

STATE OF INDIANA)
)SS:
COUNTY OF CARROLL)

STATE OF INDIANA)
)
 v.)
)
RICHARD ALLEN)

IN THE CARROLL CIRCUIT COURT
CAUSE NO. 08C01-2210-MR-000001

MOTION TO DISQUALIFY

Comes now the Accused, by counsel, and pursuant to Rule 2.11 of the Indiana Code of Judicial Conduct and Rules 12(B) and (D) of the Indiana Rules of Criminal Procedure respectfully and moves for recusal of and change of judge from Judge Frances C. Gull.

1. Rule 2.11 of the Indiana Code of Judicial Conduct requires a judge to disqualify himself or herself when the judge's impartiality might reasonably be questioned. Such is the case in this cause of action for the reasons described below.

2. The comments to Rule 2.11 provide additional guidance:

[1] Under 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. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] 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.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

3. Judge Gull has removed and concealed, or allowed to be removed by the Clerk of Carroll County, defense pleadings from the chronological case summary in violation of the Indiana Supreme Court's Administrative Rules. Those pleadings include: *Franks*

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motion filed 9/18/23; *Franks* memorandum filed 9/18/23; three affidavits (Warden Galipeau, Sgt Jones, Sgt Robinson) filed 10/10/23 and the affidavit of the leaker, Mitch Westerman. Judge Gull has not removed or hidden any State filings.

4. Indiana Access to Court Records Rule 2(A) provides in pertinent part, “All persons have access to Court Records as provided in this rule,” and that certain persons have greater access to Court Records. The Commentary to ACR Rule 2(A) is that “all persons, including members of the general public, the media, and commercial and non-commercial entities are entitled to the same basic level of access to Court Records.” And, ACR Rule 4 provides that “A Court Record is accessible to the public except as provided in Rule 5.” ACR Rule 5(A) provides that certain “Entire Cases” shall be excluded from public access, without notice of exclusion, but this “entire case” has not been declared confidential by statute or rule, and meets none of the other criteria laid out in ACR Rule 5(A). ACR Rule 5(B) provides the process for excluding individual Case Records. However, none of the thirteen listed grounds for excluding public access to the records secreted from the docket in this case apply to the above referenced documents which have either disappeared from the CCS or are inaccessible to the public, nor were the documents filed using the procedures required by ACR Rule 5(B) (i.e., filing on green paper, or filing electronically as a confidential document, along with an ACR form identifying the specific grounds upon which exclusion is based). By secreting pleadings from the docket without following the Access to Court Records Rules, Judge Gull has, or has allowed, violations of public access. Because those acts have only shielded documents from the defendant, these actions clearly demonstrate a

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lack of impartiality and fairness in violation of Judicial Rule 1.1 Compliance with the Law,¹ and Rule 2.2 Impartiality and Fairness.²

5. On October 12, 2023 Judge Gull instructed appointed counsel to “cease work on Mr. Allen’s case” which interfered with the attorney-client relationship and prejudiced the Accused by denying him the timely effective representation guaranteed him by the State and Federal Constitutions.

6. On October 19, 2023 Judge Gull conducted critical stage proceedings in chambers outside the presence of the Accused even though she had ordered him transported and he was available. She then did the same after placing his attorneys in an ethical dilemma and again, creating a public record outside of the presence of the Accused. This ignored clear precedent.

7. On October 19, 2023 Judge Gull ambushed appointed counsel with a planned Hobson’s choice designed to coerce withdrawals. The choice presented was to suffer a public shaming AND be removed from the case or to *voluntarily* withdraw. Despite defense counsel requesting clarification as to the topics and/or motions to be addressed at the October 19, 2023 hearing, she gave defense counsel no notice of her plan to force withdrawals or remove them, thus, denying counsel the opportunity to adequately refute her accusations.

8. That same day Judge Gull had a prepared statement that she threatened to read to the public alleging defense counsel was grossly negligent in their representation of Defendant Allen. Judge Gull’s complaint was more about not having control over

¹ “A judge shall comply with the law, including the Code of Judicial Conduct.”

² “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”

counsel rather than any legitimate concerns that Counsel had engaged in conduct that compromised Richard Allen's defense. A general summary of Judge Gull's complaints are as follows:

- a. A press release (generic in substance) was issued by the defense in November, 2022 before the Court's gag order and only after repeated press conferences by the prosecution.

Allen's Response: The intent was only to level the playing field. This was well within the obligations of defense counsel by established guidelines. She never expressed any concerns over the multiple press conferences by the prosecution.

- b. Two motions filed by the defense, one of which addressed the health and safety of Defendant Allen, and the second of which addressed the immediate transfer of the Accused due to the not so coincidental and undisputed facts that individuals engaging in Norse Paganistic practices may have not only murdered two girls, but that they were also escorting Defendant Allen around the prison at the same time his health was in rapid decline.

Allen's Response: The Court had previously ordered the Accused transferred to a State prison at the request of the Carroll County Sheriff. His mental and physical health began an immediate decline. Prison guards in his area had Odinist emblems on their uniforms which endangered their client after the Odinist connection was exposed. The defense had video of the patches and the guards admitted they wore them. The defense had previously noted a connection between the murders and Odinism. The patches have since been removed. Mr. Rozzi cited instances of abuse. Those filings were within the obligation established guidelines imposed for effective representation.

- c. Mr. Baldwin had drafted an e-mail to co-counsel but sent it to the wrong person due to self-populating in electronic mail.

Allen's Response: This was an accident that happens routinely to most people. The intended recipient, Attorney Bradley Rozzi, and the unintended recipient share the same first three letters of their first names. The e-mail attachment contained no substantive information; just a bare-bones outline of a tiny portion of the discovery received by the defense in this case.

- d. The Court alleged that Mr. Baldwin put improper statements in his *Frank's* memorandum. Not false or misleading statements, just improper in her opinion.

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Allen's Response: The court had disdain for the defense for not filing it under seal even though there was no order to do so. That memorandum was demanded by the prosecution before there could be a *Frank's* hearing. It is an impressive piece of legal writing and has been lauded by expert defense counsel across the nation. It again was required by applicable guidelines.

- e. That Mr. Rozzi had filed a tort claim notice to preserve the rights of his client. The court opined that this action amounted to gross negligence.

Allen's Response: The filing of the notice was intended to preserve the rights of a man who was shuttled off to one of the most secure detention units in the State. Locked up and isolated with only a tablet (which was often dysfunctional) to communicate with the outside world. Allen had no ability to speak with his Wife in private as his phone calls were all being recorded. Allen's own attorneys were required to make advance reservations to visit him at the Prison. It is entirely impractical that Allen would have had the means to prepare his own tort claim notice and/or secure private counsel to do so.

- f. Mr. Baldwin had "hired" a lawyer to represent him in this matter.

Allen's Response: This is/was not true. Mr. Baldwin was betrayed by a friend and there was a subsequent related suicide. As a friend and colleague, David R. Hennessy, suggested he needed a lawyer to speak on his behalf and he volunteered, no fee was arranged between the two. The Court also alleged undersigned had put volatile facts in the memorandum regarding possible sanctions or disqualification. The true facts in a criminal case are often volatile. There was no untruth.

- g. The dissemination ("leak") of crime scene photographs in which neither Attorney Rozzi or Attorney Baldwin had knowledge of nor participated in.

Allen's Response: See Affidavit of Mitch Westerman previously filed.

9. Guideline 1.1 of the Indiana Public Defenders Council's Performance

Guidelines for Criminal Defense Representation states: "The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process". Similar obligations are recognized by the American Bar Association, the National Legal Aid and Defender Association, the

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National Advisory Commission on Criminal Justice Standards and Goals and Rule 1.1 IRPC.

10. Everything cited by Judge Gull as concerning was either not attributable to Attorney Rozzi or excellent and ethical lawyering in the best interests of the clients defense and mental and physical well-being.

11. Throughout the pendency of this proceeding, the defense has exposed untruths by law enforcement, withholding of exculpatory evidence by the prosecution, and discovery violations about which Judge Gull showed no concern and did nothing.

12. The Court has routinely expressed umbrage at defense counsels' Representations through investigations and filings, while silently abiding the prosecution's discovery delays and false statements by them or their agents.

13. On October 19, 2023 Judge Gull coerced an oral request to withdraw from Attorney Rozzi, that did that did not comply with Rule 3.8(H), Indiana Rules of Trial Procedure, and further coerced an oral request from Attorney Baldwin to withdraw as co-counsel in this cause.

14. Judge Gull has exhibited a lack of concern about and taken no action to protect the physical and mental health of the Accused.

15. Throughout these proceedings Judge Gull has exhibited a bias and prejudice against the Accused and his attorneys and in favor of the prosecution.

16. Counsel for the Defendant are appointed pauper counsel and upon appointment judicial control and oversight of the appointed counsel is inappropriate. The Court cannot and should not dictate the process of representation or improvidently curtail the representation of counsel. It has done so without notice to the defendant or

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his counsel affording them an opportunity to be heard. It has also done so of its own accord without any precipitating motion or request. No due process has been afforded.

17. Rule 2.11 of the Indiana Code of Judicial Conduct requires a judge to disqualify himself or herself when the judge's impartiality might reasonably be questioned. Such is the case in this cause of action for the reasons described below.

18. Rule 1.2 of the Indiana code of Judicial Conduct states: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

19. As previously stated, Judge Gull strong-armed Attorneys Rozzi and Baldwin, with a prepared statement that she intended to read into the record had either attorney resisted her efforts to remove them from the Defense. Within minutes Judge Gull took the bench, started the record, and informed those present and the viewing public, that there existed "an unexpected turn of events" with the defense team withdrawing from the case. Judge Gull further stated that these circumstances were "clearly...outside of our control." The only clarity offered up by these statements is that they were entirely inconsistent with her actions in chambers, just minutes earlier, that forced the attorneys to consider withdrawal in this matter. These words run afoul of Rule 2.1 as they demonstrate the tribunal's lack of integrity and impartiality toward the public and usurp Defendant Allen's right to competent legal representation.

20. Rule 2.2 of the Indiana Code of Judicial Conduct requires that "A Judge shall

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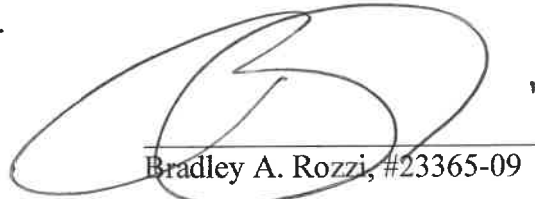
uphold and apply the law and shall perform all duties of judicial office fairly and impartially....” Comment 1 to the Rule states: “To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.”

21. Rule 2.15 of the Indiana code of Judicial Conduct, in pertinent part, states:

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

It does not indicate that any such opinion of the court allows removal of appointed counsel without due process and against the wishes of the Accused.

22. Judge Gull has violated Rules 1.2, 2.2, 2.3, 2.6, 2.8, and 2.11 of the Indiana Code of Judicial Conduct.

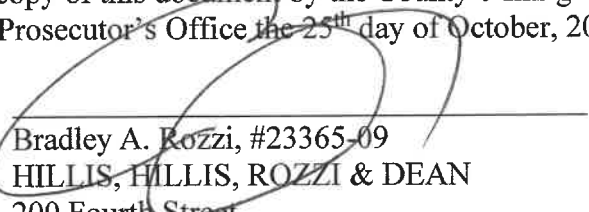

Bradley A. Rozzi, #23365-09

I swear and affirm under the penalties of perjury that the foregoing representations are true.


Bradley A. Rozzi, #23365-09

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 the 25th day of October, 2023.


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