

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

AFFIDAVIT OF RICHARD ALLEN

Comes now affiant, Richard Allen, and swears and affirms that the following statements and reasons for disqualification are true and accurate, as I have either personal knowledge or have learned of these facts and reasons through my counsel, Bradley A. Rozzi and Andrew J. Baldwin.

I. Judge Gull Interfered With Richard Allen’s Attorney-Client Relationship.

On October 12, 2023, Judge Gull instructed appointed counsel to “*cease work on Mr. Allen’s case*”¹ which interfered with the attorney-client relationship and prejudiced the Accused by denying him the timely effective representation guaranteed to him by the State and Federal Constitutions. This disarming of Counsel also occurred immediately in advance of Judge Gull ordering up a hearing in her own courtroom in Allen County, Indiana. At the *hearing*, Judge Gull staged the pre-meditated removal of Attorneys Rozzi and Baldwin, complete with cameras in the courtroom for the first time ever in this case, with Judge Gull having prepared in advance a handwritten statement with claims of grossly negligent and grossly incompetent actions on the part of each lawyer.

¹ This directive by Judge Gull was included in an email dated October 12, 2023 (11:02 a.m.) from Judge Gull to Attorneys Rozzi, Baldwin and Prosecutor McLeland.

II. Judge Gull Publicly, And On The Record, Disparaged Defendant Allen’s Chosen Attorneys.

The week before the October 19, 2023 hearing, Rozzi and Baldwin had asked Judge Gull what to expect at said hearing. Rozzi and Baldwin knew from an October 10, 2023 phone call that Judge Gull had commented that she was inclined to have Rozzi and Baldwin removed from the case at the request of Prosecutor McClelland before any hearing had taken place, before researching the issue, or even having any meaningful chance to consider the request. Between the October 10th phone call and the October 19th hearing date, Judge Gull prepared a scripted statement that would otherwise be used as her basis for finding that Rozzi and Baldwin acted “grossly negligent” and with “gross incompetence” in their duties as Defendant Allen’s lawyers. It should be noted that Judge Gull later added to her list of allegations that Attorneys Rozzi and Baldwin also violated the Rules of Professional Conduct.²

There exists a rational inference of bias or prejudice because Judge Gull formed this opinion. Worse yet, Judge Gull claiming on the record in chambers that she is finding “gross incompetence” on the part of Baldwin and Rozzi, provides a rational inference of bias and prejudice. A judge that has predetermined an attorney is grossly negligent and grossly incompetent has developed a bias towards that attorney. The mere reference to Rozzi and Baldwin being incompetent would be strong evidence of a rational inference of bias and prejudice, but claiming that she (Judge Gull) finds them

² See page 12 of *Respondent’s Brief In Opposition To Relator’s Verified Petition For Writ Of Mandamus* in cause number 23S-OR-311. It is noteworthy that Judge Gull makes these claims despite her own appellate attorney acknowledging to the Indiana Supreme Court that Attorneys Rozzi and Baldwin were “very experienced” and “highly competent” lawyers, in all other respects except for their alleged incompetence and grossly negligent acts in this case. The contrasting facts are hard to reconcile.

grossly incompetent, provides even more conclusive evidence of a rational inference of bias and prejudice.

Judge Gull telling Rick Allen that she has “grave concerns”³ about Baldwin and Rozzi representing him, provides a rational inference of bias and prejudice. And finally, Judge Gull for the first time ever allowing cameras in the courtroom *knowing* her plans to ambush the defense and how cameras in the courtroom would impact the attorneys psychologically as they tried to process their options, provides a rational inference of bias and prejudice.

III. Judge Gull Violated Defendant Allen’s Due Process Rights.

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 at the expense of Rick Allen AND be removed from the case or to *voluntarily* withdraw in the face of compromising Rick Allen’s defense strategy. Despite defense counsel requesting clarification as to the topics and/or motions to be addressed at the October 19, 2023 hearing, Judge Gull gave defense counsel no notice of her plan to force withdrawals or remove them, thus denying counsel the opportunity to adequately refute her accusations. Judge Gull’s failure to offer up to the Defendant, or his counsel, the basic due process of the law creates a rational inference of bias or prejudice toward he and his attorneys.

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

³ Judge Gull spoke these words to Richard Allen at the October 31, 2023, hearing in the Carroll County Circuit Courtroom.

control over counsel rather than any legitimate concerns that Counsel had engaged in conduct that compromised Richard Allen's defense. In support of Judge Gull's forced removal of Attorneys Rozzi and Baldwin, Judge Gull cited a number of different concerns, none of which formed a basis for their removal under Indiana law.

Additionally, until the in-chambers hearing, other than the topic of the evidence leak, Judge Gull had never before mentioned to counsel that the other items she mentioned in-chambers were worthy of them being disqualified from the case. There is no way that the defense could have been prepared to refute or argue, for example, Judge Gull's apparent belief that Brad Rozzi's filing of a tort-claim notice to protect his client's rights was one reason that she (Judge Gull) thought that the defense should be disqualified.

Judge Gull provided no preview of the topics she intended to discuss which caused her to disqualify Allen's attorneys, other than the leak, and certainly never told the defense that she had already made up her mind to remove them from the case. In other words, the majority of topics Judge Gull raised with the defense as reasons for their removal at the in-chambers hearing were a complete surprise to the defense. What happened in-chambers was a violation of Richard Allen's and his attorney's due process rights.

Accordingly, the Indiana Supreme Court recently ruled that Judge Gull's actions in removing Baldwin and Rozzi were in error and reinstated Attorney's Rozzi and Baldwin as Richard Allen's appointed public defenders. This reversal of Judge Gull's removal of Baldwin and Rozzi and refusal to accept their appearances as pro bono lawyers took place very publicly over the course of tense litigation pitting Judge Gull on one side and Baldwin and Rozzi, (through their client's original action against Judge Gull) on the other. Judge Gull chose to retain counsel to fight the original action. The highly public

and contentious litigation between Judge Gull and Rick Allen, and therefore between Judge Gull and attorneys Baldwin and Rozzi, provides a rational inference of bias and prejudice.

IV. Judge Gull Engaged in Critical Stage Proceedings in Defendant's Absence.

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 to participate in the in-chambers hearing, placing his attorneys in an ethical dilemma and creating a public record outside the presence of the Accused. This ignored any sense of due process and violated Rules 1.2 and 2.2 of the CJC.

V. Judge Gull Failed to Maintain Impartiality and Fairness.

Judge Gull engaged in a planned, forced resignation of the Defense team in her chambers on October 19, 2023. Judge Gull again, referenced Defense Counsel's pleadings that contained in her words, "inaccuracies and falsehoods." The Court's references were connected to the facts and circumstances surrounding the emergency motion to modify the safekeeping order that was denied by the Court on the same day the Court instructed IDOC staff to stand down on the transport of a subpoenaed defense witness. The Court's own actions were and are prejudicial to Defendant Allen's defense. Judge Gull's belief that counsel would provide false pleadings to the court, thereby questioning their integrity, exhibits a rational inference of bias and prejudice.

VI. Judge Gull Demonstrated Bias Toward the Prosecution.

In the days leading up to the October 19th, 2023, hearing in Fort Wayne, Judge Gull, Attorneys Baldwin and Rozzi, and Prosecutor McLeland participated in a phone

conference to discuss matters associated with the dissemination of crime scene photos. It was during this phone conference that Prosecutor McLeland first uttered the word “disqualification.” After a very brief discussion, Judge Gull communicated to the parties that she, at that moment, was inclined to grant the request. The comments were made by the Court without having conducted even the most informal of hearings, without having considered any single piece of evidence, and without consulting with Defendant Allen on the matter. Judge Gull’s conduct of quickly siding with the prosecution on an off-the-record phone call on a matter of such high importance (i.e. illegally kicking off lawyers who have spent thousands of hours on the case and would be prepared for the January 2024 trial date) demonstrates a rational inference of bias against Defendant Allen and runs afoul of Rule 2.3 of the CJC.

VII. Judge Gull Made Public Misrepresentations on the Record.

Immediately following the Court’s planned removal of the defense team, Judge Gull took the bench and addressed all those in attendance as well as the public at large, through the lens of a pool camera (authorized by Judge Gull) broadcasting the proceedings to the general public and potential jury pool. In pertinent part, Judge Gull spoke the following words:

“Um, we’ve had an unexpected turn of events, ladies and gentlemen. Um, earlier this afternoon, the defense attorneys have withdrawn their representation of Mr. Allen...”

The Court concluded the hearing by stating that “*clearly this is outside of [our] control*” when referring to the events that took place in chambers. These words spoken are untruths as the withdrawals of Baldwin and Rozzi were exactly what Judge Gull had pre-planned to happen. Her words to the public, therefore, appear to have been intended

to disguise her in-chambers actions which forced their resignation. And Judge Gull knew her actions were wrong as later she tried to conceal what happened in-chambers. When Richard Allen's original action lawyers attempted to obtain a transcript of the in-chambers hearing, Judge Gull's staff refused access to the transcript, calling it "confidential." Richard Allen was therefore denied his right to the transcript of a hearing wherein he was not present and wherein his lawyers were effectively severed from him without his consent. In order to review what happened in-chambers, on October 19, 2023, Rick Allen's counsel on the original action were forced to request the Indiana Supreme Court to order Judge Gull to release the transcript. Allen's counsel made this request on November 6, 2023. On November 8, 2023, the Indiana Supreme Court ordered Judge Gull to release the transcript, and ultimately Judge Gull complied. Judge Gull's attempt to deny Allen's lawyers the transcript of the in-chambers hearing, and to keep that transcript hidden from Allen's attorneys and from the public provides a rational inference of bias against Richard Allen and his defense team. The Court's own words to the public at the October 19, 2023 hearing claiming that the events were unexpected and were out of the court's control are in conflict with Rule 1.2 of the CJC and support recusal pursuant to Rule 2.11 of the CJC.

VIII. Judge Gull Engaged in Ex Parte Communications.

On October 30, 2023, Attorneys Rozzi and Baldwin filed their private Appearances on behalf of Defendant Allen as his pro bono attorneys. The next morning, Attorneys Rozzi and Baldwin appeared, in person, in the Carroll County Circuit Court as Defendant Allen's pro bono attorneys with the ethical and legal duty to carry-out their representation of Defendant Allen. However, Judge Gull, with intentionality, refused to

allow Attorney Rozzi and Attorney Baldwin to carry-out their representation of their client. This included communicating by text message to Judge Gull's chosen replacement attorneys, Robert Scremin and William Lebrato, prior to the start of the hearing. This also included engaging in an in-chambers conference with said replacement attorneys and Prosecutor McLeland, while Attorneys Rozzi and Baldwin remained in the courtroom with their client. After taking the bench, Judge Gull, on her own volition, severed the attorney-client relationship for a second time, without seeking the opinion and/or permission from Richard Allen, the Client. This sua sponte severance of the attorney-client relationship, without the input and/or permission of Mr. Allen was prejudicial to his defense. The Court's actions were not only violative of Defendant Allen's rights but also significantly impair any public transparency in the actions of the judiciary.

IX. Judge Gull Denied Defendant Allen His 6th Amendment Right to Counsel and in doing so denied his right to a speedy trial.

Judge Gull denied Defendant Allen his 6th Amendment Right to Counsel when she forced their resignation during the October 19th in-chambers "hearing." Rozzi and Baldwin then entered their appearances as private counsel for Richard Allen. This was done at Richard Allen's request. Richard Allen's intentions were to file a speedy trial motion and secure his previously scheduled jury trial date of January 8, 2024. Judge Gull prevented this from happening by refusing Defendant Allen of the attorneys of his choosing. Judge Gull's refusal to allow Defendant Allen's counsel of choice back onto the case effectively derailed any strategy Defendant Allen and his lawyers had developed in an effort to move his case into a courtroom and challenge the merits of the State's charging information. The Judge's actions were *per se*, prejudicial to Defendant

Allen in that he was denied of his basic constitutional right to choice of counsel and also his basic constitutional right to a speedy trial. By extension, the denial of his right to a January 2024 trial date, was prejudicial to Defendant Allen because he was returned to “safekeeping” within the confines of the same maximum-security unit wherein he was unfairly detained and experienced both mental and physical deterioration for nearly a year prior to Judge Gull’s 6th Amendment violation.

X. Judge Gull Changed Her Ruling in a Prior Order when Attorneys Rozzi and Baldwin were Reinstated.

Judge Gull received the Frank’s memorandum on September 18, 2023. She took no action on the Frank’s filing for over 4 months. She did, however, offer her chosen public defenders. the opportunity for a hearing while they were representing Richard Allen. This is evident from her November 1st Order, wherein she offered up the following invitation:

“Court notes (2) pending motions (Motion to Suppress, Motion for Frank’s Hearing) and will await a report from Attorneys Scremin and Lebrato and Prosecuting Attorney McLeland regarding hearing dates.”

The Court then memorialized this invitation to pursue these motions in a minute entry reflected on the CCS on November 2nd. Then again, on November 14th, the Court issued an additional minute entry again, inviting Defendant Allen’s new counsel to set a hearing on the pleadings. The minute entry reads as follows:

*“If defendant's new counsel inform the Court they intend to pursue the Franks Motion, the Court **will** schedule a hearing.”* (Emphasis added)

Two business days after Attorneys Rozzi and Baldwin were reinstated, Judge Gull issued an Order denying a hearing on the Frank’s Motion and denying a motion in limine, filed by Rozzi and Baldwin, regarding the admission of ballistics evidence by

the State. What appears to the defense to be a hastily written opinion lacks any serious legal and factual analysis on such an important issue. The absence of any real factual or legal analysis contained in Judge Gull's order begs the question of whether Judge Gull actually engaged in any meaningful review of the memo and attached exhibits. The timing of the ruling and the lack of serious legal and factual analysis provides a rational inference of bias or prejudice against Richard Allen. And most notably, Judge Gull offering her chosen replacement attorneys the opportunity for a hearing on the pending motions, while denying Baldwin and Rozzi the same opportunity, creates a rational inference of personal bias against Richard Allen and his current defense team.

XI. Judge Gull Discredited Defendant Allen's Defense Strategy.

On November 14, 2023, Judge Gull issued an Order that in pertinent part, acknowledged Defendant Allen's filing of a Motion for Frank's Hearing, Memorandum in Support, and accompanying documentation. These documents had been filed by Defendant Allen on or about September 18, 2023. Nearly two months later, Judge Gull having taken no action on Defendant Allen's pleading invited successor counsel to either "adopt those pleadings or make their own." Implicit within Judge Gull's verbiage is what appears to be the Courts attempt to empower her chosen replacements (Attorneys Scremin and Lebrato) to abandon a material aspect of Allen's defense strategy. If there is any debate about the Court's intentions, at the very least, Judge Gull's Order and language therein creates the impression that the Court is skeptical of Allen's defense strategy thereby prejudicing the totality of his defense. Accordingly, Judge Gull violated Rule 2.3 of the CJC.

XII. Judge Gull Committed Violations of the Access to Court Records Act.

Judge Gull did remove and seal or ordered the removal of defense pleadings from the chronological case summary in violation of the Indiana Supreme Court's Administrative Rules. Those pleadings include: *Franks* motion filed 9/18/23; *Franks* memorandum filed 9/18/23; three affidavits (Warden Galipeau, Sgt Jones, Sgt Robinson) filed 10/10/23, the affidavit of an accused leaker, Mitch Westerman, and most recently, an affidavit signed by defense investigator, Suzanne Moller, and incorporated in the third request for transfer. By secreting pleadings from the docket without following the ACR Rules (Rule 2(A) and Rule 4, Judge Gull allowed violations of public access. Because those acts have shielded documents these actions demonstrate a lack of impartiality and fairness in violation of Judicial Rule 1.1, Compliance with the Law,⁴ and Rule 2.2, Impartiality and Fairness.⁵

XIII. Judge Gull Engaged In Additional Violations of the Access To Court Records Act.

Defendant Allen's original Motion to Disqualify Judge Gull was filed by Attorney Rozzi on October 25, 2023. On October 27, 2023, the Court issued an Order noting Attorney Rozzi's withdrawal (albeit forced) from the case and struck, from the record, substantive pleadings filed by Defendant Allen. Any authority the Court had to strike the substantive pleadings from the record stemmed from the Courts reversible error⁶ terminating the attorney-client relationship between Defendant Allen and Attorney Rozzi despite Defendant Allen's objection. The Court's conduct demonstrates

⁴ "A judge shall comply with the law, including the Code of Judicial Conduct."

⁵ "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially."

⁶ See Indiana Supreme Court Published Order dated 1/18/24 under cause number 23S-OR-311.

the Court's inability to remain impartial to Defendant Allen and further demonstrates that this Court has engaged in judicial conduct which undermines all public confidence in the independence, integrity, and impartiality of the Court in violation of Rule 1.2 of the CJC.

XIV. Judge Gull Failed to Address Her Administrative Duties.

Attorney Baldwin submitted his first billing invoices on May 19, 2023. Baldwin's staff left several communications with Judge Gull's office concerning Judge Gull's failure to sign off on payment to Baldwin. As the months passed, those communications were basically ignored. The Carroll County Auditor said they would pay the bill as soon as Judge Gull sent them an order, but they had not yet been sent an order. Finally, Baldwin personally sent an email to Judge Gull's staff essentially begging to be paid. Eventually, Baldwin's attorney bill from May 19, 2023, was paid in full on September 18th, 2023, only a few days after Carroll County received an order from Judge Gull, but almost 4 months to the day that the bill was tendered. Attorney Rozzi submitted his first billing invoices on May 10, 2023. Said invoices were not satisfied until September 19, 2023. Since then, Judge Gull has failed and refused to authorize other payment of invoices submitted by Attorney Rozzi in this cause:

On October 4, 2023, Attorney Rozzi submitted two separate invoices, one for his own services rendered (Invoice #2833) to Defendant Allen, and a second for administrative expenses reimbursement (Invoice #2832). No action was taken on the invoices up to and including January 5th, 2024. On this day, Attorney Rozzi reached out to Judge Gull's Court staff through email and provided summaries of various outstanding invoices that had yet to be processed by the Court. These included invoices

from Attorney Baldwin which were submitted in early December 2023, also yet to be processed. Four days later, having received no response from the Court, Attorney Rozzi sent a second email requesting a status update. The Court staff's response was that the three-month old invoices had been "forwarded for...review." One day later, Judge Gull's staff informed Attorney Rozzi that several invoices had been approved and forwarded to the Carroll County Clerk for payment. Several invoices were paid, including Attorney Baldwin's invoices submitted in early December. However, as of the date of the filing of this motion, Attorney Rozzi's invoices (#2832 and #2833), submitted nearly 3 ½ months ago, remain unpaid.

Judge Gull's refusal to process the Attorneys invoices in the normal course of business demonstrate a rational inference of bias against Defendant Allen and further demonstrate her prejudicial behavior toward his defense team, even regarding administrative matters. The Court's conduct is in violation of Rule 2.3 of the CJC.

Furthermore, on August 8, 2023, Allen's attorneys requested that the transcript from the June 15, 2023, hearing (in which defense counsel requested Allen to be moved out of Westville) for reasons important to the defense. Nearly 6 months have passed, and the defense still has not received the transcript of the June 15, 2023, hearing. Judge Gull's failure to provide that transcript is another example of Judge Gull's contempt of the defense. It also provides a rational inference of bias and prejudice.

XV. Judge Gull Failed to Protect the Accused.

Defendant Allen's unique and unusually burdensome detention circumstances have been a concern of his defense team since he was shipped off to the state penitentiary only a month or so after his arrest. These concerns were immediately

brought to the attention of the Court by way of both in-chamber communications between Attorney Rozzi and the Court as well as emails between Attorney Rozzi and the Court offering up a reasonable solution to the problem. After the Court declined to take precautionary action, on April 5, 2023, the defense team filed an emergency motion to modify the safekeeping order. The Court's response to the emergency request was to set the matter for hearing on June 15, 2023, a full two-and-a-half months after the "emergency" motion was filed. In the interim, Westville Inmate Robert Baston filed a *pro se* letter with the Court corroborating some of the concerns regarding the detention circumstances surrounding Defendant Allen. The Defense subpoenaed Inmate Baston to the June 15, 2023, hearing. Attorney Rozzi perfected service of the subpoena with the assistance of a DOC staff attorney. However, on the morning on June 15, 2023, Judge Francis Gull, in chambers, informed Attorney's Rozzi and Baldwin that she had released Carroll County from executing the subpoena on Inmate Baston due to his resistance to being transported by IDOC staff members. A hearing on the Defense motion was then conducted and thereafter the Court issued an Order (Order or Judgment of the Court dated 7/19/2023) denying the Defense motion to move Defendant Allen and in fact, suggested in its Order that "the evidence submitted did not support *many* [emphasis added] of the allegations advanced by defendant[s] counsel."

In paperwork filed with the court on June 20, 2023, but sealed by Judge Gull until November 2023 (and only unsealed after the filing of a writ of mandamus against Judge Gull) it was revealed to the public that Judge Gull and/or her staff chose to communicate with a State's witness, Tobe Leazenby, concerning inmate Baston's unwillingness to attend a hearing. Legally speaking, the witness had no choice but to

appear and Carroll County had no choice but to honor the subpoena and transport the witness. Prisoners all over the state of Indiana are transported to hearings and trials that they may not want to attend, even if their refusal to attend is out of fear that their testimony will put them in danger. The proper method to deal with the situation would have been for Judge Gull to alert both sides about the problem and then conduct a hearing of the matter so that it is on record, which the court of appeals could review later, if needed. Instead, Judge Gull, either directly or through her staff, opted to leave the defense completely out of the equation and issued an ex parte, off-record ruling advising the Carroll County Sheriff's Department and Westville Correctional facility to leave the witness at Westville, thereby ignoring the valid subpoena prepared and properly served by the defense for a witness that was expected to support the defense assertions concerning Allen's treatment at Westville.

In summary, Judge Gull released a material defense witness from a properly served Defense subpoena and then claimed that the Defense team failed to meet its burden of proving up the allegations in its emergency motion when it was Judge Gull that prevented a defense witness from testifying. Judge Gull's actions were prejudicial to Defendant Allen in that her actions usurped Defendant Allen's ability to prosecute his own emergency motion, which is otherwise known as the refusal of *compulsory process*. Judge Gull's behavior exhibits a rational inference of bias and prejudice against Allen and his attorneys. Furthermore, her actions violate Rule 2.3 of the CJC.

XVI. Judge Gull's Continued and Ongoing Failure to Protect the Accused.

Judge Gull has exhibited a lack of concern about and taken no action to protect the physical and mental health of the Accused. On two different occasions, the Court has

been asked to order the removal of Richard Allen from the Westville Correctional Facility and place him in a less restrictive and healthier environment, as he is a pre-trial detainee. This Court denied both attempts. At times following these denials, the Court has taken the position that allegations offered up by defense counsel were untrue. Most notably, the Court accused Attorney Rozzi of misrepresenting truths about his detention circumstances and used this as support for Judge Gull's finding that defense counsel engaged in "gross negligence" in their representation of Defendant Allen.

Mr. Allen's replacement attorneys filed a third motion requesting his transfer in early January of 2024. The allegations in the motion address ongoing connections between Odinites employed by the IDOC who had continued to be in contact with Mr. Allen. Former counsel Scremin actually offered up a photo of one guard who was so bold as to tattoo an Odinite symbol on his face while knowing that his Odinite connections had been previously called into question by the Defense in formal pleadings. In addition, there are new claims that Mr. Allen continues to be detained (i.e., shackled like "Hanibel Lecter") unnecessarily and has now been moved (apparently, without any judicial involvement) to a facility some 233 miles from replacement counsel, Attorneys Scremen and Lebreto.

The Court continues to take no action to protect Mr. Allen. This is not an adversarial matter/issue. The State should be an uninterested party in this matter. There is no need for the introduction of evidence in support of these claims. The Court has absolute jurisdiction of Mr. Allen's detention circumstances. It would be entirely appropriate for the Court to err on the side of caution and engage in remedial measures to ensure Mr. Allen is being housed under humane circumstances for a pre-trial

detainee. It would be entirely appropriate for the Court to order the detention of Mr. Allen in a facility close to or near his court appointed attorneys so that they would have the simple convenience of communicating with him in person, and under reasonable conditions, without the necessity of lengthy sojourns each and every time they desire to meet with Mr. Allen to prepare his defense. Attorney Rozzi had even arranged for the Cass County Jail, literally a two-minute walk from Attorney Rozzi's office, to keep Richard Allen in pre-trial detention.⁷ This request was denied as Judge Gull sided with Carroll County Sheriff Department's due to its confusing claim that the Sheriff would have difficulty transporting Rick Allen 20 minutes from Logansport to Delphi, when it was taking much longer than that to transport Allen from Westville to Delphi. The Court's refusal to intervene is prejudicial to Mr. Allen and in violation of Rule 2.3 of the CJC. The Court's refusal to intervene violates Mr. Allen's 6th Amendment right to present a defense and runs afoul of his Due Process rights under the State and Federal Constitutions, and Judge Gull's failure to take common sense measures to move Richard Allen out of Westville, especially after it was proven that he was guarded by practicing paganists/Odinists (when evidence and allegations exists that Odinists were involved in the murders) provides a rational inference of bias against Allen.

XVII. Judge Gull Has Treated the Prosecution More Favorably than Defense Counsel.

Throughout the entirety of the Franks memorandum the defense detailed and provided evidence exposing false and/or contradictory sworn testimony by law enforcement and even the withholding of exculpatory evidence by the prosecution.

⁷ This exchange occurred in an email from attorney Rozzi to Judge Gull, Prosecutor McClelland, and attorney Baldwin as well as Cass County Sheriff Schroder on February 8, 2023, at 11:31 a.m.

Judge Gull did not have to read too far into the Franks memo to find these intentional acts on the part of the State alleged by the defense as many of the most egregious intentional behavior of the State is referenced in the first 25 pages.

The State of Indiana was continuing to provide large quantities of discovery even into October, nearly 10 months after Rozzi and Baldwin entered their appearance, causing Rozzi and Baldwin to seek a discovery deadline. Despite the State's intentional behavior, including the non-disclosure of exculpatory evidence, Judge Gull has focused her ire on Rick Allen's counsel for what she claimed was gross negligence. For example, Nick McClelland was in possession of a highly exculpatory document prepared by officer Todd Click's own lawyer in which Click alerted McClelland that he (Click) was concerned that McClelland had not been informed about Click's involvement in investigating a group of men whom he believed were involved in the murders – evidence that third parties involved in Odinism had murdered the girls. McClelland held onto that highly exculpatory document for nearly four months⁸ without turning it over to the defense. McClelland's failure to turn over the exculpatory documents also prevented the defense from questioning investigators about the exculpatory information during defense depositions in early August. This failure on the part of the Prosecutor will require additional depositions and prolong the discovery process. McClelland's failure to turn over exculpatory documents is accurately detailed in the Franks memorandum. Despite these truths, Judge Gull has never, not one-time, chastised McClelland for these wrongs. Judge Gull never told McClelland that his behavior appears intentional, or grossly intentional, or at least grossly negligent. Judge Gull

⁸ The document wasn't disclosed to Allen's defense team until September 2023.

never indicated her belief that McClelland should be replaced, nor did she ambush him in an in-chambers meeting after allowing cameras in the courtroom to tell him that she was kicking him off the case. In fact, on page 16 of the transcript that the Indiana Supreme Court ordered Judge Gull to release, Judge Gull even states: “I am not accusing the State of gross incompetence and negligence. I am finding gross incompetence and negligence with you.”

The fact that Gull has solely focused her ire on her perceived belief that Rozzi and Baldwin are grossly negligent and incompetent while not addressing the prosecution’s provable discovery issues, provides a rational inference of bias or prejudice against Richard Allen and his defense team.

XVIII. Judge Gull Engaged in Unacceptable Extrajudicial Activities.

On July 9, 2023, someone who is believed to be Judge Gull’s then daughter-in-law published an entry on her own Facebook page stating the following: “*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 grandparents presented our girls with their championship finalist rings.*”⁹ In spite of being the presiding judge in this case at the time this message was posted, Judge Gull made a choice to publicly comment on the post with a simple “congratulations.” While this post may appear to be an innocuous comment, to Richard Allen’s counsel it raises fair questions about whether or not a rational inference of bias or prejudice exists. As the presumable relatives of Judge Gull who are mentioned in this post will likely see Judge Gull from time-to-time,

⁹ The Facebook post is not included herein as it contains photos and names which need not be made part of the record. A copy of the post can be provided at a later hearing, if necessary.

communicate with Judge Gull and have opinions concerning the murders of Abby and Libby. And, Judge Gull must know that her relatives may have been emotionally impacted by their involvement in the softball tournament, especially from interacting with Abby's and Libby's grandparents. Yet knowing all of this and knowing that Judge Gull will be challenged with resolving evidentiary and procedural disputes in this case, she chose to comment on the post.

In 2013, the American Bar Association (ABA) issued Formal Opinion 462, entitled "Judge's Use of Electronic Social Networking Media." While the ABA acknowledged that electronic social networking media can be beneficial, judges were cautioned to be conscious of the way their online relationships will appear to others. Under the Model Code of Judicial Conduct, judges are obligated to "maintain the dignity of judicial office at all times and to avoid both impropriety and the appearance of impropriety in their professional and personal lives." Judges must therefore be very cautious in their use of electronic social media, as online communications and friendships, taken out of context, can create the appearance of bias or impropriety, thereby undermining public confidence in the judiciary. 33 A.L.R.7th Art. 9 (Originally published in 2017). Publicly commenting on a post concerning a softball tournament that honored the victims in this case provides evidence of a rational inference of bias.

XIX. Timing of Judicial Bias, Prejudice and Lack of Impartiality.

RPC 2.4(C)(2) requires that good cause be shown when any movant for a change of judge cannot meet the thirty-day timing requirement referenced in subsection (1) of the Rule. Defendant Allen asserts that the first time Judge Gull's bias was cemented in the minds of the defense, demonstrating her bias, prejudice, and lack of

impartiality, occurred during a phone call between Prosecutor McLeland, Attorneys Rozzi and Baldwin and the Court. This phone call occurred on October 10th, 2023. During this call, Prosecutor McLeland made a fleeting reference to the potential disqualification of Attorneys Rozzi and Baldwin. With very little hesitation, Judge Gull suggested that the Court was leaning toward disqualification and thereafter, ordered the parties to appear in her Allen County courtroom on October 19, 2023. It was at this hearing that the Court staged a pre-meditated severing of both Attorney Rozzi and Attorney Baldwin as the chosen lawyers of Richard Allen, leading to contentious and very public litigation. The claims contained herein, some of which occurred prior to the October 10th phone call, are believed by Richard Allen to be pieces of a puzzle, the totality of which illustrates the Court's bias, prejudice and lack of impartiality toward Richard Allen.

Some of the factual matters that show a rational inference of bias occurred before October 10, 2023. The defense had hoped that some of Judge Gull's questionable behavior that predated October 10, 2023, were not signs of bias. However, when placed into context, Gull's actions predating October 10, 2023, are now viewed as evidence of a continued pattern of bias (such as Judge Gull's failure to pay defense attorney's Rozzi and Baldwin in a timely fashion and Judge Gull's continued failure to protect Richard Allen). Obviously, neither Attorneys Rozzi nor Baldwin had the authority to file any pleadings in this case after October 31, 2023, due to Judge Gull's forced removal of Allen's chosen lawyers. Therefore, Baldwin and Rozzi could not file their motion for change of judge until after the Indiana Supreme Court placed Rozzi and Baldwin back on the case.

It is from this set of circumstances that Richard Allen asserts his claims in support of his motion for change of judge from Judge Francis C. Gull.

Further the Affiant sayeth not.

Dated 1/27/24.



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

Richard M. Allen