

STATE OF INDIANA)
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COUNTY OF CARROLL) CAUSE NO. 08C01-2210-MR-000001

STATE OF INDIANA)
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RICHARD ALLEN)

**DEFENSE SECOND VERIFIED MOTION TO DISQUALIFY JUDGE and
REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW UPON
DENIAL OF THIS REQUEST, IF THIS COURT DENIES THIS REQUEST**

Comes now the Accused, Richard M. Allen, by Attorneys Rozzi and Baldwin, and pursuant to Rule 2.4 of the Indiana Rules of Criminal Procedure and the Indiana Code of Judicial Conduct move for a change of judge from Judge Frances C. Gull, or her recusal from this cause. In support of said Motion, Richard M. Allen swears and affirms as follows:

Legal Standard

1. The filing of a motion for disqualification and/or request for recusal strips the Court of jurisdiction to decide on any matters until a ruling on the disqualification motion occurs. Lucas v. State, 249 Ind. 637, (Ind. 1968), citing Weer v. State, 37 N.E.2d 537 (Ind. 1941).
2. Pursuant to **Indiana Criminal Rule of Procedure 2.4(B)**: “The state or defendant may request a change of venue from the judge only for bias or prejudice. The motion must be accompanied by an affidavit signed by the defendant or prosecuting attorney. The affidavit must set forth facts and

reasons for the belief that bias or prejudice exists. If the defendant signs the affidavit, the defendant's attorney must file a certification that the attorney believes in good faith the facts recited in the affidavit are true. The court must grant the request if the facts recited in the affidavit support a *rational inference of bias or prejudice*. Put another way, the facts contained in the affidavit must show there is a reasonable basis to question the judge's impartiality toward Richard Allen and his defense team.

3. Concomitant with Ind. Crim Rule 2.4(B) is **Rule 2.11 of the Indiana Code of Judicial Conduct**, which 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. The Rule on disqualification and the Canon on recusal, both adopt a threshold of reasonableness, i.e., would an objective person have a reasonable basis doubting the judge's impartiality?
4. The **comments to Rule 2.11 of the Indiana Code of Judicial Conduct** 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.

5. “The test under [the Canon] is whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge’s impartiality. The question is not whether the judge’s impartiality is impaired in fact, but whether there exists a reasonable basis for questioning a judge’s impartiality.” Tyson v. State, 622 N.E.2d 457, 459 (Ind. 1993) (opinion of Chief Justice Shepard, recusing himself from consideration of a petition for transfer). This legal standard is not lofty.
6. The Accused has a Federal Due Process right to an unbiased judge under the 5th and 14th Amendment to the U.S. Constitution. Judicial bias is one of the narrow classes of constitutional violations that implicate *structural error*. Cases of judicial bias involve a denial of the most fundamental constituents of due process - so fundamental that a conviction in their absence is indecent even if the defendant is plainly guilty. Tyson v. Trigg,

50 F.3d 436, 442 (7th circ. 1995). Structural errors render a criminal trial fundamentally unfair and are not subject to harmless error analysis. Arizona v Fulminante, 499 U.S. 279, 111 S Ct. 1246 (1991).

7. The preamble to the code of judicial conduct provides that judges "should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence."

Richard Allen incorporates his first Verified Motion to Disqualify filed January 28, 2024, as if fully set out herein

8. After the Supreme Court quickly reinstated the defense following oral arguments, on the same day, the Indiana Supreme Court did not grant Allen's request for Judge Gull to be recused based upon the limited record set out at that time by Allen's appellate counsel.
9. On January 28, 2024 the defense filed its motion requesting Judge Gull to be disqualified knowing that the Indiana Supreme Court was not aware of all the reasons Allen could cite to that showed a rational inference of bias.
10. The defense cited 18 reasons for Judge Gull to recuse herself in that January 28, 2024 motion.

11. On February 6, 2024, before finding out exactly why the Indiana Supreme Court rejected Allen's request to have her removed, Judge Gull denied the defense request for her to be removed.¹
12. Judge Gull's one sentence denial of the defense motion to have her disqualified stated: "The Court, having defendant's Verified Motion to Disqualify (filed January 28, 2024), Defendant's Affidavit (filed January 28, 2024), and Certification of Richard Allen's Attorneys (filed January 28, 2024) under advisement and having considered the pleadings, now denies the Verified Motion to Disqualify without hearing *as the Indiana Supreme Court unanimously denied Defendant's previous request on January 18, 2024.*" (Emphasis added)
13. Had Judge Gull waited only two more days before ruling on the defense motion to have her disqualified, she would have had the benefit of learning exactly why the Indiana Supreme Court did not disqualify Judge Gull.
14. On page 16 of its order reinstating Baldwin and Rozzi, the Indiana Supreme Court stated that Allen (through his attorneys) did not "identify anything she [Gull] has done that demonstrates she isn't impartial." (Indiana Supreme Court opinion, page 16).

¹ The Indiana Supreme Court's opinion detailing the reasoning for not taking Judge Gull off the case was issued on February 8, 2024 and certified on February 15, 2024.

15. At the time the Indiana Supreme Court issued its opinion, the Court did not have the benefit of reviewing the 18 reasons the defense cited in its January 28, 2024, filing which the defense claimed supported a showing of Judge Gull's bias. Certainly, some of those 18 reasons were included in the Indiana Supreme Court's opinion as, by themselves, not being enough to cause Judge Gull's recusal. However, many of the examples of bias identified by the defense in its January 28, 2024 motion were not cited by Allen's lawyers in their request for Judge Gull to recuse herself.

16. In other words, Judge Gull's use of the January 18, 2024 Supreme Court ruling as a sort of blanket immunity to support her decision to not disqualify herself was wrong in that the Indiana Supreme Court's February 8, 2024 opinion leaving Judge Gull on the case was clearly based on a very finite set of reasons argued by Allen's appellate attorneys and not the longer list of reasons articulated by Baldwin and Rozzi in their motion to have Judge Gull disqualified. Judge Gull ignored that longer list and instead erroneously used the Indiana Supreme Court's ruling as her reason to remain on the case without any legal analysis and before reading the Indiana Supreme Court opinion.

17. The defense is requesting that if Judge Gull does anything but recuse herself from this case that she issue findings of facts and conclusions of law that support her decision to deny the defense motion rather than a one sentence order summarily denying Richard Allen's request.

18. In addition to the reasons cited in his January 28, 2024 motion, Judge Gull has revealed a rational inference of bias towards the defense based on the following:

- a. Judge Gull engaged in ex parte communications with the State of Indiana;
- b. Judge Gull interfered with a properly subpoenaed defense witness;
- c. Judge Gull treats the prosecution more favorably than the defense;
- d. Judge Gull engaged in the act of prosecuting Richard Allen by inviting the prosecutor to file pre-trial motions seeking the limitation of evidence of third-party culpability and also forecasting the outcome of such a request by the State;
- e. Judge Gull continues to make disparaging comments about defense counsel in open court and in orders issued by the Court;
- f. Judge Gull's handling of defense pleadings verses her handling of prosecution pleadings.
- g. Judge Gull placed blame on defense counsel, and its staff, for administrative failures in maintaining confidentiality of ex-parte defense filings whereas evidence revealed that failures were on the Court's side of the filings.

- h. Judge Gull failed to conduct her own internal investigation into allegations of leaks coming from her own staff, while facilitating contempt proceedings against Richard Allen's chosen attorneys for leaking confidential information related to this case.
- i. Judge Gull effectively denied Richard Allen his right to a speedy trial by not requiring the prosecution to follow the same time restrictions at trial as she was forcing the defense to follow, which forced the defense to seek a continuance of the May 13, 2024 speedy trial date.

Ex Parte Communications and Interfering with Defense Witnesses

- 19. Judge Gull participated in ex parte communications with the State of Indiana, through its witnesses, to the detriment of the defense.
- 20. On April 5, 2023, Richard Allen, by counsel, filed his Emergency Motion to Modify Safekeeping Order, based on the conditions of his confinement at Westville Correctional Unit.
- 21. On April 14, 2023, Judge Gull entered an order stating the Indiana Department of Corrections was authorized to move the defendant within the Department of Corrections to accommodate his medical and physical needs pursuant to medical directives by DOC physicians, psychiatrists and psychologists.

22. On May 4, 2023, Mr. Allen, by counsel, filed his Motion to Reconsider and Request for Due Process hearing, which the Court set for hearing on June 15, 2023.

23. In preparation for the hearing, the defense served a valid subpoena on witness and Westville inmate Robert Baston to appear for the June 15, 2023 hearing.

24. When a deputy from the Carroll County Sheriff's Department went to the Westville Correctional Unit on June 14, 2023 to transport the inmate to the hearing, the inmate became uncooperative. Carroll County Chief Deputy Tobe Leazenby contacted Judge Gull about the situation, and Judge Gull told Deputy Leazenby to leave the inmate there if he did want to come to the hearing.

25. Tobe Leazenby was the first witness called by the prosecution at the June 15, 2023 hearing and certainly will be called as a witness at trial, yet Judge Gull and/or her staff communicated with this prosecution witness the day before his testimony without the full disclosure of said communications to the defense.

26. Additionally, Tony Liggett, who was a witness at the June 15, 2023 and will be a witness when this matter goes to trial, issued a report in which he stated:

On the 14th day of June 2023, communication with the Court was established by Sheriff's Major/Chief Deputy Tobe H. Leazenby, wherein Major Leazenby was advised by the Court to disregard any further efforts to retrieve inmate Baston from the Westville Facility. (Emphasis added).

27. On June 14th, 2023, Judge Gull sent an email to the parties stating: "FYI the Carroll County Sheriff's transport officer went to Westville to pick up the inmate requested by the defense team per subpoena. The inmate refused to come out of his cell and demonstrated an ability to fight if forced. The transport officer stood down and has left the facility to return to Carroll County without said inmate. I have asked for a formal written report on these activities which will provide to you all upon receipt."

28. What Judge Gull failed to tell the defense in that email is that she was the person who used her authority as judge to direct the Carroll County Sheriff's Department to ignore a valid subpoena of a defense witness scheduled to testify at an important hearing on behalf of the defense.

29. It is not unusual for those incarcerated to not cooperate when being transferred from one facility to another when presented with a subpoena.²

² Judge Gull has detailed on more than one occasion her vast experience on the bench. It would be surprising if this situation has not occurred in her tenure on the bench.

However, the lack of cooperation of an inmate is not a legal justification for a judge to direct the IDOC or a County Sheriff transport officer to simply ignore a valid subpoena.

30. The proper method for a judge facing that situation would be to not communicate in an ex parte fashion with witnesses who are involved in the case. Rather, it would be to contact the attorneys for both parties (prosecution and defense) explaining that the court has been informed that there is a potential problem with the transportation of a witness from the IDOC and that the court will not talk to the State of Indiana without talking to both sides. Then, after both sides are engaged, to work on a solution. If the defense still wanted the witness to attend the hearing, then law enforcement would still be required to use whatever means necessary to transport the inmate, unless the State of Indiana filed a motion to quash the subpoena which was granted by the Court.

31. After the June 15, 2023 hearing, Judge Gull denied Mr. Allen's Motion to Reconsider, stating, "the evidence presented demonstrated at the hearing on defendant's Motion to Reconsider did not support many of the allegations advanced by defendant counsel. In fact, the evidence presented demonstrated that the Defendant is treated more favorably than other inmates housed at the Westville Correctional Facility." This is disingenuous given that Judge Gull prevented the defense from presenting the very evidence she said was lacking.

32. Any *perception* of Judge Gull's bias was supplanted with proof of *actual* bias when Judge Gull denied Mr. Allen's Motion to Reconsider claiming a lack of evidence when she prevented Mr. Allen from presenting the testimony of Mr. Baston.
33. Communicating with State's witnesses in an *ex parte* fashion provides a rational inference of bias.
34. Issuing a directive for a state's witness (Carroll County Sheriff) to ignore a valid subpoena to the detriment of the defense provides a rational inference of bias.
35. Judge Gull's failure to fully inform the defense of her involvement in directing law enforcement to ignore a properly issued defense subpoena demonstrates deception. Such deception to the defense provides a rational inference of bias against the defense.

Recent Ex Parte Communication and Additional Evidence of Judge Gull's Favorable Treatment to the State of Indiana as Opposed to her Treatment of Richard Allen and his Defense Team

36. On May 3, 2024, the defense deposed Sheriff Tony Liggett. During this deposition, it was learned that the court has engaged in activities with law enforcement and prison representatives regarding Richard Allen's housing, both during scheduled jury selection in Fort Wayne and during the scheduled jury trial in Carroll County, Indiana. The Court failed to communicate any of these plans to the defense in advance of the court's

actions. Again, the Court appears to have engaged in ex parte communications with State of Indiana.

37. At the June 15, 2023 hearing concerning the pretrial housing of Richard Allen, Sheriff Liggett claimed that the only reason he objected moving Richard Allen to the Cass County jail (approximately 25 minutes from Delphi) was due to a lack of manpower to transport Richard Allen to and from jail.

38. During his May 3rd deposition, Sheriff Liggett acknowledged that Richard Allen was set to be housed at the Tippecanoe County Jail during the scheduled jury trial and that the transportation of Richard Allen to and from the courthouse, was arranged. Therefore, there is no need to continue to house Richard Allen at a prison some two and a half hours from Carroll County, during the pendency of this case.

39. According to Sheriff Liggett, Judge Gull is aware of these circumstances.

40. Despite this, Judge Gull failed to communicate, or even inquire with the defense, about Richard Allen's housing circumstances.

41. It is also true that despite alternative detention options, Judge Gull has failed to intervene and protect Richard Allen, who at this moment in time is presumed innocent, from his appalling confinement conditions by facilitating a more suitable pre-trial housing arrangement for Richard Allen while he awaits trial.

42. Judge Gull's actions of ignoring the defense in matters related to the housing of their client while continuing to communicate with the state of Indiana in an ex parte manner provides a rational inference of bias against Richard Allen and his defense team.

Judge Gull Invited the Prosecution to Seek Limitations on Richard Allen's 6th Amendment Right to Prove that Other Parties Committed the Crimes in Question

43. Both Judge Gull and the prosecution have known since the filing of the first Franks Notice on September 18, 2023, that the defense will be relying on a third-party suspect defense.

44. In rebuttal to the defense's theory regarding third-party perpetrators, the prosecution listed an Odinism expert on their supplemental witness list emailed to the Defense on March 17, 2024.

45. At no time between September 18, 2023 and April 27, 2024 did the prosecution take any action to prevent the defense from pursuing a third-party perpetrator defense. During this time, the Defense conducted many depositions related to their third-party perpetrator defense and in addition, made numerous requests to the State seeking additional discovery regarding third party suspects.

46. On April 28, 2024, Judge Gull directed an email to both the prosecution and defense regarding scheduling matters and, without any prompting, informed the defense that she (Judge Gull) was fully aware of the law

regarding third party perpetrator defenses and would be prohibiting the admission of such evidence by the defense unless some nexus between the two could be proven. This unprompted comment was akin to an invitation by Judge Gull to the prosecution to file a motion in limine that would prevent the defense from presenting evidence that third party suspects committed the murders.

47. Approximately 12 hours later (at midnight on a Sunday night), the prosecution filed its motion in limine requesting that Judge Gull not allow the defense to discuss third party suspects. The court's invitation to the prosecution, to seek such limitations creates a rational inference of bias in favor of the State of Indiana and against the defense.

Judge Gull has repeatedly disparaged Richard Allen's Appointed Public Defenders.

48. Beginning October 19, 2023 Judge Gull began verbalizing her negative feelings about Richard Allen's defense team, using such words as "grossly negligent" and "incompetent".

49. When Richard Allen's original defense team attempted to enter their appearance for Richard Allen, pro bono, Judge Gull would not allow their appearance to be entered based upon her view that the defense attorneys

were grossly negligent and that Richard Alen could not even expect an adequate defense from attorneys Baldwin and Rozzi.³

50. In her comments at the October 31, 2023 hearing, Judge Gull stated the following, “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.” (Emphasis added). These words alone, equate to outright bias on the part of Judge Gull, toward the defense and toward Richard Allen.

51. Since denying the defense motion to disqualify, Judge Gull has continued to show her bias in a variety of ways, including demeaning Richard Allen’s two defense lawyers who have between them over 50 years of experience and zero findings that they are incompetent or have violated the professional rules of conduct.

52. Most recently, in her April 30, 2024 two-page order detailing her ruling on the prosecution’s request to find the defense attorneys in contempt, Judge Gull continued her maligning of the defense attorneys calling them “incompetent,” “negligent,” and “sloppy” in the way that they handled evidence.

³ Judge Gull stated the following to Richard Allen at the October 31, 2023 hearing: “Mr. Allen, I understand that you wish to have Mr. Baldwin and Mr. Rozzi represent you in this matter. **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 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.**” (Emphasis added).

53. Furthermore, in that same order, Judge Gull articulated to not only the lawyers, but the general public, that she would be referring her findings to the Office of Judicial and Attorney Regulation. Judge Gull's targeted comments and reference to the Office of Judicial and Attorney Regulations have no legal relevance to her findings of non-contempt and appear to have been intended only to further disparage the character and fitness of defense attorneys Rozzi and Baldwin.

54. While Judge Gull has on at least 8 occasions denied defense motions with three words: "denied without hearing", Judge Gull felt it necessary to use insulting language concerning defense counsel only 2 weeks before the beginning of trial.

55. The fact that Judge Gull continues to disparage the character and fitness of defense counsel, when she could have otherwise remained silent on the matter, provides a rational inference of bias against the defense.

Other Examples of Judge Gull Treating the Prosecution More Favorably than the Defense

56. At the March 18, 2024 contempt hearing, the defense provided evidence to the court that the Carroll County Prosecutor, Nicholas McLeland, interacted with a social media content provider named Gary Baudette (aka "Fig"). The evidence was in the form of emails, including an email

in which Fig claimed that McLeland had requested Fig to erase their communications.

57. The defense provided evidence that other leaks occurred over the case's history, implying that those leaks could have emanated from McLeland's office.

58. While Judge Gull required the defense to cooperate in the investigation of leaks attributed to the defense, Judge Gull seemingly has no interest in similar allegations attributable to the prosecution.

59. Judge Gull's actions, as referenced in the various paragraphs above, create a rational inference of bias against the defense and in favor of the prosecution.

Judge Gull Treated the Defense Team differently than She Treated her Own Office Regarding Allegations of confidential Discovery Matters

60. At the March 18, 2024 contempt hearing, the defense tendered evidence to Judge Gull that showed that her staff may have leaked confidential information to social media sources.

61. This evidence included emails and video from a content provider named "Fig" and others, as well as testimony from other witnesses.

62. In a November 22, 2022, social media video tendered to the Court, Fig detailed sensitive crime scene information that at that time was not

available to the public.⁴ At the time Fig detailed his knowledge of crime scene information, that information was in the possession of the Court.

63. The defense then attempted to provide emails and did provide testimony to the Court in which a witness (Steven Wood) testified that Fig told him (Steven Wood) that his source of that confidential and sealed information was someone on Judge Gull's staff.⁵

64. Judge Gull has shown no concern whatsoever about unmistakable evidence that on November 22, 2022, Gary "Fig" Baudette revealed sensitive crime scene information at a time when that information was not known by the public, later claiming that he (Fig) received said sealed information from Judge Gull's staff. Judge Gull has called the defense incompetent, negligent, grossly negligent, and sloppy concerning the very same allegations against her staff that Judge Gull has apparently refused to investigate.

65. The defense has no idea whether Judge Gull's court staff leaked sensitive information to a social media site but there does exist facts to support this allegation. Despite these facts, the defense is aware of no action taken

⁴ The defense attempted to admit exhibit "Q" which was a flash drive containing a youtube video from November 22, 2022 in which Fig announced his knowledge of a bullet purportedly found at the scene when this information was still sealed. The judge refused to admit said document as part of her analysis for contempt, but it was accepted as part of the record for appellate purposes (page 139-140 of "Record of Proceedings at Hearing on Motion for Contempt Held on March 18, 2024.") This flash drive is still available for Judge Gull if she becomes concerned that either McLeland or someone from her office was leaking information to Gary "Fig" Baudette.

⁵ Record of Proceedings at Hearing on Motion for Contempt Held March 18, 2024, page 141, lines 1-25, page 142, lines 1-14.

by Judge Gull to investigate these circumstances. This is a stark contrast from the actions of Judge Gull, who in the fall of 2023, endorsed the prosecution and its law enforcement personnel in seeking out suspects associated with a leak of crime scene photos to the public. The fact that Judge Gull has treated the defense differently, when the defense is accused of a leak, than it has treated her own staff or the prosecution creates a rational inference of bias against the defense.

Judge Gull Wrongly Blamed the Defense for Ex Parte Filings which were Inadvertently Directed to the Prosecutor.

66. The defense learned from a prosecution filing that the prosecution had somehow received Mr. Allen's ex parte documents that were not to be viewed by the prosecutor.
67. Upon inspecting how this happened, the defense determined that Judge Gull's staff or the Carroll County clerk errantly misdirected these documents to the prosecutor.
68. When defense counsel's staff reached out to Judge Gull's staff to determine why and how multiple ex parte motions had been sent to the prosecutor, Judge Gull (without investigating the matter) fired off an email to the defense disparaging its staff and placing the blame on the defense.
69. Having been accused by Judge Gull of making the mistake, the defense staff member who filed the ex parte motions then reached out to DoxPop

to make sure that she was filing the ex parte motion correctly. It was determined that the defense was filing the motion correctly. The entity responsible for sending the ex parte documents to the prosecution, therefore, was either Judge Gull's staff or the Carroll County Clerk.

70. Attorney Rozzi then reached out to the Carroll County Clerk who maintained that she had correctly handled the ex parte documents.

71. The defense is in possession of screen shots which prove that defense counsel's staff filed the ex parte matter confidentially and that proves that the defense staff provided service only to attorneys Rozzi and Baldwin (and not Mcleland or any other person). This is the proof that the defense staff followed the rules for filing ex parte motions. The defense did not send out the ex parte motion to McLeland, in spite of Gull's quick accusation.

72. Judge Gull failed to investigate how such a significant error could have been made to avoid misdirected ex parte filings in the future, but rather simply blamed it on the defense.

73. Judge Gull's reaction in blaming the defense for the ex parte leak of information when the leak appears likely to have emanated from Judge Gull's own staff shows a rational inference of bias.

Accusations of Violating Rules on Access to Court Records

74. Due to the way Judge Gull maintained the records on this case, attorneys Margaret Smith and Cara Wieneke entered their appearances and filed a “Petition for Writ of Mandamus & Prohibition (Original Action)”.

75. Following Smith’s and Wieneke’s original action for Writ of Mandamus, Judge Gull hired a lawyer and then was forced to cure most of the issues that Smith and Wieneke identified prior to the hearing in the Indiana Supreme Court.

76. In other words, Judge Gull and her attorneys recognized that she had errantly violated the rules on access to records and then cured those errors.

77. Calling the defense incompetent, grossly negligent and sloppy, while ignoring the fact that both the court and prosecution have been accused by others of behavior that might or would be considered incompetent, grossly negligent, or sloppy provides a rationale inference of bias.

Defense Motions are Treated Differently than Those of the Prosecution.

78. While at least five outstanding defense motions were pending related to the merits of the case (all which needed to be ruled on as soon as possible for purposes of trial preparation for the defense), Judge Gull chose to not issue orders or set hearings on any of those motions. Instead, Judge Gull chose to spend valuable court time setting a half day hearing on the prosecution’s motion for contempt. The prosecution’s motion for contempt

did not address the merits of the murder allegations against Richard Allen, nor was the contempt motion a time-sensitive matter.

79. There is no reason that the contempt hearing could have not taken place after Mr. Allen's trial.

80. The prosecutor filed his motion for contempt against the defense on January 29, 2024. Three days later (February 1, 2024), Judge Gull issued an order setting the matter for hearing. The defense had never received such a quick setting on any of its motions.

81. Even at this moment, several outstanding motions have yet to be ruled on.

82. For example, the record shows that on more recent pleadings filed by the parties, Judge Gull quickly prioritized the prosecution's request for contempt over the following defense motions:

- a. **Motion to suppress confessions.** The defense filed this motion on April 11, 2024 but it was ignored by the Court until the recent May 7, 2024 hearing. Again, it took Judge Gull only 3 days to file a written order addressing the prosecution's motion for contempt by setting it for a hearing only two weeks later, while Judge Gull failed to even acknowledge the defense motion for suppression of the confessions for nearly a full month, and then only did so at the hearing.

- b. **Motions to suppress the accused's second statement.** The defense filed this motion on April 15, 2024, but it was ignored by the Court until the recent May 7, 2024, hearing. Again, it took Judge Gull only 3 days to file a written order addressing the prosecution's motion for contempt by setting it for a hearing only two weeks later, while Judge Gull failed to even acknowledge the defense motion for suppression of the accused's second statement for over three weeks and then only did so at the hearing.
- c. **Motion to compel and for sanctions.** The defense filed this motion on April 23, 2024, but it was ignored by the Court until the recent May 7, 2024, hearing. Again, it took Judge Gull only 3 days to file a written order addressing the prosecution's motion for contempt, while Judge Gull failed to even acknowledge the defense motion to compel and request for sanctions for over two weeks and then only did so at the hearing.
- d. **Motions for Franks III.** The defense filed this motion on March 13, 2024. Judge Gull has ignored this defense filing now for 62 days (through May 14, 2024). Again, it took Judge Gull only 3 days to file a written order addressing the prosecution's motion for contempt by setting it for a hearing only two weeks later, while Judge Gull failed to even acknowledge the defense third Franks motion, even up until the time of this filing.

e. **Ruling on the First Franks Motion.** Additionally, while it took Judge Gull over 4 months to rule on the first Franks motion (Denied without hearing), it only took Judge Gull 43 days to issue an order on the prosecution's request to find the defense attorneys in contempt following a half day of testimony.

83. The prosecution's contempt motion is not relevant to the merits of the case, while the defense's various motions described above are relevant to the merits of the case. Yet Judge Gull acted on the prosecution's motion within 3 days, while ignoring the defense motion for weeks. Judge Gull ignored other older defense pleadings sometimes for months before ruling.

84. Many defense motions have resulted in Judge Gull issuing an order stating these three words: "*denied without hearing*". Since their reinstatement alone, Judge Gull has denied defense motions "without hearing" a total of **8 times**, including denying motions to compel discovery which Mr. Allen needs to prepare his defense.

85. Judge Gull's quick treatment of the prosecution's motion on matters ancillary to the innocence or guilt of Richard Allen verses Judge Gull's treatment of defense motions that are related to the merits of the case

provides a rational inference of bias for Judge Gull's bias for the prosecution and against the defense.

86. Certainly, it appears that Judge Gull used the prosecution's motion for contempt as a vehicle to malign the defense while simultaneously ignoring matters raised by the defense that would malign the prosecution for its handling of discovery. This provides a rational inference of bias against the defense.

Judge Gull Ignored the Defense's Request to Set Aside 2 Weeks to Present Mr. Allen's Defense While Refusing to Set Any Time Limits on the Prosecution

87. On or about October 4, 2023, Mr. Allen's counsel notified the Court that they would need approximately two (2) weeks to present his defense.

88. In the aforementioned April 28, 2024 Sunday morning email, Judge Gull sua sponte issued a stern message in the email indicating that the trial would end on May 31, 2024, "not more or less."

89. Before issuing her order on the days allotted for trial, Judge Gull failed to reach out to the parties in order to determine how many witnesses were expected to testify, the expected length of their testimony, how many videos were expected to be played and the length of those videos; and most importantly how long each side expected their case to last based upon the evidence that they expected to present.

90. Between all defense counsel, with a combined seventy (70) years of experience, not one time have they been told that a trial would absolutely end on a certain day and not go any longer.
91. Judge Gull's inflexibility only impacts the defense as the prosecution presents its case-in-chief first and therefore likely would have enough time to put on its case, leaving the defense with little or no time to put on its case-in-chief.
92. Richard Allen possesses constitutional rights to the compulsory process of having witnesses testify on his behalf and to confront witnesses pursuant to the 6th Amendment of the Constitution of the United States, as well as a right to present a complete defense pursuant to the 14th Amendment.
93. When the defense asked Judge Gull at the May 7, 2024, hearing if the State of Indiana would be forced to abide by the same time constraints as the defense, Judge Gull would not commit to such a requirement of the prosecution.
94. Out of fear that the prosecution would run out the clock and leave the defense with minimal time to present its case, Judge Gull forced the defense to accept her remedy: a continuance of a speedy trial.
95. Because of Judge Gull's refusal to guarantee the defense the same amount of time for trial as the prosecution, Richard Allen was for all intents and purposes denied his right to a speedy trial.

96. All the above circumstances create a rational inference of bias against the defense and in favor of the prosecution.

Judge Gull Engaged in extrajudicial activities that raise a rational inference of bias especially when Judge Gull may have to rule on how the extrajudicial activities of a key state's witness will impact the admissibility of Richard Allen's purported confessions

97. Judge Gull was appointed to preside over this case on November 4, 2022.

98. Since being appointed as special judge, this case has become one of the highest profile cases in recent memory, even receiving worldwide attention.

99. The victims of the murders are Abby Williams and Libby German.

100. On July 9, 2023, more than 8 months after being appointed to the case, Judge Gull chose to comment on a post concerning a softball tournament at the Abby and Libby Memorial Park. The post upon which Judge Gull was commenting stated: "What an honor it was for the girls to play in the Abby and Libby Memorial tournament. What a greater honor it was that Abby and Libby's grandparent present our girls with their championship finalists rings."

101. Judge Gull's comment was "Congratulations."

102. While seemingly innocuous, Judge Gull's choice to comment on a post involving a softball tournament celebrating the lives of the victims of the crimes in which Judge Gull is the presiding judge was inappropriate.

103. Certainly, when factoring in the other issues raised in the first motion to have Judge Gull disqualified, as well as the issues raised in this second motion to disqualify, Judge Gull's comments were even more inappropriate, providing an appearance of bias against Richard Allen and in favor of the State of Indiana who is prosecuting the accused murderer of the victims who are identified in the post.
104. The defense believes that Judge Gull's choice to comment on social media as detailed herein, on its face, supports a rational inference of bias as well as an appearance of bias.
105. However, newly discovery evidence adds another layer of conflict and bias to Judge Gull's post.
106. On May 6th, 2024, The State of Indiana filed its formal request for a pre-trial ruling on admissibility. Within said request, the State referenced Dr. Monica Wala, as being a psychologist providing services to offenders at Westville Correctional Facility; one of those inmates being Richard Allen. Subsequent to the filing of said pleading, members of the public began to discover evidence that Dr. Wala had joined and participated in social media forums/outlets/etc. involving the Delphi murders. Naturally, these facts were reported to the defense through various means.
107. It is also true that the defense deposed Dr. Wala on Wednesday, May 8th, 2024 at the law office of Hillis Hillis Rozzi & Dean. The deposition

was not completed due to timing constraints and will likely be reset in early June, at which time the defense expects the deposition to conclude.

108. The defense was unaware of the apparent social media activities of Dr. Wala at the time of the deposition and therefore, the matter was not addressed. It wasn't until shortly after the deposition concluded that these issues were brought to the attention of Attorney Rozzi, who conducted the deposition. Since May 8th, 2024, the defense has become aware of information that suggests that Dr. Wala did in fact engage in social media activities related to the Delphi murders. The defense is not in a position to determine the extent and nature of said activities at this juncture without conducting further discovery. However, the defense is aware that the online personality purporting to be Monica Wala (including a picture of Dr. Wala) appears to have deleted/removed and/or wiped clean any online presence related to the Delphi murders. This appears to have been done in the hours following the deposition referenced above.

109. Again, this court is faced with a conundrum. The Judge's decision to publicly comment on matters involving the death of the two girls is evidence that Judge Gull does not find it inappropriate to engage in such communications about a pending case. How then, can Judge Gull be impartial in making any determinations on the defense's motion to suppress or State's request for a pre-trial ruling on admissibility of

communications between Richard Allen and his state appointed psychologist? If this court were to find that Dr. Wala's alleged acts were inappropriate, then by extension, the same could be true about Judge Gull's actions.

110. As the purported confessions loom as potentially the most powerful evidence against Richard Allen, any appearance of bias or conflict that exists for Judge Gull as she makes determinations of the legal impact of this witness's social media activity on those purported confessions provide a rational inference of bias.

111. Additionally, even when Judge Gull rules against the defense and does not suppress the purported confessions, Judge Gull will likely face a second legal argument: the admissibility of any social media postings of this witness that involve the Delphi murders in order to attack the witness's credibility.

112. Should the prosecutor object, claiming that the witness's social media comments on the Delphi case are inadmissible, Judge Gull will once again find herself in a conflicted position due to her own social media comments concerning a post involving the victims of the murders.

113. Judge Gull's starting position, apparently, is that it was appropriate for her (Judge Gull) to choose to comment on a social media post concerning the victims' softball tournament.

114. Therefore, it would be more likely that Judge Gull's starting position will also be that this Dr. Wala's social media posts/activity are similarly appropriate.

115. With this starting position, the defense will face a heightened burden in arguing for the inadmissibility of the Dr. Wala's social media posts/activity. This additional hurdle, created at least, in part, by the court's inappropriate comments on social media, creates an inference of bias or prejudice against Richard Allen. Disqualification/recusal is the appropriate action in terms of remedying this prejudice.

Judge Gull has Impaired Richard Allen's Ability to Defend Himself by Denying his Reasonable Requests for Expert and Administrative Staff Funding.

116. In 2023, the defense tendered bills for matters related to their defense of Richard Allen, totaling over \$38,000. Judge Gull has not authorized payment of those bills as of the date of this filing.

117. Defense counsel has been forced to advance those expense out of their own pockets.

118. For example, the defense has paid \$26,000 for the work its investigator performed in the spring, summer and fall of 2023. When Judge Gull was not satisfied with the format of the investigator's bill, the defense tendered a new bill to meet the court's expectations. Because the

investigator deserved to be paid for the work he performed, the defense paid the investigator out of its own law firm account.

119. After trying to rectify the issues Judge Gull had with the bill's format, Judge Gull has failed to order the payment of such expenses associated with the defense's private investigator.

120. The defense has sent multiple requests to Judge Gull and her staff seeking input as to why this bill has not been paid. Judge Gull has not responded to these requests.

127 The lack of response to these requests for payment creates a rational inference of bias.

128 Also, while the prosecution has unlimited access to funds and law enforcement experts, Judge Gull initially denied the defense request for expert funds for certain experts needed for the defense of Richard Allen. Only after the defense filed requests for reconsideration and apparent public outcry, did Judge Gull change her mind and provide the defense funds for these experts. The refusal to initially provide funds to the defense for experts provides a rational inference of bias.

Evidence that Public Confidence in Judge Gull has Eroded Due to Continued Improper Conduct and Conduct that Creates the Appearance of Impropriety.

129 Evidence of the erosion of the public's confidence in Judge Gull can be shown through letters that Judge Gull has received, as well as letters the Indiana Supreme Court has received, as well as memes and other social media content that can be easily located on the internet.

130 Find attached 14 letters and emails that members of the public have taken the time to draft and then sent either directly to Judge Gull or to the Indiana Supreme Court. These letters and emails provide evidence that the public perception of Judge Gull's ability to be fair and impartial has eroded.

131 Multiple people paying attention to this case believe that an inference of bias and prejudice against the defense exists to such a degree that they took the time to alert this Court and the Indiana Supreme Court to what they are observing.⁶ The perspective of common everyday citizens (i.e.,

⁶ On March 28, Paige Moore wrote Judge Gull (among other things): "Mr. Allen was denied funds for expert witnesses even though Americans are guaranteed a fair trial. Experts are needed for forced confessions, and bullet markings."

On April 1, 2024, Oscar Lopez wrote to Judge Gull saying (among other things): "I have serious doubts that you, the judge presiding over this case is capable of being a fair and impartial judge in this case."

On March 29, 2024, Liza Trick wrote to Judge Gull (among other things): "You are the most bias judge I've ever seen." And "you ought to be ashamed of yourself. This is NOT a fair trial."

On March 27, 2024, LGW wrote Judge Gull (among other things): "It appears that the defense is being prohibited from being able to defend their client."

On March 28, 2024, Stephanie Cope wrote Judge Gull (among many things) the following: "I have watched every phase this case gone through like many others. It's shocking and disturbing seeing Mr. Allen and how his public defenders treated so unjust. I can't understand the lack of self awareness you have concerning your own biased feelings."

On March 29, 2024, Hope Douglas wrote Judge Gull the following: "In my opinion, it is clear as an outsider looking at this case that you have presented your rulings as bias and almost always pro prosecution."

objectively reasonable people) who have taken the time to voice their concerns about the apparent bias they are witnessing should not be overlooked.

Judge Gull has Refused to Order the State to Comply with Discovery Rules to the detriment of Richard Allen

132. The Indiana Code of Judicial Conduct 2.6 states that a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

133. Comment 1 states that the right to be heard is an essential component of a fair and impartial system of justice. **Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.** (Emphasis added)

134. Comment 2 discusses the important rule the judge plays in overseeing the settlement of disputes, indicating that the judge should be careful that efforts to further settlement of disputes do not undermine the party's right to be heard according to law and that the judge should keep in mind the effect that the judge's participation in settling disputes may have, not only on the judge's own view of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after set efforts are unsuccessful. (Emphasis added). ICJC 2.7 states that "A judge shall hear and decide matters assigned to the judge, except

when disqualification is required by Rule 2.11 or other law.” Comment 1 states that judges must be available to decide the matters that come before the court.

(The defense incorporates paragraphs 1-134 in support of Judge Gull’s violation of ICJC 2.5, 2.6 and 2.7)

135. Judge Gull has held only 2 hearings with current defense counsel since June 15, 2023, and one-half of the March 18, 2024 hearing pertained to the prosecution’s hearing on contempt, unrelated to the merits of the case.

136. Even though the defense has filed several motions seeking hearings on discovery matters that are deeply impacting the defense, Judge Gull has ignored the opportunity to assist in the resolution of those matters either through a hearing or some other means.

137. Judge Gull’s refusal to act on discovery disputes raised by Richard Allen raises a rational inference of bias.

Judge Gull Has Only Allowed Cameras in the Courtroom Once, at the Hearing When She Knew, One Way or Another, that She was Kicking Attorneys Rozzi and Baldwin off of the Case

138. Rule 2.8(B) states that a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, **lawyers**, court staff, court

officials and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, court staff, court officials and others subject to the judge's direction and control.

139. The defense incorporates paragraphs 1-138 in support of its contention that Judge Gull has violated ICJC 2.8.

140. Judge Gull has run one of the test courts for cameras in the courtroom and appears supportive of cameras in the courtroom. However, the only time in this case that Judge Gull has specifically allowed cameras in the courtroom was on October 19, 2023.

141. On that date, Judge Gull knew going into that hearing that she would either allow Attorneys Baldwin and Rozzi the opportunity to withdraw or proceed to the hearing in which she would read into the record a handwritten document she penned before the in-chambers hearing disparaging and discrediting Attorneys Baldwin and Rozzi.

142. Judge Gull's attempt to disparage the defense counsel with cameras in the courtroom (again the only time cameras have been in the courtroom) violates ICJC 2.8, in addition to all other facts pled herein.

143. It would be difficult to believe that an objectively reasonable person would not believe that Judge Gull has demonstrated bias and prejudice against the defense. Her own words (grossly negligent, negligent, incompetent and sloppy) are proof of these obvious facts. Beyond Judge

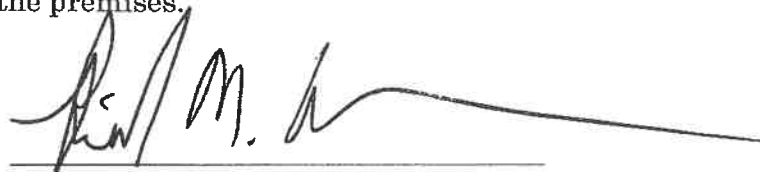
Gull's words, lie her actions. They are articulated throughout the body of this motion. Actions often do speak louder than words. The actions of Judge Gull warrant her recusal and/or disqualification.

144. The defense is requesting this court to restore public confidence by withdrawing from this case. The defense is requesting this court to disqualify itself to reduce the likelihood of costly appellate litigation and the cost of a retrial should a negative outcome against Richard Allen result from the trial should she remain on the case.

145. The cumulative effect of each piece of bias and prejudice recited herein supports the defense request for a change of judge. Richard Allen, a man presumed innocent, deserves a fair trial, as do the victims' families and the entire Delphi Community. Judge Gull's continued involvement in this case will leave a cloud of doubt over the legitimacy of the proceedings.

146. Accompanying this motion is the Affidavit of Richard Allen which the defense requests to be incorporated into this document. The same affidavit sets forth the facts establishing the timeliness of Defendant Allen's request for a change of judge pursuant to RCP 2.4(C)(2). And finally, this motion is also accompanied by a certification that Richard Allen's attorneys believe in good faith the facts recited in the affidavit are true and accurate.

WHEREFORE, the defense requests that Judge Gull recuse herself and for all other just and proper relief in the premises.

A handwritten signature in black ink, appearing to read 'Richard M. Allen', written over a horizontal line.

Richard M. Allen

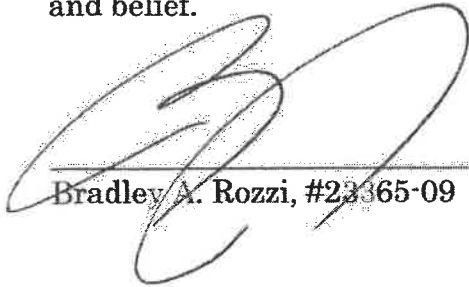
I swear and affirm under the penalties of perjury that the foregoing representations are true.

A handwritten signature in black ink, appearing to read 'Richard M. Allen', written over a horizontal line.

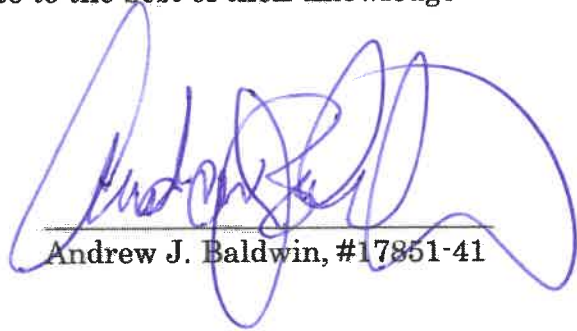
Richard M. Allen

CERTIFICATION

Comes now Attorney, Bradley A. Rozzi and Attorney, Andrew J. Baldwin, in good faith certifies that the facts and circumstances alleged in this Verified Motion are true and accurate to the best of their knowledge and belief.



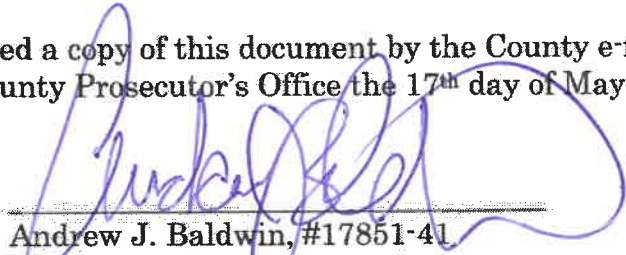
Bradley A. Rozzi, #23365-09



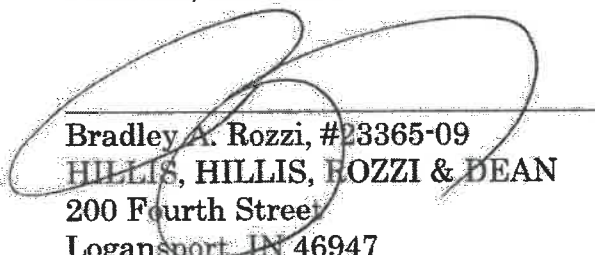
Andrew J. Baldwin, #17851-41

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 17th day of May, 2024.



Andrew J. Baldwin, #17851-41
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