

FILED

STATE OF INDIANA

) IN THE DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

) OCT 3

) GENERAL TERM 2011

STATE OF INDIANA

) *Richard J. Weems*

) CLERK OF DEARBORN CIRCUIT COURT

V.

DANIEL BREWINGTON

) CAUSE NO. 15D02-1103-FD-084

**MOTION TO DISQUALIFY F. AARON NEGANGARD
AND APPOINTMENT OF A SPECIAL PROSECUTOR**

Daniel Brewington moves the Court to disqualify F. Aaron Negangard as the Prosecutor in the within cause and request the appointment of a special prosecutor.

The Defendant moves the Court for an order dismissing Prosecutor Negangard for prosecutorial misconduct during the grand jury process and as the result of the Court's order granting the Defendant's first public defender's request to withdraw as counsel.

The Defendant's first public defender requested permission to withdraw as counsel for the Defendant as "counsel has multiple cases in Judge Humphrey's court" and "Counsel feels that this situation at minimum creates an appearance of impropriety." The Court granted the Defendant's first public defender's motion to withdraw. The Defendant moves the Court to disqualify Prosecutor Negangard on the same grounds as the Court found appropriate for the Defendant's first public defender, i.e., "this situation at minimum creates an appearance of impropriety." Prosecutor Negangard has more cases pending before Judge Humphrey than the Defendant's first public defender. If the appearance of impropriety is so great or minimal for the Defendant's first public defender to withdraw, Prosecutor Negangard is faced with the same appearance of impropriety.

IC § 33-39-1-6 (a)(2) (2) permits a circuit or superior court judge "to appoint a special

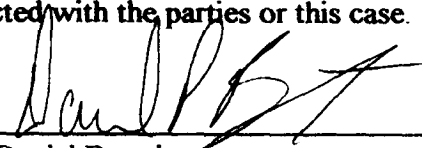
prosecutor if: (A) a person files a verified petition requesting the appointment of a special prosecutor; and (B) the court, after: (i) notice is given to the prosecuting attorney; and (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime.” The Defendant requests the Court to appoint a special prosecutor as the result of Prosecutor Negangard’s use at the recent motion to reduce bond of evidence or testimony of a witness Prosecutor Negangard did not investigate or in the alternative introduced into evidence knowing the information was false. The Defendant has documentary evidence the Defendant was never in the presence of the jail house snitch. Prosecutor Negangard introduced statements from the jail house snitch this Court used to continue the astronomical bond for the Defendant. The information submitted to the Court concerning the jail house snitch was false and the Prosecutor has done nothing to bring to the attention of the Court the Prosecutor’s use of the false evidence.

IC § 35-44-1-2 states “A public servant who knowingly or intentionally: (1) commits an offense in the performance of the public servant's official duties. IC § 35-44-3-4 states “A person who withholds or unreasonably delays in producing any testimony, information, document, or thing commits an offense. The information submitted by Prosecutor Negangard concerning the jail house snitch was false and it is absolutely false based on the records of the Hamilton County, Ohio, Justice Center. The issue before the Court is what, if anything, the Prosecutor or the prosecution’s witness did to verify the information provided concerning the jailhouse snitch. The Defendant was the victim of a prosecution witness assigned by the Special Crimes Unit under the control of Prosecutor Negangard.

The Defendant was able to obtain documentation the testimony of Shane McHenry at the Defendant's hearing to reduce bond was false. An "investigator" with the Special Crimes Unit should be able to obtain the same information the Defendant was able to obtain. The Prosecutor's sole interest was to keep the bond as high as possible to vindicate the Prosecutor's witch hunt concerning the Defendant's blog posts. The Prosecutor represented to the Court the information from the jail house snitch was accurate when the Prosecutor either did not know whether it was truthful or not or failed to thoroughly investigate the matter prior to the Prosecutor introducing the evidence. What is more alarming is the Prosecutor did nothing once it was obvious the testimony from McHenry was not truthful.

The Defendant requests the Court to dismiss the charges against the Defendant or in the alternative to appoint a special prosecutor not connected with the parties or this case.


Verified
under oath



Daniel Brewington
301 W. High Street
Lawrenceburg, Indiana 47025
No telephone number
Inmate DCLEC

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing was hand delivered to upon all parties or counsel of record including F. Aaron Negangard, Prosecuting Attorney, Dearborn County Courthouse, Lawrenceburg, Indiana 47025 this 3 day of October 2011.



Daniel Brewington