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COUNTY OF CARROLL)

STATE OF INDIANA)
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RICHARD ALLEN)

IN THE CARROLL CIRCUIT COURT

CAUSE NO. 08C01-2210-MR-000001

VERIFIED MOTION TO DISQUALIFY

Comes now the Accused, Richard M. Allen, by Attorneys Bradley A. Rozzi and Andrew J. Baldwin, and pursuant to Rule 2.4 of the Indiana Rules of Criminal Procedure (“RCP”) and Rule 2.11 of the Indiana Code of Judicial Conduct (“CJC”) and respectfully 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:

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, (S. Ct. 1968), citing Weer v. State, (1941), 219 Ind. 217, 37 N.E.2d 537.
2. Pursuant to **Ind. Crim. 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 [emphasis added]**. 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 RCP 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 **Ind. Judicial Conduct Rule 2.11** provide additional guidance as follows:

[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. Here, there is no recognizable legal rationale which supports judge Gull continuing to preside over this case. At every stage, from now until the conclusion of this case, the actions and rulings of the court will be scrutinized through the lens of Judge Gull's error in severing Richard Allen's attorney-client relationship with his chosen lawyers.
8. 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."
9. This court has already interfered with one of the most sacred concepts in our Constitution, the relationship between attorney and client. There can be no dispute that this has occurred. The highest court in the state of Indiana has cemented this fact. If the Indiana Supreme Court concluded that Judge Gull wrongfully denied Richard Allen of the attorneys of his choosing, wouldn't then, an objective person have a reasonable belief that she, Judge Frances C. Gull, *is* [emphasis added] biased and prejudiced toward Defendant Allen?
10. Judge Gull should recuse herself and in doing so, restore any sense of impropriety that is clouding the system of jurisprudence in the State of Indiana and in this very proceeding because of the Judge's prior actions. The recusal of Judge Gull would be

entirely consistent with the spirit and foundation of Canon 1 and Canon 2 of the Code of Judicial Conduct, both of which are founded in the concept of judicial impartiality and fairness.

11. Judge Gull continuing to preside over this case necessitates that the following questions be asked:

- a. Will Judge Gull's continued involvement create built-in reversible error in the event Defendant Allen is convicted of any one or more of the charged crimes?
- b. Will all future rulings of the Court be viewed by the defense as being tainted with bias, prejudice and a lack of impartiality?
- c. Will the public be able to maintain any sense of confidence that the presiding officer, Judge Gull, is unbiased and impartial?
- d. Can Judge Gull process any information and/or legal arguments offered up by Attorneys Rozzi or Baldwin knowing that she has already made an extra-judicial finding that both attorneys have demonstrated gross negligence and gross incompetence in their representation of Defendant Allen?
- e. Does Judge Gull have some ulterior reason or motivation driving her unwillingness to recuse herself from this case?
- f. Do the practical benefits of recusal far outweigh the inherent risks of Judge Gull remaining on the case, especially as it relates to the likelihood of protracted and expensive litigation throughout the remainder of this case and in the appellate courts if a conviction occurs?

12. Accompanying this motion is the Affidavit of Richard Allen setting forth facts and reasons why Defendant Allen believes that a rational basis for questioning the judge's

impartiality exists. 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.



Richard M. Allen

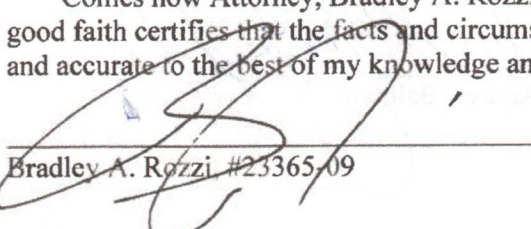
I swear and affirm under the penalties of perjury that the foregoing representations are true.



Richard M. Allen

CERTIFICATION

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



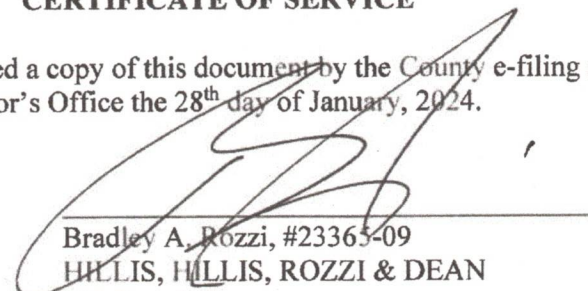
Bradley A. Rozzi, #23365-09



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 28th day of January, 2024.



Bradley A. Rozzi, #23365-09
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