

In the
Indiana Supreme Court

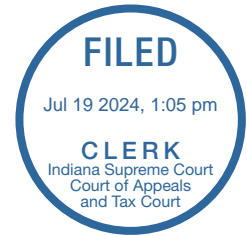
STATE OF INDIANA

v.

RICHARD M. ALLEN

Supreme Court Case No.
24S-SJ-237

Trial Court Case No.
08C01-2210-MR-000001



Notice of Chief Administrative Officer's Determination
Pursuant to Trial Rule 53.1(E)

The Chief Administrative Officer of the Indiana Supreme Court, pursuant to Indiana Trial Rule 53.1 finds that withdrawal of the submission of the above matter from the judge is not warranted.

A review of the Chronological Case Summary (CCS) reveals that on March 13, 2024, Mr. Richard M. Allen filed a motion entitled, "Richard Allen's Third Franks Notice and Request for Franks Hearing, Based Upon Newly Discovered Evidence and Request for Findings of Facts and Conclusions of Law Upon any Ruling on This Request." On April 29, 2024, the CCS reveals that Mr. Allen filed a motion entitled, "Defendant's, Richard Allen, Fourth Franks Motion Based Upon Newly Disclosed Evidence and Request for Hearing." On May 7, 2024, the trial court issued an Order or Judgment of the Court wherein the trial judge stated, "Defendant's third and fourth Request for Franks Hearing will be ruled upon and not set for hearing unless necessary." On July 11, 2024, Mr. Allen filed his Praecipe seeking to have the matter withdrawn from the trial judge for failing to rule on his two motions pursuant to Trial Rule 53.1 (A). However, Mr. Allen is mistaken, and the matter should not be removed from the trial court.

According to T.R. 53.1(A), if a trial judge fails to rule on a motion or set the motion for a hearing within 30 days, the cause may be withdrawn from the trial court. However, Mr. Allen has waived any relief under T.R. 53.1 by filing motions beyond the time that either party could have legitimately raised a claim for removal. Regarding the predecessor rule to T.R. 53.1, the Supreme Court held, ". . . it is well settled that a party cannot claim the benefit of Rule 1-13 when by his conduct he has consented or waived his right to claim it. *Board of Medical Registration and Examination v. Turner*, 168 N.E.2d 193, 195 (Ind. 1960). The case was cited for this holding in *State ex rel. Koppe v. Cass Circuit Court*, 723 N.E.2d 866 (Ind. 2000). In footnote 1, the Supreme Court stated:

Similarly, the benefit of Trial Rules 53.1 or 53.2 may be waived where the deadline for a ruling has passed, but rather than filing a praecipe to withdraw the cause, a party files pleadings or otherwise takes voluntary action of record inconsistent with that party's right to invoke those rules. *See generally Board of Medical Registration v. Turner*, 241 Ind. 73, 77-78, 168 N.E.2d 193, 195 (1960)(applying a predecessor rule).

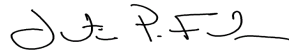
Mr. Allen filed a motion on March 13, 2024, which warranted the trial court to issue a ruling on the motion by Friday, April 12, 2024. The trial judge failed to issue a ruling by April 12, 2024. However, instead of filing a praecipe for withdrawal as early as Monday, April 15, 2024, or prior to the filing of any subsequent motion, Mr. Allen filed an additional motion. On April 29, 2024, Mr. Allen filed his “Defendant’s, Richard Allen, Fourth Frank’s Motion Based Upon Newly Disclosed Evidence and Request for Hearing.” Because Mr. Allen filed a motion seeking to advance the matter before the trial court, Mr. Allen has waived any relief under T.R. 53.1 (A) concerning his motion filed on March 13, 2024.

In terms of Mr. Allen’s motion filed on April 29, 2024, he has also waived any relief under T.R. 53.1(A). Mr. Allen’s motion warranted a ruling by the trial judge by Wednesday, May 29, 2024. The trial judge failed to issue a ruling by May 29, 2024. However, instead of filing a praecipe for withdrawal as early as Thursday, May 30, 2024, or prior to the filing of any subsequent motion, Mr. Allen filed an additional motion. On June 18, 2024, the CCS reveals that Mr. Allen filed a motion entitled, “Accused’s Response to This Court’s May 31, 2024 ‘Order or Judgement of the Court’ and Notice of Conflict.” Because Mr. Allen filed a motion seeking to advance the matter before the trial court, Mr. Allen has waived any relief under T.R. 53.1 (A) concerning his motion filed on April 29, 2024.

The Praecipe is denied.

Accordingly, submission of this case is not withdrawn from the trial judge. In accordance with Indiana Trial Rules 53.2(E) and 53.1(E) the local clerk must enter this determination in the Chronological Case Summary of the case and provide a copy of this Notice to the trial judge and all parties of record in the proceeding.

Done at Indianapolis, Indiana, on 7/19/2024.



Justin P. Forkner
Chief Administrative Officer
Indiana Supreme Court