

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

STATE OF INDIANA)
 Plaintiff)
 v.)
)
RICHARD ALLEN,)
 Accused)

VERIFIED PETITION FOR RECUSAL FROM CONTEMPT PROCEEDINGS

Come now Attorneys Baldwin and Rozzi, by counsel, and respectfully petition the Court to recuse herself from any contempt proceedings. In support of this Petition counsel states:

1. On October 8, 2023, by email, the Court made inquiries about and suggestions for law enforcement’s investigation of a reported “leak” of discovery material subject to a protective order. Exhibit L, Appendix, vol. 1 at 224, State ex rel. Richard Allen v. Carroll Circuit Court, Indiana Supreme Court No. 23S-OR-311.

2. In that email, the Court, *sua sponte*, offered to use its contempt power—power it did not have, under the circumstances—to assist the investigation by compelling the cooperation of recalcitrant “content creators.”

3. The Court’s initiation and participation in the investigation give rise to the appearance of a lack of neutrality and independence.

4. The Court instructed Defense Counsel they were expected to cooperate with the investigation, which they did. This was further involvement in the investigation.

5. The Court has received much information from the attorneys and other sources concerning the “leak” that may or may not be admissible in a contempt proceeding. Recusal is appropriate to avoid the possibility and appearance that the Court is considering events outside the evidence and testimony actually presented at a contempt proceeding.

6. Without having heard any evidence and without even having reviewed the document sent in an accidentally misdirected e-mail, the Court has already expressed its judgment that the misdirection of the e-mail was an “egregious” error; it is therefore at least appears the Court has prejudged the contempt allegation by the State regarding the misdirected email.

7. More generally, the Court previously not only criticized the same defense attorneys for the same conduct now alleged by the State to be contemptuous, it also coerced them into withdrawing their representation of Mr. Allen for that conduct. Again, there is at least the appearance that the Court has prejudged the State’s contempt allegations.

8. Defense Counsel will be offering admissible evidence that Gary Baudette, a/k/a Fig a/k/a Fig.Solves, a person who has involved himself in this case on the Internet, claimed to have received and disseminated confidential documents and that his source for the documents was an employee of the Court. Protesting too much, Mr. Baudette has now written a fawning letter to the Court denying allegations that have not yet even been made. Under the circumstances, with the allegation of court involvement that will not go unsubstantiated, the Court should not be ruling on the admissibility Defense Counsel’s evidence regarding Mr. Baudette and his activities, much less assessing what value to give it.

9. Counsel for the State accessed and, in a filing with the Court, even quoted an *ex parte* motion filed by Defense Counsel. Doxpop has confirmed that the *ex parte* pleading was correctly filed as confidential. The Carroll County Clerk’s office has confirmed the *ex parte* pleading was only shared with Defense Counsel and the Court. One of the Court’s staff has reported that they thought a confidential filing applied only to the public and not counsel for the State. Evidence about access to the *ex parte* pleading will be presented at any contempt hearing.

Because it appears the State's access to an *ex parte* pleading was enabled by the Court's staff, whether due to improper training or through ignorance, the Court should not preside over any contempt hearing.

10. The Court conducted its own investigation of the "leak" and lent itself and its powers to the investigation conducted by others. As a matter of public record, the Court at least appears to have prejudged almost all, if not all, of the State's contempt allegations against Defense Counsel. The involvement of the Court's staff will now also be the subject of any contempt hearing. Under the totality of these circumstances, the Court *cannot* appear to be a neutral and detached arbiter of the State's contempt allegations and, accordingly, the Court should recuse itself from those contempt proceedings.

WHEREFORE; counsel for Defense Counsel respectively prays the Court to recuse herself.

Respectfully Submitted,

/s/David R. Hennessy

VERIFICATION

I swear, under penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

/s/David R. Hennessy

CERTIFICATE OF SERVICE

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

/s/ David R. Hennessy

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