March 18, 2024, motion to dismiss and her failure to do so provides a rational inference of bias.

Judge Gull is now a witness in this matter as to Tobe Leazenby's credibility

25. Given that Judge Gull is the only individual who knows that she did not direct the CCSO office to ignore the subpoena and leave Mr. Baston at Westville (despite the contrary assertions in the CCSO report) she has become a witness to Tobe Leazenby's truthfulness and to the fact that the information contained in CCSO's report is false.

26. The credibility of a witness is always an issue for the jury. *Stanley v. State*, 273 Ind. 13, 18, 401 N.E.2d 689, 692 (1980).

27. If Judge Gull's story is correct, then she had a ringside seat to the intentional behavior of the CCSO and/or the bad faith of the CCSO in that it: (1) intentionally ignored a valid defense subpoena for a defense witness and then (2) fabricated a story in a police report claiming that the sitting judge on the case authorized the CCSO to ignore the valid defense subpoena. In this scenario, Judge Gull is a witness.

28. At future hearings, and at trial, the defense should have the ability to cross-examine Tobe Leazenby on these contradictory stories with questions similar to the following:

Attorney: Mr. Leazenby, the defense attempted to bring a witness named Robert Baston to testify at a hearing concerning his observation of guards abusing Richard Allen in a variety of ways at Westville, but your office ignored a valid subpoena, to bring that witness to a hearing, isn't that right?

Attorney: You did not want the judge to hear the testimony of that witness because it would support the defense's contention that Richard Allen was being abused and should be moved to the Cass County jail closer to both his family and attorneys and away from the abuse?

Attorney: You wanted Richard Allen to remain in the Westville prison so that he would continue to be housed far from his attorneys and family, while emotionally vulnerable to the abuse he was suffering at Westville?

Attorney: Worse yet, you then lied in a report claiming that Judge Gull advised you that it was ok to leave Baston behind. You lied about that in your report?

Attorney: Judge Gull **never** told you that it was ok to ignore a valid defense subpoena, did she?

Attorney: I am handing you exhibit 85, which is the June 14, 2023, report from CCSA. In which you claim that Gull gave the directive allowing you to ignore the subpoena (etc.…)

29. Because the defense is claiming that law enforcement has acted in bad faith, and bad faith is an important component in its motions to dismiss as well as the four Franks notices, it must be able to call Judge Gull to the stand to testify concerning the false statements contained in the CCSO's June 14, 2023 report. Judge Gull's testimony is especially vital concerning the defense motions to modify the safekeeping order, as well as their Franks Motions and Motions to dismiss.

30. Calling Judge Gull to the stand to testify as to the fabricated facts contained in this report is especially important when the very witness who is the subject of this report (Robert Baston) would have testified about Richard Allen's treatment at Westville which directly led to the deterioration of his mental state and false statements concerning his involvement in the crime.

31. The defense plans on issuing subpoenas and calling Judge Gull to the stand at future hearings and at trial to testify that she never directed CCSO to ignore a valid subpoena and also never advised CCSO to leave Robert Baston behind if he (Baston) did not want to attend the June 15, 2024, hearing.

32. Judge Gull should recuse herself from this matter as she is now a witness in the proceedings.

Judge Gull's failure to admonish the CCSO may cause law enforcement to believe that they can create fabricated stories in this case with no consequences

33. Despite having the CCSO report since June 20, 2023, to this day Judge Gull has failed to admonish the CCSO for filing a report that contains such a flagrant falsehood and which is arguably an attempt to cover up their illegal actions in ignoring a valid defense subpoena.

34. Judge Gull's failure to address that fabrication in any fashion whatsoever, provides a basis for state's witnesses to believe that they can freely fabricate stories which subvert justice for Richad Allen without consequence. This provides a rational inference of bias.

Judge Gull continues to errantly accuse the defense of improperly filing Ex Parte documents

35. In its May 31, 2024, Order, this Court continued to claim that the defense is to blame for Ex Parte pleadings that were accessible to the prosecution.

36. On March 7, 2024, Attorney Rozzi alerted Judge Gull about his grave concerns surrounding McLeland receiving the Ex Parte documents. It took Judge Gull thirteen days to responds to this urgent matter. In her March 20, 2024 emailed response, Judge Gull wrote to defense counsel: "I would encourage you to educate your staff on how to properly file pleadings."

37. Attached is a printout from the Doxpop filing process of the February 26, 2024, Ex Parte document that court staff mishandled, causing accessibility of the document to the prosecutor.[2] (**Exhibit A**)

38. It should be noted that upon receiving this February 26, 2024, pleading, court staff would see in bold font and capital letters at the top of the pleading the following: "EX PARTE PLEADING TO BE PLACED UNDER SEAL" which should have easily alerted court staff of the Ex Parte nature of the document, causing them to follow the proper procedures in processing an Ex Parte pleading.

39. The staff for the defense filed the Ex Parte documents correctly. The Doxpop printout shows that the only service contacts listed on this Ex Parte filing were Brad Rozzi and Andrew Baldwin (*not* Nicholas McLeland, James Luttrell or Stacey Diener). Furthermore, the printout shows that all documents were marked as confidential.

[2] In her May 31, 2024 order, Judge Gull seems to believe that parties can only file Ex Parte documents through the Odyssey platform. If so, she is incorrect. Parties may also file Ex Parte documents through the DoxPop platform – which is the platform defense staff utilized when they correctly filed the February 26, 2024, Ex Parte document in this case. Over the course of this case defense staff has used both Odyssey and Doxpop platforms when e-filing Ex Parte documents. It is telling that the "tutorial" Judge Gull sent to the defense details how court staffs should process Ex Parte documents they receive in the Odyssey platform, not the Doxpop platform.

40. There is nothing else further that the defense can do to prevent these documents from being made public or misdirected to the prosecution. After the defense correctly files the Ex Parte document, the defense must then trust that the Court staff has been properly trained on how to navigate an Ex Parte filing, whether it is filed using the Odyssey or Doxpop platforms.

41. In this case, after the defense correctly filed the Ex Parte Motion, somehow court staff erred in how it processed the document into the system, causing Prosecutor McLeland to have access to the Ex Parte document.

42. In her May 31, 2024 Order, Judge Gull detailed how she sent the defense a "tutorial paper authored by JTAC explaining the process." The Court implied in said order that she sent the tutorial to the defense in order to assist the defense in learning the proper process of how to file an Ex Parte motion. Judge Gull's presumption that this tutorial assisted the defense is inaccurate for three reasons: (1) the defense was not errantly filing Ex Parte documents; (2) the tutorial Judge Gull sent to the defense had nothing to do with assisting practicing lawyers on how to file Ex Parte documents; and (3) The defense continued to file Ex Parte documents in the exact same manner it had been filing *before* Judge Gull ever sent the "tutorial" to the defense and there were no issues.[3]

43. The "tutorial" Judge Gull emailed to counsel is actually intended to assist court staff and clerks in how to properly handle Ex Parte documents *after* the private practitioner has filed the Ex Parte document. In other words, the document that Judge Gull refers to in her order does not in any way assist the practicing lawyer in filing Ex Parte documents, as it is a tutorial for court staff. Please find attached a printout of the "tutorial" Judge Gull sent the defense marked as **Exhibit B** which also includes the "cheat sheet" referenced in the letter from Office of Court Services.

44. Even though, on its face, this tutorial clearly appears directed to assist court staff in understanding how to process/accept Ex Parte filings, the defense's staff still reviewed the "tutorial" sent by Judge Gull to determine

[3] In her May 31, 2024, Order, Judge Gull (referring to the email in which she provided the JTAC tutorial) stated: "Since that communication, defense have had no issues with their staff properly filing Ex Parte pleadings." This Court attempted to give credit to the JTAC tutorial for her claim that no Ex Parte issues occurred after she sent the tutorial to the defense. However, this is simply not true as that tutorial provided no guidance for practicing lawyers and as discussed above, the defense was already correctly filing Ex Parte documents. It seems likely that the actual reason for no further Ex Parte issues was that court staff actually learned the proper manner in which to process Ex Parte documents.

whether any part of the tutorial was meant to assist a practicing attorney in how to file an Ex Parte document. It does not. When defense staff clicked on the link detailed in "Step 1" and attempted to sign in, they were presented with a prompt that states "You are not authorized to use this site". This is because, again, the tutorial that Judge Gull proclaimed in her order as helpful to the defense was actually meant for court staff.

Judge Gull has failed to admonish Prosecutor McLeland for improperly reading Ex Parte pleadings while continuing to denigrate defense counsel

45. The pleadings errantly made accessible to Prosecutor McLeland were clearly marked "Ex Parte".

46. The defense became aware that Prosecutor McLeland read the Ex Parte documents based upon a March 6, 2024, prosecution filing in which the prosecution directly quoted from defense's Ex Parte filing from February 26, 2024. This document was clearly marked in capital letters at the top of the document: "EX PARTE PLEADING TO BE PLACED UNDER SEAL."

47. After reading Prosecutor McLeland's March 6, 2024 filing and realizing that McLeland had reviewed a defense Ex Parte document, attorney Rozzi sent an email to Judge Gull and one of Judge Gull's staff members, as well as to Nick McLeland. Find attached copy of said email marked as **Exhibit C**. The email respectfully questioned how an Ex Parte motion was made accessible to the prosecution.

48. Then, on March 7, 2024, Prosecutor McLeland filed a pleading in which he (McLeland) finally admitted that he also had access to three other Ex Parte filings.[4]

49. Despite the clear marking of "Ex Parte" on the documents, Prosecutor McLeland chose to read those Ex Parte documents rather than promptly deleting them and alerting the defense of the misdirected filing, as required under Indiana Rule of Professional Conduct ("I.R.P.C") 4.4(b) ("A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.")

[4] After reviewing the record, the defense believes that Prosecutor McLeland actually reviewed only two Ex Parte filings as two of the filings that he referenced in this pleading he identified as Ex Parte are not actually Ex Parte filings.

50. Prosecutor McLeland never contacted defense counsel after receiving the Ex Parte documents as required under I.R.P.C. 4.4(b). The defense only learned of this violation upon reviewing McLeland's March 6, 2024, pleading in which McLeland audaciously quoted directly from the Ex Parte document, thereby making said quote available for public view.

51. The act of McLeland reading from defense's Ex Parte documents provided the prosecution with an entirely improper glimpse into the manner in which Mr. Allen's attorneys would be defending him. This is yet another example of a subversion of Richard Allen's due process rights.

52. This Court has failed to reprimand the prosecution for reading Ex Parte documents or to even address that issue in any way whatsoever. Nor has Judge Gull filed a pleading in which she (Judge Gull) publicly proclaimed that she is referring Nick McLeland to the "office of judicial and attorney regulation, executive director Adrienne Meiring for that office to enforce the rules or determine counsel's ethical misconduct."[5]

53. This Court publicly declared in its April 30, 2024 order that it was referring defense counsel to the office of judicial and attorney regulation concerning a short and bland press release that defense counsel sent out to media sources when no gag order was in place and after the prosecution and law enforcement had conducted multiple press conferences and issued multiple press releases over the course of the investigation. Meanwhile, on the much more serious allegation of McLeland reviewing Ex Parte documents and violating I.R.P.C. 4.4(b), Judge Gull has said or done nothing. Judge Gull is clearly treating the prosecution differently than defense counsel and this provides a rational inference of bias.

This Court offered its hand pick-picked public defenders an opportunity for a hearing on the Franks motion but denied the same opportunity for Attorneys Baldwin and Rozzi

54. In her May 31, 2024, Order denying the defense's request for disqualification, this Court maintained that it has no bias against defense counsel.

[5] This quote is taken from Judge Gull's April 30, 2024 "Order or Judgment" of the Court concerning the prosecution's request that defense counsel be found in contempt.

55. On January 22, 2024, this Court denied Baldwin's and Rozzi's request for a Franks hearing. At that point in time, this Court had failed to rule on the Franks request for over 4 months. Yet, within 4 days of their re-entering their appearances on the case, Judge Gull denied their request without hearing.

56. However, after Baldwin and Rozzi were taken off the case in October, 2023, Judge Gull informed her newly hand-picked public defenders that they should review prior counsel's pleadings and either adopt those pleadings or make their own. In that November 14, 2023, CCS entry, it was memorialized that Judge Gull informed the new public defenders (Scremin and Lebrato) that "*if defendant's new counsel inform the Court they intend to pursue the Franks motion,* ***the Court will schedule a hearing***." (Emphasis added)

57. Such action demonstrates that this Court is punishing Richard Allen due to her bias against attorneys Baldwin and Rozzi in that after they re-entered their appearances, she quickly denied Allen's original counsel a hearing on the Franks motion while offering the replacement public defenders an opportunity to have a Franks hearing soon after their appearance on the case.

58. This disparate treatment of Attorneys Baldwin and Rozzi compared to this Court's treatment of the prosecution, and even of the replacement public defenders, provides a rational inference of bias against defense counsel Baldwin and Rozzi and therefore against Richard Allen.

In its order, this Court claimed that it is "irrational and unreasonable" for the defense to assert that as lawyers with 70 years of combined experience they have never had a judge provide a hard end date for a trial. Calling defense counsel "irrational and unreasonable" shows bias, especially when the Court is wrong in its understanding of Jury Rule 4

59. This Court unfortunately continues to malign defense counsel by calling them "irrational" and "unreasonable" for their averments that courts around the state of Indiana never set a rigid day for the trial to end. Implicitly, the Court is also averring that defense counsel are lying about their experiences in other courts around the state of Indiana. Furthermore, this Court maligns defense counsel concerning its knowledge of the jury rules, when it is the Court that incorrect in its assessment of the jury rules.

60. At the May 7, 2024, Pre-Trial Hearing, the Court stated:

> "Well, you understand – **well, maybe you don't understand**. Jury Rule 4 requires that I issue summonses to the jury with the dates of the trial… Jury Rule 4 requires that I issue summon to jurors with the dates."
> Transcript May 7, 2024, Hearing, p. 12, line 13. (Emphasis added)

61. The Court cited Jury Rule 4 as a basis for limiting the time of the trial. However, Jury Rule 4 does not ever discuss the length or dates of the trial or require courts to place a hard end date for a trial. Jury Rule 4 states that,

> "Not later than seven (7) days after the date of the drawing of names from the jury pool, the jury administrator shall mail each person whose name is drawn a juror qualification form, and notice of the period during which any service may be performed."

62. Jury Rule 4 is primarily referring to the timespan or term during which citizens need to be on the alert that they could be summonsed in for jury duty (e.g. when they are "on call" for possible jury duty). The prospective juror needs to be aware that over the course of a specified number of months, the court may summons them to appear in court as a potential juror at a later date.

63. Jury Rule 4 further states that when summoning a prospective juror in for jury duty that:

> "The summons shall include the following information: directions to the court, parking, public transportation, compensation, court policies regarding the use of electronic communication devices, i.e. cell phones, PDA's, smart phones, etc.), attire, meals and how to obtain auxiliary aids and services required by the American with Disabilities Act."

64. Note that Jury Rule 4 does <u>not</u> require the Court to provide the dates of the actual trial or the length of the actual trial, nor does Jury Rule 4 require the prospective juror to be advised of the beginning date or end date of a trial.

65. Jury Rule 9, Term of Jury Service, states:

> "A person who appears for service as a petit juror serves until the conclusion of the first trial in which the juror is sworn, **regardless of the length of the trial** or the manner in which the trial is disposed."

66. Once summonsed in and selected as a juror, Jury Rule 9 is the jury rule that comes the closest to referring to the length of the actual trial.

67. Note that Jury Rule 9 places no limit to the length of actual trial once a juror is selected, nor does Jury Rule 9 place a hard end on the conclusion of any trial. Indeed, by stating that the juror serves until the end of the first trial, regardless of the length of the trial, the authors of the jury rules innately understand that Courts will not have foresight to include an actual end date to a trial. As proof, in larger counties, jurors are summoned for a particular day and could be chosen to serve on any number of trials of varying lengths.[6]

68. In spite of Judge Gull's proclamation at the May 7, 2024, hearing, Indiana Jury Rules do not provide or require a mechanism to limit the length of the trial whatsoever, including as it relates to the information contained in the jury summons that the Court sends to citizens pursuant to Jury Rule 4.

69. Judge Gull's errant interpretation of Indiana Jury Rules created a situation in which Mr. Allen was required to seek a continuance of his speedy trial in order to assure for himself a trial where he could thoroughly present his defense without time restrictions.

70. Judge Gull's bungling of Mr. Allen's speedy trial right due to her misunderstanding of what the Jury Rules require in the summons only negatively affected the defendant and his constitutional rights, not the prosecution, and thus provides a rational inference of bias against the defense and Mr. Allen.

[6] In Marion County, for example, prospective jurors arrive and gather in a large room not knowing which court or what trial they may be called upon to serve as often multiple jury trials are conducted at the same time and on the same day. The prospective juror could be asked to serve any one of those trials.

71. Additionally, at the May 7, 2024, hearing, Judge Gull cited several cases over which she has presided that lasted less time than the defense is requesting on this case, essentially chastising the defense for the amount of time it was seeking for trial. The length of a trial is determined by the number of witnesses, the amount of evidence, the length of the investigation and the complexity of the issues involved.

72. This is the case of *State of Indiana v. Richard Allen*, with its own set of facts, challenges and potential pitfalls that could cause the trial to last beyond what the parties expect. For example, several witnesses reside 125+ miles away. If those witnesses fail to appear in spite of being properly subpoenaed, the trial may be delayed while the parties try to determine how to deal with a witness whose car may have broken down or who may have simply ignored a valid subpoena. These situations arise in trial, especially in a factually complex trial with approximately 185 witnesses identified by the parties.

73. Additionally, of the approximately 185 witnesses identified by the parties, a dozen or more are expert witnesses, whose testimony will generally take longer and will be more complex than fact witnesses.

74. For this Court to call defense counsel "irrational" and "unreasonable" for stating the truth that they have never had a judge set a hard end date to a trial provides a rational inference of bias against the defense.

75. Additionally, it is shocking and disconcerting that the Court refused to place a limit on the time allotted to the prosecution, but absolutely limited the time for the trial, thereby limiting Mr. Allen's time to present his defense.

76. Under the Court's prior Order, the trial was to last from May 13, 2024, through May 31, 2024, thereby allowing approximately 13 days for opening statement, testimony, evidence, rebuttal evidence, surrebuttal evidence, arguing of final instructions and closing arguments of both parties. If the prosecution took 8 days to present their case, this would only leave 5 days for Mr. Allen to present his witnesses, which include at least 5 expert witnesses without even factoring in rebuttal evidence, surrebuttal evidence, arguing of final instructions and closing arguments.

77. The hard limit on the end of the trial denies Mr. Allen his 6th Amendment Right to Confront Witnesses, his 6th Amendment Right to the Compulsory

Process for Witnesses and his 14th Amendment Due Process Right to Present a Defense.

78. In the context of its request for Judge Gull to disqualify herself, this Court's maligning of defense counsel as "irrational" and "unreasonable" (when in fact it was this Court that was wrong in its understanding of Jury Rules and also wrong in its claim that Court's statewide provide a hard end date to a trial) offers a rational inference of bias against the defense.

Judge Gull's May 31, 2024, explanation for her denial of defense motions without a hearing provides a rational inference of bias

79. In its May 31, 2024, order, when explaining why the Court denied several defense motions without hearing, the Court stated: "If pleadings on their face are not supported by the law or admissible evidence, judicial economy does not require a hearing."

80. This Court knows very little about this case, especially compared to the lawyers litigating the matter. Therefore, how could this Court determine what evidence would be admissible or inadmissible until a hearing takes place and the defense moves to admit the evidence, subject to possible objection by the prosecution?

81. Judge Gull's claim that defense evidence is inadmissible *before* conducting a hearing and before listening to the defense's contextualization of the evidence surrounding their legal arguments provides a rational inference of bias against the defense.

82. This Court's denial of defense motions without a hearing based upon the reasons this Court cites in its May 31, 2024, Order establishes that this Court is prejudging defense evidence as inadmissible. Also, this Court claiming that the law does not support the defense pleadings before this Court even hears any evidence is additional proof that this Court is prejudging evidence. This Court's denying the defense's requests contained in its pleadings without a hearing, based upon her prejudging evidence, provides a rational inference of bias.

83. In the future, if this Court denies defense motions based upon the Court's belief that the defense pleading is "not supported by the law or admissible evidence", the defense then requests this Court to identify the evidence

cited in the defense's pleading that this Court believes is inadmissible and then to explain why the Court believes the evidence is inadmissible; also instead of simply stating "denied without hearing", the defense will request the Court to explain why the pleading is not supported by the law."

Even concerning something as basic as a request for a recess, Judge Gull shows favoritism to the prosecution

84. In her May 31, 2024, Order, Judge Gull expressed that she does not show favoritism to the prosecution. However, Judge Gull has shown her differential treatment between the prosecution and defense in a variety of ways, some are easily identified, and some are less perceptible.

85. For example, because cameras have not been allowed in the courtroom, it is difficult to hear Judge Gull's angry tone when addressing the defense verses how she speaks to the prosecution and also to visualize the Court's disdainful facial expressions she makes toward the defense verses the prosecution.[7]

86. Although it may seem petty or trivial to the Court, the defense offers an example of her disparate treatment concerning something as mundane as how the Court handles a simple request for a recess during a hearing.

87. At the June 15, 2023, hearing, Prosecutor McLeland requested a recess and the following transpired:

McLeland: Judge, I do, I have two witnesses. Could I ask the Court for a short recess, just so I can use the restroom?

Judge Gull: Would counsel approach.

(Sidebar conference conducted)

Judge Gull: I just want to know kind of where we're at. You've got two witnesses.

[7] In the future, the defense will likely request cameras in the courtroom for all hearings and trial for purposes of transparency and to better preserve the record.

McLeland: Tony Liggett and the Westville warden.

Judge Gull: Okay. Do you want to break for lunch?

Rozzi: I don't, but I'm –

Judge Gull: Okay.

McLeland: So I don't care, I can (inaudible)

Judge Gull: Yeah, we could take a quick break. How long –

McLeland: I don't mean to be a pain, but –

Judge Gull: No, no, no, that's all right. How long do you think you'll be?

McLeland: Downstairs and right back up.

Judge Gull: No, no, no. I mean in your witnesses, with your evidence.

McLeland: Oh.

Judge Gull: Ding dong. I don't care how long it takes you to go there. No, I don't care about that.

McLeland: I don't really think too long (Inaudible) Tony about the transportation resources, and then Galipeau just to address allegations they made in their safekeeping.

Judge Gull: So like another, like, hour and a half?

McLeland: I guess I just couldn't –

Judge Gull: Let's just break for lunch. I know you don't want to, but too bad.

Rozzi: I'm fine with whatever.

Judge Gull: Okay, let's just break for lunch.

Rozzi: I don't have anywhere else I need to be.

Judge Gull: Well, I know you don't, because you were supposed to be here for two days.

88. However, at the May 7, 2024, hearing, the Court treated the defense much differently when the defense sought a short recess to confer with their client on urgent matters concerning the positives/negatives of continuing Mr. Allen's speedy trial due to Judge Gull's hard end date of May 31, 2024. Following a back-and-forth exchange between Judge Gull and defense counsel concerning the defense needing more time for trial than Judge Gull was allowing, this occurred:

Rozzi: Can we have a five-minute recess?

Judge Gull: Why?

Rozzi: I would like to speak with my co-counsel here and have a discussion about the business issues such as scheduling, not here in a courtroom where everybody's listening to us. We've got, you know, 50 staff members in this Courtroom, people sitting behind. There's no privacy, and I'd like to talk to him in the hallway about some of the logistics of this so we can solve this problem so that he, Mr. Allen, can put on a defense.

Judge Gull: Does the State of Indiana have any objection to a recess.

McLeland: No, Your Honor.

Judge Gull: All right. Jodie you can go off record.

89. Judge Gull did not playfully call Brad Rozzi "ding dong", but instead questioned Rozzi's reasons for seeking a recess. Then Judge Gull surprisingly asked the prosecutor if he (the prosecutor) had an objection to seeking a 5-minute recess so that defense counsel could talk to their client about the important matters concerning seeking a continuance of a speedy trial due to the trial court's unwillingness to provide more time to the defense at trial.

90. When a defense attorney requests a five-minute recess to talk to their client on such weighty matters as their constitutional rights related to continuing a speedy trial, it should be met with a simple: "Of course" and should not require approval of the prosecutor.

91. The fact that Judge Gull treats the defense differently on such a basic matter as requests for a recess provides a rational inference of bias

This Court failed to address the *appearance of bias* which exists in this case

92. Judge Gull claims in her order "As counsel should know, criminal cases are tried in a Court of law not in the court of public opinion."

93. However, the standard for recusal is not just whether actual bias exists, but also whether the *appearance* of bias exists.[8] The judge must consider both actual bias and the appearance of bias when determining whether to disqualify herself.

94. Judge Gull appears to conflate the general concept that on occasion, the public will vehemently criticize a judge with the defense's specific contention that many in the public are particularly criticizing her for what the public perceives is actual bias against the defense.[9]

95. The emails which the defense attached to the motion and the memes the defense referenced in the motion detail how the public believes that Judge Gull *is biased against the defense.*

96. The defense agrees with this Court that general complaints by the public concerning the Court's rulings should not cause her to disqualify herself.[10] However, that is not what the defense is discussing in its motion.

97. Although the defense believes actual bias exists, it is the *appearance of bias against the defense* about which the public has complained. It is the *appearance of bias against the defense* about which the public has written the Indiana Supreme Court. It is the *appearance of bias against the defense* about which the public has written Judge Gull. And it is the *appearance of bias against the defense,* the existence of which Judge Gull

[8] "[T]he mere appearance of bias and partiality may require recusal if an objective person, knowledgeable of all the circumstances would have a rational basis for doubting the judge's partiality." (*Bloomington Magazine v. Klang*, 961 N.E.2d 61, 64 (Ind Ct.App. 2012).

[9] As part of the legal reasoning contained in her Order, Judge Gull cites to being threatened with bodily harm and injury. She is not alone as defense counsel have also received death threats and threats of bodily harm. Regardless, the defense sees no linkage between whether an appearance of bias exists and Judge Gull's mentioning that she (or any other party) has been threatened.

[10] It is true that many in the public have written both Judge Gull and the Indiana Supreme Court to complain that the judge is wrong in various rulings, particularly whether the judge should allow cameras in the courtroom. However, these complaints would not support an appearance of bias.

should recognize, and for which Judge Gull should voluntarily recuse herself.

Failure to address other issues contained in the first motion to disqualify

98. This Court addressed a few other defense issues contained in their second motion to have Judge Gull disqualify herself. The defense stands by those reasons as well and does not waive those issues for purposes of appeal.

99. However, in its May 31 Order, this Court failed to address all issues contained in the defense's first motion to have Judge Gull disqualified (which the defense incorporated into its second motion).

100. The defense requests Judge Gull to review the first and second motion to disqualify and consider whether she feels obligated to disqualify herself from this case based upon the itemized reasons contained in those motions, as well as in this response.

Conclusion

101. The defense wishes to move forward and have this Court conduct hearings, most immediately the request to have Richard Allen removed from the DOC to either Cass or Tippecanoe County jails while awaiting trial.

102. This motion is intended to respond to Judge Gull's order for purposes of preserving the issues for the record and so that Judge Gull may consider whether or not she feels obligated on her own to recuse herself from this case, which remains an ongoing obligation whether or not the defense is seeking her recusal.

WHEREFORE, the defense files its response to Judge Gull's May 31, 2024 "Order or Judgement of the Court" concerning her denial of the defense request for disqualification.

Respectfully Submitted,

/s/ Andrew Baldwin
Andrew Baldwin, #17851-41

/s/ Bradley Rozzi
Bradley Rozzi, #23365-09

/s/ Jennifer Auger
Jennifer Auger, #21684-41

CERTIFICATE OF SERVICE & COMPLIANCE

I hereby certify that the foregoing document complies with the requirements of Trial Rule 5(G) with regard to information excluded from public record by administrative rule 9(G). I certify that this was filed with the Court via IEFS on June 18, 2024. I further certify that a copy of the foregoing has been provided to the following by IEFS on June 18, 2024:

Nicholas McLeland
Stacy Deiner
James David Luttrell
Bradley Rozzi
Andrew Baldwin
Jennifer Auger

/s/ Andrew Baldwin
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