

**IN THE  
INDIANA SUPREME COURT  
CASE NO. \_\_\_\_\_**

STATE OF INDIANA ON THE	)	
RELATION OF RICHARD ALLEN,	)	
	)	
Relator,	)	
v.	)	CAUSE NO. 08C01-2210-MR-000001
	)	
THE CARROLL CIRCUIT COURT	)	
and THE HONORABLE FRANCES	)	
C. GULL, SPECIAL JUDGE,	)	
	)	
Respondents.	)	

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**RELATOR’S BRIEF IN SUPPORT OF PETITION  
FOR WRIT OF MANDAMUS**

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## INTRODUCTION

Over five years after teens Abigail Williams and Liberty German were brutally murdered in Delphi, police announced that they had arrested Richard (Rick) Allen for the murders, concluding a police investigation that has captured the world's attention and involved thousands of tips. At his initial hearing and clad in protective gear for his own safety, Rick told the court he would be hiring private counsel. Rick was transported to the D.O.C. for "safekeeping," the judge removed himself from the case, and a special judge was appointed. [R1, 6-7, 41-42].

But a week later, Rick "[threw] himself at the mercy of the court" and requested a public defender. [R1, 44]. Andrew Baldwin and Brad Rozzi, attorneys with a combined 50 years of experience, were appointed. [R1, 8].

Over the next year, Attorneys Baldwin and Rozzi zealously advocated on Rick's behalf: they appropriately asserted Rick's innocence after the public release of the probable cause affidavit; they repeatedly requested a change in the conditions of his confinement due to the obvious effects the conditions were having on his physical and mental health; and they prepared a trial strategy with Rick after poring through thousands of pages of discovery to prepare his defense for a January 2024 trial.

During that time, Rick never complained to the court about his attorneys. [*See generally* R1, 8-39]. On the contrary, he unequivocally stated his desire to have Attorneys Baldwin and Rozzi continue their zealous representation.

Yet less than three months before trial, the court removed Attorneys Baldwin and Rozzi as counsel, citing its extrajudicial "finding" that counsel had engaged in

“gross negligence.” [R1, 38]. At Rick’s direction, Attorneys Baldwin and Rozzi entered appearances as private counsel, agreeing to continue representing him for free. [R2, 16-19].

But at a hearing held on October 31, 2023, the court told Rick that it had “grave concerns” about his defense team, that he was entitled to a “vigorous defense,” and that the court “cannot and will not allow these attorneys to represent you . . . . I can’t do it, sir. I just can’t.” [R2, 26].

Rick’s trial has been reset for a year from now, and he has been forced to start over with new attorneys. The court’s statements about Rick’s counsel have completely undermined the credibility of Rick’s proffered defense.

Rick has an original action currently pending in this Court, under Case Number 23S-OR-302, concerning the lack of public access to the court records in his case. The lack of transparency is an important societal interest, but the issue here implicates Rick’s fundamental constitutional rights to counsel and a fair trial.

## **BACKGROUND**

### **I.A. Rick requested and was appointed competent and experienced counsel.**

On October 28, 2022, the State charged Rick with two counts of murder. [R1, 5-6]. Officers arrested Rick and took him into custody, where he has remained ever since. The Carroll Circuit Court ordered Rick transported to the DOC for safekeeping, due to “a toxic and harmful insistence on “public information” from media about the case. [R1, 41]. After sending Rick to the DOC, the judge recused

himself. [R1, 7]. The Honorable Frances C. Gull accepted an appointment as special judge. [R1, 7].

Rick requested a public defender to represent him. [R1, 44]. Attorneys Andrew Baldwin and Brad Rozzi were appointed as Rick's counsel. [R1, 8]. Attorney Baldwin is one of only four Indiana attorneys certified as a Criminal Trial Specialist by the National Board of Trial Advocacy as authorized under Indiana Rule of Professional Conduct 7.4. He has nearly 30 years of criminal trial experience, handling hundreds of jury trials and representing numerous defendants charged with murder. Attorney Baldwin has never been disciplined or suspended. [R2, 36].

Attorney Rozzi has over 20 years of criminal trial experience, handling thousands of cases, including eight murder cases. Attorney Rozzi practices regularly in Carroll County and surrounding counties. He was born and raised in adjoining Cass County and is intimately familiar with the police officers and prosecutors investigating and prosecuting this case. Attorney Rozzi has never been disciplined or suspended. [R2, 36-37].

Rick wants this partnership to handle his defense. [R2, 36-37].

**I.B. Rick's lawyers issued a press release affirming Rick's innocence.**

On November 29, 2022, the charging information and probable cause affidavit in Rick's case were made available to the public. [R1, 11]. Attorneys Baldwin and Rozzi issued a "press release," which responded to the allegations contained in the affidavit, reasserted Rick's innocence, and indicated they would continue to share exculpatory information with the public to the extent they were ethically permitted

to do so. [R1, 46-48].

Later that day, the court entered a gag order prohibiting the parties from making extra-judicial statements about the case, which was reaffirmed after a hearing. [R1, 11, 14]. The court also entered a protective order prohibiting the parties from divulging or granting access to the discovery material to all but certain people. [R1, 50-51].

On December 21, 2022, Rick's counsel, Andrew Baldwin, inadvertently emailed a summary log of the evidence on a flash drive received during discovery. The log did not contain any substantive evidence but was similar to a table of contents. [R1, 242].

**I.C. Due to his declining mental and physical health, Rick asked to be moved out of maximum-security segregation confinement.**

On April 5, 2023, Rick moved to modify the safekeeping order, arguing that he was unrepresented when the order was entered, that no hearing had ever been held on the motion, that he was being held in a maximum-security segregation unit at Westville Correctional Facility (WCF) that is generally reserved for violent convicted offenders, and that WCF had a history of unequal and inhumane treatment of its inmates. [R1, 53-61]. Rick described the conditions in which he was being held as well as the obvious decline in his physical and mental health. [R1, 53-57]. Rick explained the significant hardship his placement in WCF had on his ability to assist his attorneys in preparing his defense. [R1, 56-59].

The court denied the motion, reaffirmed its prior order, and clarified that the

D.O.C. could move Rick to accommodate his needs. [R1, 63]. Attorney Rozzi filed a tort claim notice to preserve Rick's right to obtain private counsel in the future to file a civil suit relating to the conditions of his DOC confinement. [R1, 65-66].

**I.D. Rick and his attorneys formulated a strategy of seeking a speedy trial and pursuing a defense of third-party guilt.**

Rick's counsel continued to file motions to change his confinement conditions. [R1, 19, 205-12]. He and his attorneys also developed a trial strategy of seeking a speedy trial and pursuing a defense of third-party guilt. [R1, 68-203; R2, 37]

Several months before trial, Rick filed motions to suppress evidence, a motion in limine regarding the ballistics evidence, and a request for a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). [R1, 20-21, 26-28, 68-203].

Rick also signed a motion for speedy trial, which Rick's attorneys planned to file in early November to lock in the January trial date. [R2, 37]. During a telephone conference with the court in early October 2023, Rick's attorneys informed the court that they were ready to proceed to trial in January. [R2, 37].

**I.E. The trial court removed Rick's chosen counsel over his objection.**

In August 2023, a former employee of Attorney Baldwin's office, Mitchell Westerman, stopped by Baldwin's office to visit. [R2, 34]. Westerman slipped into a conference room where he found crime scene photos, and by his own admission secretly photographed some of the discovery material and disseminated it. [R2, 34]. Attorney Baldwin was not aware Westerman had done this. [R1, 215].

When counsel learned the material had been disseminated, they disclosed the

matter in an email to the court and the State on October 6. [R1, 225]. The prosecutor responded that he had known about the leak for a day and that the State was investigating the matter. [R1, 225].

On October 9, 2023, Westerman told Attorney Baldwin about his inappropriate, if not criminal, conduct in secretly photographing the discovery items. [R1, 215]. Rick's counsel informed the State and the court the following day. [R1, 215]. The parties had a telephone conference with the court that day to discuss the matter, and the State mentioned the issue of disqualifying counsel. [R2, 37].

A day later, counsel informed Rick of the matter, and Rick immediately and unequivocally indicated he still wanted his attorneys to represent him, believing their representation was in his "best interest." [R1, 221]. This letter was filed with the court on October 12, 2023 as an attachment to a letter filed by Attorney Rozzi. [R1, 214-21].

After receiving Rick's letter, the court notified the parties that it was scheduling a hearing on October 19, 2023 to address "other matters which have recently arisen," and ordered Rick's counsel to "cease work on Mr. Allen's case until we meet on the 19<sup>th</sup>." [R1, 223].

On Rick's request, the court ordered the attorneys to appear in chambers at 12:30 p.m. before the hearing to discuss what was expected at the hearing. [R1, 227]. Attorney Baldwin filed a memorandum regarding "possible disqualification or sanctions," explaining the circumstances regarding the theft of discovery, the law regarding a criminal defendant's constitutional right to counsel, the court's limited

authority to remove appointed counsel, and a proposed sanction in the event it was warranted. [R1, 233-37].

On October 19, 2023, the judge opened the courtroom to the media and, for the first time, authorized “one or two cameras providing pool coverage [to] be permitted in the Court session.” [R1, 30]. The attorneys appeared in chambers without Rick being present. [R1, 228]. During the conference, the trial court read a prepared statement to Rick’s counsel, accusing them of “gross negligence” and citing specific examples of their zealous advocacy as purported acts of their negligence. [R1, 241-42].

These purported acts of “gross negligence” included the following:

- Issuing a press release before entry of the gag order;
- Filing motions to protect Rick’s health and safety, which the court believed lacked evidentiary support;
- Unintentionally emailing a discovery log to a third party;
- Unspecified “improper” statements made in the motion to suppress;
- Filing a tort claim notice to preserve Rick’s right to seek redress for the conditions of his ongoing confinement;
- Attorney Baldwin hiring a lawyer to appear on his behalf on the issue of sanctions or disqualification; and
- A third party impermissibly photographing discovery without the knowledge or consent of either lawyer.

[R1, 242-43].<sup>1</sup>

The court then informed Rick’s attorneys that they had two options: (1) “voluntarily” withdraw their appearances; or (2) be disqualified as counsel after the court read its prepared statement in open court. [R1, 228].

Attorneys Baldwin and Rozzi met with Rick to discuss the matter. [R1, 228]. Rick disagreed that his trial counsel had engaged in any negligence, and he reaffirmed his desire for them to remain as his counsel. [R1, 228]. Rick’s attorneys informed the court that they believed the court had engaged in an unconstitutional ambush of Rick and his counsel without due process. [R1, 229].

Counsel also informed the court that they believed their withdrawal was involuntary and done under duress, since their refusal to withdraw would “publicly disparage their representation of the accused, framing their advocacy on his behalf as ‘gross negligence,’” and cast Rick, his attorneys, and the merits of his defense in a negative light. [R1, 231]. Such a public statement “risked tainting the jury pool, harming their client’s defense, undermining their professional relationship with the client, and possibly creating an actual conflict for their continued representation.” [R1, 231].

Faced with this dilemma, Attorney Baldwin orally moved to withdraw his appearance, and Attorney Rozzi informed the trial court he would file a formal

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<sup>1</sup> The court reporter declined to provide a transcript of the in-chambers proceeding, and the court did not rule on Relator’s motion for the transcript. Relator is relying upon the recollection of Rick’s attorneys memorialized shortly after the proceeding.

motion to withdraw his appearance at a later date. [R2, 6]. Attorney Rozzi did not withdraw. [See R1, 31-39].

The judge entered the courtroom, went on the record without Rick or his attorneys being present, and stated there was an “unexpected turn of events” and that Rick’s lawyers had withdrawn from the case. [R2, 6]. The court concluded the hearing by noting that the State “had some witnesses here that came earlier to have the hearing, but clearly, this is outside of our control.” [R2, 7].

In a written order, the court noted that Rick’s pretrial motions were still pending, due to the court still reviewing the exhibits submitted by counsel. [R1, 32].

**I.F. To continue pursuing Rick’s trial strategy, counsel remained in the case as private counsel, but the court disqualified them.**

Attorney Rozzi filed a notice indicating that Rick did not want him to withdraw as counsel. [R1, 227-31]. This notice informed the court that there were “no circumstances under Rule 1.16 of the Indiana Rules of Professional Conduct which warrant the withdrawal of counsel,” and that everything cited by the court as alleged “gross negligence” was the product of “ethical lawyering in the best interests of the client[']s defense and mental and physical well-being.” [R1, 244].

The notice also indicated that Rick was asserting his constitutional right to the counsel of his choice and wanted counsel “to move forward with the representation of Defendant Allen until a final disposition of this matter.” [R1, 230]. Finally, the notice indicated that Rick was prepared to go to trial on January 8, 2024, and any continuance of the trial beyond that date would prejudice him. [R1, 230].

Rick, by counsel, also filed a motion seeking the special judge's recusal. [R1, 239-46]. The trial court ordered the clerk to remove Rick's filings from the record because Attorney Rozzi was no longer counsel of record. [R1, 33]. The court also appointed two public defenders to represent Rick. [R1, 33].

Attorney Baldwin filed a motion requesting the court reconsider her order to remove he and Rozzi as Rick's counsel of record. [R2, 10-11]. In the motion, Attorney Baldwin argued that his oral motion to withdraw was involuntary, the court rules outlining the proper procedure to withdraw as counsel were not complied with, he and Attorney Rozzi were not disqualified and remained as counsel of record at the time they filed a motion on Rick's behalf for the judge's recusal, the court lost jurisdiction to take any further action in the case until the motion to recuse was resolved, and removal of counsel interfered with their attorney-client relationship and prejudiced Rick's constitutional right to counsel. [R2, 10-11].

The day before a hearing scheduled on October 31, 2023, Attorneys Baldwin and Rozzi entered their appearances as Allen's retained counsel. [R2, 16-19]. In their appearances, Baldwin and Rozzi reasserted their belief that they were improperly removed as counsel of record, and that they were now entering their appearances as private counsel in order to protect Allen's constitutional rights to a fair and speedy trial and to honor his Fourth, Fifth and Sixth Amendment Rights. [R2, 16-19].

On October 31, 2023, a hearing was held. Attorney Baldwin stated that Rick had asked them to represent him, so they reentered their appearance. [R2, 24]. The court asked what had changed in the 12 days since they had chosen to withdraw

rather than be removed. [R2, 24]. Attorney Rozzi argued that their withdrawal as counsel was involuntary, so as to avoid prejudicing Allen's defense by allowing the court to disqualify them. [R2, 24]. He also argued that Rick had a constitutional right to counsel of his choice, he had asserted that right, and the court had no authority to remove his counsel without due process. [R2, 24-25].

The State indicated it agreed with the court that Rick's counsel were grossly negligent. [R2, 25]. The State reiterated the examples of "negligence" the court had noted during the in-chambers hearing. [R2, 25-26].

The court acknowledged that Rick had chosen Attorneys Baldwin and Rozzi as counsel, but refused to recognize them as his counsel, stating: "I have grave concerns, Mr. Allen, about their representation of you, the previous findings by this Court of their gross negligence. Mr. Allen, you are entitled to adequate representation in your case, you are entitled to a vigorous defense in your case. And this is difficult, Mr. Allen, because I know what you want, you've indicated that through your attorneys, but I cannot and will not allow these attorneys to represent you with the concerns that I've had, with the gross negligence that I have found. They withdrew, rather than be found grossly negligent and be removed. I can't do it, sir, I just can't. . . . I cannot allow that." [R2, 26].

Thereafter, the new attorneys requested a continuance of the January 2024 trial. [R2, 23]. The court granted the request and set an October 2024 trial date, noting that counsel had not yet received the discovery and were unable to estimate when they would be ready for trial. [R2, 26-28]. The new attorneys admitted they could

not tell the court with any certainty that they would be ready in October. [R2, 27]. The court also noted it had not completed review of the exhibits related to the *Franks* motion, and that once new counsel had time to review discovery and the pleadings, they “could either adopt those pleadings or make your own . . .” [R2, 28].

## GROUNDS FOR WRIT OF MANDAMUS

### **II. The trial court lacked any authority to remove Rick’s entire defense team over his objection and based on a summary finding of “gross negligence.”**

Original actions provide extraordinary remedies and, accordingly, “writs of mandamus and prohibition will be issued only where the trial court has an absolute duty to act or refrain from acting.” *State ex rel. Commons v. Pera*, 987 N.E.2d 1074, 1076 (Ind. 2013). This Court routinely relies on its original jurisdiction to address claims that attorneys have inappropriately been disqualified or that they should have been disqualified. *See, e.g., State ex rel. Meyers v. Tippecanoe County Court*, 432 N.E.2d 1377 (Ind. 1982).

Here, trial court has an absolute duty to reinstate Attorneys Rozzi and Baldwin, and the remedy on appeal is non-existent. The Sixth Amendment to the U.S. Constitution provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” The right to counsel embraces not only the assistance of counsel but also the reasonable opportunity to secure counsel of one's own choice. *Latta v. State*, 743 N.E.2d 1121, 1127 (Ind. 2001); *Powell v. Alabama*, 287 U.S. 45, 53 (1932).

The attorney-client relationship, once established, is inviolate, and should not be

severed or subject to “unwarranted interference.” *Latta v. State*, 743 N.E.2d 1121 (Ind. 2001). The attorney-client relationship is afforded the same venerable protections whether the lawyer is a public defender, acting pro bono, or privately retained. *Smith*, 440 P.2d at 74; *Lane v. State*, 80 So. 3d 280, 297 (Ala. Crim. App. 2010).

Indiana recognizes only two narrowly circumscribed situations where a trial court may sever the attorney-client relationship against the client’s wishes: (1) the lawyer is not a member of the state bar, *Wheat v. United States*, 486 U.S. 153, 159 (1988); or (2) the lawyer has an *actual* conflict of interest that will obstruct his ability to provide effective representation. *See T.C.H.*, 714 N.E.2d 1162 (Ind. Ct. App. 1999).

No Indiana court has ever tolerated a trial judge removing a lawyer from a case, over the client’s objection, based on the judge’s subjective belief the lawyer is negligent, or even “grossly negligent.” And courts across the country regularly issue extraordinary writs in criminal cases to reinstate defense attorneys who have been kicked off cases for conduct the trial court found upsetting or negligent. *See State v. Huskey*, 82 S.W.3d 297, 311 (Tenn. Crim. App. 2002); *Smith v. Superior Ct. of Los Angeles Cnty.*, 440 P.2d 65, 75 (Sup. Ct. Cal. 1968); *Stearnes v. Clinton*, 780 S.W.2d 216, 223 (Tex. Crim. App. 1989); *Buntion v. Harmon*, 827 S.W.2d 945 (Tex. Ct. Crim. App. 1992); *Finkelstein v. State*, 574 So. 2d 1164, 1168 (Fla. Dist. Ct. App. 1991).

When a court believes it possesses *objective* evidence to support a lawyer's removal, it should clearly articulate that evidence on the record and "exhaust other possible remedies before resorting to the removal of counsel," such as censure, disciplinary referral, or contempt proceedings. *Huskey*, 82 S.W.3d at 307-10. Removal, if ever considered by a judge, should be an absolute last resort. And the removal proceedings should occur at a hearing where the defendant and his chosen counsel are provided notice and an opportunity to be heard on why the attorney-client relationship should be severed. *Id.* at 309.

Here, the judge acted to terminate the attorney-client relationship when she had an absolute duty to refrain from doing so. This Court should mandate Attorneys Rozzi and Baldwin be immediately reinstated. Attorneys Baldwin and Rozzi were active members of and in good standing with the Indiana bar. [R2, 36]. And there is no conflict of interest even alleged between Rick and his attorneys. The inquiry should end here.

But Attorneys Baldwin and Rozzi were removed because the trial court disagreed with their conduct. The judge made a *sua sponte* summary finding in-chambers of "gross negligence" after the State raised the issue of disqualifying them. [R2, 37]. It is entirely unclear from the record what the court found was "gross negligence." The record only includes Attorney Rozzi's recollection of the acts mentioned by the court, because Rick has been unable to obtain a transcript of the in-chambers proceeding.

Nevertheless, the judge's subjective allegations of "gross negligence" fall into two categories: (1) a mere disagreement with zealous defense tactics, or (2) concerns about the unintended release of evidence, which objectively had no effect on the lawyers' ongoing, effective representation of Rick. A Sixth Amendment interference-with-counsel claim is at its zenith when a trial court dismisses a lawyer because it disagrees with *competent* advocacy. *See Stearnes*, 780 S.W.2d at 223. That is precisely what occurred here.

Once Attorneys Rozzi and Baldwin were appointed and became Rick's counsel, the court lacked any authority to obstruct and sever that relationship. If the court found their conduct upsetting or negligent it should have clearly articulated that evidence on the record and exhausted other possible remedies before removing them from the case, such as censure, disciplinary referral, or contempt proceedings. She had an absolute duty to refrain from obstructing and severing the relationship, especially where Attorneys Baldwin and Rozzi suggested a remedy in the event the court was considering removal. [*See* R1, 236].

This Court should grant emergency relief and reinstate Attorneys Rozzi and Baldwin.

But reinstatement of Rick's counsel of choice is not sufficient to remedy the violation here. Rick was pursuing a speedy trial and third-party guilt strategy. He intended to file a speedy trial request in early November. [R2, 37]. But the judge kicked them out of the case, rejected their appearance, and struck their pleadings. This Court is the *only* court in the State that can order a speedy trial date. If it does

not seize this opportunity now, it will forever be lost. There is no post-judgment remedy available. The new lawyers have already indicated they will not be prepared for a speedy trial. [R2, 26-28].

A new judge should also be appointed to avoid the appearance of bias that will otherwise permeate these proceedings. “A judge shall disqualify . . . herself in any proceeding in which the judge's impartiality might reasonably be questioned, including . . . circumstances [where] . . . [t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.” Ind. Judicial Conduct Rule 2.11(A)(1). The commentary to this canon provides that “[u]nder this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.” Jud. Cond. R. 2.11 cmt. [1].

Here, the judge summarily found that counsel were grossly negligent and publicly proclaimed that she has “grave concerns about their representation.” [R2, 26]. The judge also emphatically stated she could not allow them to remain as Rick’s counsel, given her concerns about their representation. [R2, 26].

For many Hoosiers this case marks the first time they have followed the workings of an Indiana court. Yet for all rulings going forward, the public will question the judge’s impartiality. To restore the public’s trust in the integrity of the judicial process in this high-profile case, a new special judge should be appointed.

## CONCLUSION

To ensure that, going forward, Richard Allen receives his fundamental right to counsel, a writ of mandamus is appropriate to reinstate Attorneys Baldwin and Rozzi as court-appointed counsel, to set a trial date within 70 days from the issuance of the writ, and to remove the special judge and appoint a new one.

Respectfully submitted,

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## VERIFIED STATEMENT OF WORD COUNT

Pursuant to Rule 3(B) of the Indiana Rules of Procedure for Original Actions, undersigned counsel certifies that the foregoing contains fewer than 4,200 words, exclusive of the items listed in Appellate Rule 44(C), as counted by the word processing system used to prepare the Brief (MS Word).

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## CERTIFICATE OF FILING AND SERVICE

Pursuant to Rule 2(D) of the Indiana Rules of Procedure for Original Actions, the foregoing was electronically filed using IEFIS and on November 6, 2023 was served upon the following through IEFIS and via electronic mail at the noted e-mail address:

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