

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

MEMORANDUM CONCERNING CONTEMPT PROCEEDINGS

Undersigned counsel incorporates herein, by reference, as if fully set out Prof. Ausbrook’s pleading titled “Defendant’s Counsel’s Motion for Summary Denial of the State’s Verified Information for Contemptuous Conduct”.

THE PRESS RELEASE

The “gag” order was issued on December 2, 2022, and states explicitly that it was issued in response to the defense press release from December 1, 2022. Thus, the press release could not have violated an order issued the next day.

To the extent that the press release may have violated a rule of professional conduct, trial courts are without jurisdiction to enforce those rules or determine attorney misconduct. The Indiana Constitution grants exclusive jurisdiction over attorney disciplinary matters to the Indiana Supreme Court. Ind. Const., Art. 7, Sec. 4; *see also* Indiana Appellate Rule 4(B)(1)(b); *Cunningham v. State*, 835 N.E. 1075, 1079 n.6 (Ind. Ct. App. 2005). Imposing attorney discipline and protecting a defendant’s constitutional rights are separate matters. *Little v. State*, 819 N.E.2d 496, 503 n.3 (Ind. Ct. App. 2004). This Court has repeatedly declined to step outside its jurisdiction and act as a disciplinary body to determine whether an attorney’s actions are unethical. *Bennett v. NSR, Inc.*, 553 N.E.2d 881, 884 (Ind. Ct. App. 1990) (refusing to address whether an attorney’s conduct was unethical); *cf. Carter v. Knox County Office of Family and*

Children, 761 N.E.2d 431, 434-35 (Ind. Ct. App. 2001) (concluding that a trial judge's violation of the Code of Judicial Conduct was not a proper consideration for the court).

The preamble to the Rules provides in relevant part:

Violation of a Rule should not itself give rise to a cause of action against a lawyer, nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability, but the Rules may be used as non-conclusive evidence that a lawyer has breached a duty owed to a client. *Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.* The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.

Ind. Professional Conduct Preamble (emphasis added).

ACCIDENTALLY MISDIRECTED E-MAIL

Attorneys Baldwin and Rozzi have fully explained how this happened. It clearly was not knowing, intentional or willful. The law regarding indirect contempt just as clearly requires willful conduct.

Accidental misdirection is a common occurrence for anyone that uses e-mails daily. *See* Affidavits previously filed. The prosecutor in this case acknowledges the possibility of an accidentally misdirected e-mail at the bottom of his e-mails. Most, if not all, users that experience such follow up requesting that it be deleted after learning it was sent to an unintended recipient.

Additionally, the only thing related to this case that was sent was a defense created outline organizing discovery. It describes the discovery but not the contents of any discovery. To the extent it contained the first names of the victims, it was intended for

internal use only. Furthermore, their first names were used publicly by agents of the State from day one and incessantly after.

Contrary to the prosecutor's allegation the accidentally misdirected e-mail did not violate this Court's "gag" order. That order specifically applied to "...means of public communication..." The e-mail at issue was private and sent to a single individual.

Attorneys Baldwin and Rozzi had no reason to suspect further dissemination by the unintended recipient. And if that did happen, they certainly had no prior knowledge of such and did not condone it.

Lastly, the February 17, 2023, court order referenced by the prosecution cannot logically or realistically apply to an e-mail sent in December 2022.

CANDOR TOWARDS THE TRIBUNAL

Mr. McLeland has shared that it is his position that Mr. Baldwin was somehow required to voluntarily and immediately report the accidentally misdirected e-mail to him and the Court. He has not provided any authority for such a requirement and the defense can find none. No such requirement is contained in Rule 3.3 of the Indiana Rules of Professional Conduct. That rule prohibits making a false statement or failing to correct a false statement. Mr. Baldwin did neither. That rule also prohibits the failure to disclose legal authority known to be adverse "to the position of the client". Mr. Baldwin has not done that. Lastly, the rule prohibits a lawyer from offering evidence known to be false. Mr. Baldwin has not done that.

The commentary to the rule makes it clear that a lawyer has no duty to report such information but only to insure that the tribunal not be misled, "Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the

law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.” Sule 3.3 IRPC. Mr. Baldwin was forthright and complete in his communications with the court about the e-mail sent to an unintended recipient. Also, it is clear from the body of the e-mail that it was addressed to Brad not Brandon.

Mr. Baldwin has not violated the rule so it cannot constitute contemptuous conduct.

THE “LEAK”

The leak complained of cannot be laid at the feet of defense counsel. It is beyond cavil that they did not provide any part of discovery, by photographs or otherwise to anyone outside the defense team. Nor did they knowingly or intentionally allow anyone access to discovery materials. Mr. Holeman refers to Mr. Baldwin as the victim in his report of his investigation of the Westerman leak. Det. Rector swore in an affidavit for the prosecution of Mr. Westerman that Westerman photographed discovery items without permission or authority. This is just victim blaming by the prosecution because it does not like the victim. Furthermore, there was nothing in the dissemination by Westerman that would not eventually become public.

It is impossible to tell exactly what information on the internet came from where. The leaks have been prevalent and consistent from the outset. With regard to the Westerman leak it is not known how many pictures he took of what. There have been a variety of descriptions as to just what he sent to Fortson.

The first leak about the case came from the search team shortly after the murders according to the sworn testimony of Jerry Holeman. The next came from Mr. Holeman himself according to Terri Williams.

The leaks escalated after the arrest of a suspect. There were two probable cause affidavits leaked before they were publicly available. There was a leak of information about a bullet at the scene and a gun at Mr. Allen's house. Gary Beaudette a/k/a Fig, a/k/a FigSolve published these leaks on November 22, 2022. He claimed his source was an employee of Judge Gull. Beaudette references this video in a Discord chat session on April 2, 2023, as proof that his source "works with the judge" and that he had the Richard Allen probable cause affidavit a week before the document was unsealed and made public. He has said he knew the defense attorneys would be disqualified a week before they were and that it "was a win".

There were leaks before Attorneys Baldwin and Rozzi were appointed.

On May 17, 2023, Fox 50 reported on facts contained in a probable cause affidavit for the search of Ron Logans residence filed March 17, 2023. Defense counsel had no access to that document. Only law enforcement and court staff did.

On September 29, 2022, an e-mail was sent from Tony Liggett to Debbie Lowe of Carroll County Comet concerning the special prosecutor investigation into Hatch Act violations. This final decision was under seal and the case is still currently either blocked or sealed from public view. On Gary Beaudette (Fig Solves) doing a live show about Richard Allen's arrest. He mentions that there will be evidence involving a bullet or a casing as part of the probable cause. Beaudette references this video in a Discord chat session on April 2, 2023, as proof that his source "works with the judge" and that he had the Richard Allen PCA a week before the document was utilized.

On November 22, 2022, Gary Beaudette a/k/a Fig, a/k/a FigSolve, who had communications with the prosecutor doing a live show about Richard Allen's arrest, mentioned

that there will be evidence involving a bullet or a casing as part of the probable cause. Beaudette references this video in a Discord chat session on April 2, 2023, as proof that his source “works with the judge” and that he had the Richard Allen probable cause affidavit a week before the document was unsealed and made public. Attorneys Baldwin and Rozzi were not even appointed yet.

Barbara MacDonald had a stick drawing a photograph of the tree and Professor Turco’s report that could not have come from or be connected to the defense.

Neither the Indiana State Police nor the Carroll County Prosecutors office have investigated the unrelated leaks. They only steadfastly targeted defense counsel.

Any finding of contempt will be contrary to the facts and law and will surely be reversed on appeal.

Respectfully Submitted,

/s/David R. Hennessy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon all counsels of record at the time of filing.

/s/ DAVID R. HENNESSY

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