

IN THE SUPREME COURT OF OHIO

In re Disqualification
of Judge Leonard F. Holzpfafel

) Case No.
)

16AP082

AFFIDAVIT OF DISQUALIFICATION

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IN THE SUPREME COURT OF OHIO

In re Disqualification) Case No.
of Judge Leonard F. Holzapfel)
) AFFIDAVIT OF
) DISQUALIFICATION

STATE OF OHIO)
) ss:
COUNTY OF GREENE)

I, David L. Kastner, being of full legal age and being first duly sworn according to law, deposes and states as follows:

I. INTRODUCTION

1. This affidavit is filed pursuant to Ohio Rev. Code Sec. 2701.03 and pertains to the prejudice, bias, and other disqualifying grounds to assign another judge to replace visiting Judge Leonard F. Holzapfel due to his handling of *State v. Rohrer*, Ross County Case No. 09 CR 393.
2. The next court appearance in *State v. Rohrer* is scheduled for November 4, 2016.
3. The specific allegations appear below.
4. A notary public's *jurat* appears at the end of this affidavit.
5. A certificate of service appears at the end of this affidavit.

II. RECENT POSTURE OF THE LITIGATION

6. Since early 2014 I have been representing John Rohrer in various proceedings in Franklin County and in *State v. Rohrer* in Ross County and in various appeals to the Fourth District.
7. My client is a now 36 year old man who pled NGRI in 2010 to an assault on a man in 2009 who had previously been attacking him. Judge Holzapfel was assigned by this Court

to preside over proceedings the defense initiated 12/4/13. Ever since that time, we have been contesting the validity of the original February, 2010 confinement order and all subsequent proceedings to keep John psychiatrically confined, along with the associated delays created by the State and/or Judge Holzapfel. I became John's attorney in early 2014.

8. Part of the ongoing litigation has involved a petition for *habeas corpus* filed in this court and a Complaint in *Procedendo* currently awaiting decision on our appeal as of right to this Court in Case No. 2016-0304 from the 4th District appeal court. During those two cases, Jeffrey Marks has been serving as Judge Holzapfel's attorney.

9. The primary issue, which would now resolve the case, is, as it has always been, whether the State of Ohio is capable of proving by clear and convincing evidence that John Rohrer meets the Sec. 5122.01 (A) and (B) definition of being a person who is "mentally ill and subject to court order". We submit that they cannot do so today and have never done so in the past.

10. Ohio Rev. Code Sec. 2945.401(J)(1)(a) and principles of federal constitutional law do not allow the state to psychiatrically incarcerate any citizen, including one who has pled NGRI, unless the State is able to prove him "mentally ill and subject to court order" according to the Sec. 5122.01 definition.

11. Towards that end Ohio Rev. Code Section 2945.401(C) requires the State to conduct a review hearing upon request of the defendant whenever at least six months have elapsed since a prior hearing on continued commitment. Even without a request by the defendant, another part of Sec. 2945.401(C) requires that such a hearing must be held at least within two years of any such prior hearing. Recent events show that this judge is persistently

unwilling to conduct either type of hearing.

12. I have been filing motions seeking the six month review hearing for John since March, 2015, but this judge is relentless in keeping that from happening. We still do not have a date specifically set for that review hearing. There is no actual Order for Hearing in this case but on 9/12/16 Judge Holzapfel ordered ABH, the facility holding my client, to transport my client to court on November 4, 2016 date for what the judge is vaguely calling a “miscellaneous hearing”. [see attached] There is no doubt that this is intended to cause us to prepare for an evidentiary hearing, only to have to once again send witnesses home.

13. I have credible information that Judge Holzapfel has been pre-judging the case since at least September 12, 2014 when, prior to hearing any evidence, he apparently told Jim Dye, the trial attorney the defense used in that proceeding, that he intended to terminate John’s forced drugging but would not release him. At the time, we had interpreted that statement to mean that he would not release him in 2014, but it seems clear now that his intention was to never release him. If he can stall until he decides that the common pleas court has lost jurisdiction pursuant to statute, the case won’t be his problem anymore. It certainly appears to not matter to this judge that John loses another year or more of his life because he won’t allow John a hearing while the State cannot prove itself entitled to keep him locked up.

14. Although this judge has never expressed any intention of conducting any of the required six month review hearings, he did issue orders calling the defense to appear in court on 9/14/15, on 6/27/16, on 8/9/16, and on 9/9/16. Instead of making an Entry within a reasonable time as provided in Ohio Sup Rule 40(A)(3), after we filed our March, 2015

motions, or making a non-oral decision explaining his theory that our pending appeals supposedly required him to judicially suspend John's right to such hearings, the judge waited until his 7/30/15 Entry to tell us he was going to address our motions but not until 9/14/15. But he never has. After having created six unnecessary months of delay, he announced on 9/14/15 what he obviously planned to do all along – not provide us a hearing.

15. One mechanism whereby this judge has attempted to delay involves his stalling in signing orders for transporting John to the offices of our medical experts. Initially and for no stated reason, he stalled 8 months, from December, 2013 until August, 2014, even though he had been informed that John's physical health required him to see his family doctor, Dr. Sandra Pinkham. Then when we filed new motions on 3/13/15 for John to again be seen medically, he stalled on signing orders until 5/31/16. Our experts scrambled to see John in June and got their reports in to us within days.

16. The delays Judge Holzapfel had already caused with our experts were then leveraged by assistant prosecutor Marks, who suddenly claimed on 6/24/16 that he was not prepared for the 6/27/16 hearing date. Judge Holzapfel, who was and is still Marks' client, quickly agreed to vacate 6/27/16 without opportunity for input from us. We did object the following business day because even with no legal obligation to do so, discovery having been waived, I had already provided Marks with a copy of the reports within hours of his requesting them and a few hours after I had received them myself from our doctors.

17. The next date this judge scheduled for the six month review hearing was 8/9/16. This time he and Marks waited until the morning of the 8/9/16 hearing to vacate it. The pretext this time was that Marks felt he would be "impaired" in going forward because he

claimed to have just learned that citizen perjury affidavits against him and two of his expert witnesses from the 2014 proceedings, had been filed in Montgomery County Case No. 2015 CV 02115 – never explaining the fact that I had already formally disclosed this fact to both the judge and Marks in our 5/31/16 Motion, at p. 3, in which we informed this judge and Marks:

“There are now pending affidavits in Montgomery County Case No. 2016 CV 02115 indicating that the last “evaluators” ABH sent to testify for plaintiff committed perjury in this case in September, 2014. This is not to say that everyone at ABH is ethically compromised but this has certainly been the history to date.”

18. There was absolutely no basis for Jeff Marks to claim or for this judge to believe on the morning of 8/9/16 that the perjury was anything but old news. But this judge used it anyway to deprive John of his hearing that day. According to the attached recent affidavit of Robert Fitakis, who was there that morning, this judge’s outrage was not directed to the perjury Marks appears to have suborned or that committed by his two witnesses. It was squarely directed at me, evidently because I was one of the citizens who assisted the others in filing the Ohio Rev. Code Sec. 2935.09 and 2935.10 perjury affidavits and exhibits seeking probable cause findings against Marks and his two expert witnesses.

19. The allegations were that the state’s attorney and his witnesses had committed specific acts of perjury in proceedings before Judge Holzapfel in September, 2014. The specific facts enumerated in the perjury allegations and documented in the exhibits attached thereto, have never been denied or even addressed. I tried to make it clear in my Montgomery County filing that, although John was the victim of the perjury, I only represented him in the Ross County proceeding in which the perjury took place.

20. Once it became apparent on 8/9/16 that this judge would use the pending perjury case as an excuse to not schedule proceedings pertaining to John Rohrer's liberty, I was forced to withdraw the perjury affidavits because they had become a new source of endless distraction for this judge. I therefore withdrew the affidavits of record on 8/12/16 in Montgomery County and notified Marks and the judge of that fact in the 8/24/16 Notice and Third Objection to Continuances.

21. On 8/26/16 the judge ordered a hearing for 9/9/16, not to address John's liberty or any statutory review hearing, but for the claimed reason of addressing our 8/24/16 Objections to further continuances, which could have easily been done non-orally, as this judge has done before.

22. On 8/29/16 for no stated reason this judge issued another order he referred to as being "Nunc Pro Tunc" in which for no stated reason he said only this "David L. Kastner is ORDERED to appear at this hearing." I filed 9/6/16 Objections to this effort to micro-manage the way Robert Fitakis and I divide up the legal work in this case, and pointed out that during the day I am heavily involved in critical defense contract work essential for the defense of the United States. Robert Fitakis did appear, prepared to discuss our objections to all of the continuances Judge Holzapfel had been issuing.

23. As Bob Fitakis's affidavit shows, this judge again misinformed us as to what was the topic of the hearing and chose to discuss instead his attitude against me, his ongoing resentment about the already dismissed perjury case, and tried to extort something he called "agreement" from Bob Fitakis to his hand-picked expert to assist his attorney, Jeffrey Marks. As his affidavit shows, Bob did not agree, nor did I when I later learned what had happened. On 9/22/16 this judge sent me an email demanding that I present

myself to him for no real reason, even though he knows that in our division of the attorney labor, Bob is the one who makes the court appearances.

24. This judge now has reneged on his 9/9/16 promise of an eventual review hearing. His 9/12/16 Entry instead order that my client be transported for some sort of “miscellaneous hearing” for November 4, 2016 which is obviously impossible to prepare for because we have no notice of what it concerns.

III. BACKGROUND INFORMATION & STATUS OF CURRENT MISCONDUCT

(1)Affiant has not waived objections to this judge’s prior appearance of misconduct, bias, and prejudice:

In order to provide a factual background and ethics code references to assess Judge Holzapfel’s current misconduct, I am attaching a copy of our 8/29/14 “Motion to Recuse & Notice of Grounds Establishing Appearance of Partiality of Hearing Officer”. The misconduct set out in that motion is persisting and worsening today. This history may also explain the reason that I do not believe my client or I have waived his right to be heard by an impartial tribunal. Rather we have tried to tolerate Judge Holzapfel’s misconduct on the theory that appeals and other remedies would counterbalance the extreme prejudice suffered over the years from this judge by my client. This is a case in which the health and the very life of my client is and continues to be placed at risk because of the longtime psychiatric lockup this judge allows to occur. Felonious assault, especially given that it was precipitated by the State’s admittedly violence-associated drugs, as it was in this case, is not a death penalty offense but it is certainly being treated by this judge as if it carried life without possibility. We had also taken hope from the fact that in September, 2014 we learned that this judge told our then trial attorney, James Dye,

prior to hearing any testimony, that he had already decided to stop the forced drugging of our client but would not release him.

I believe that our hope that Judge Holzapfel's conduct would improve following our August, 2014 recusal motion and the September, 2014 hearing, does not mean we waived the right to a fair and impartial hearing on John Rohrer's liberty as a person who is not legally mentally ill. To impute waiver to us would encourage litigants to object prematurely, rather than attempting to persuade a biased judge to abandon his biases. Blind imputations of waiver also mean that litigants who can demonstrate the most persistent judicial misconduct will be forced to endure the ravages of worsening judicial biases. This notion runs contrary to due process guarantees of the right to an impartial tribunal. Indeed "even the appearance of unfairness, rather than any real identifiable bias or prejudice" can present serious due process concerns. E.g. *State v. Lutd*, 180 OhioApp3d 672 (Mahoning, 2009) Due process under the Ohio and United States constitutions demands that the trier of fact be impartial and not display preconceived ideas about psychiatric patients based on zero evidence, *ex parte* communications, bias for or against litigants' attorneys, or common fallacies about psychotropic drugs. Other caselaw demonstrating the inconsistency of even an appearance of judicial bias with due process includes *In re Murchison*, 349 U.S. 133, 136 (1955), *Crawford v. U.S.* 212 U:S. 183, 196 (1909), and *Roberts v. Bailar*, 625 F2d 125, 129 (6th Cir. 1980).

(2) Persistence of the Misconduct with consequent public appearance of growing impropriety from August, 2014 to the present:

Although Judge Holzapfel did eventually stop ordering John illegally detained in the Ross County Jail (but only after this Court questioned it in its 2/21/14 *sua sponte*

Decision in Case No. 2014-0268), he continued to allow the forced drugging to continue for some 7 months after John's physician informed him by affidavit and emergency motion I filed in the trial court that the drugging could kill and permanently disable John. Judge Holzapfel did, however, finally end the drugging in November, 2014 and he did finally stop scheduling hearings based on letters from his apparent friend, Max McGee, from Appalachian Behavioral Healthcare. This encouraged us to try to overlook his other persistent misconduct. But it continues, to-wit:

(3) Continuing false statements of fact and law – invariably in support of the position of Jeffrey Marks

Despite our hopes that his conduct would improve, Judge Holzapfel continues as always to make false statements in writing about matters that are of record. Acting through Marks, he had made other statements false of record to this Court in the 2014 *habeas corpus* case, which was drawn to the attention of this Court then. His false statements of record since our August, 2014 recusal motion include the following:

a. In his 11/3/14 Entry keeping my client locked up, Judge Holzapfel made the following false finding about the testimony of Dr. Gregory Jansen: "he concurred that defendant is a mentally ill person subject to hospitalization" which Dr. Jansen could not possibly have done. Dr. Jansen in fact could not have so found because "mentally ill subject to hospitalization" or "subject to court order", as ORC Sec. 5122.01 now reads, requires an additional finding of danger to self or others. Even with all its "inaudible" notations, the existing transcript demonstrates Dr. Jansen testified at length that John was not in any way a danger to self or others. Judge Holzapfel ignored our motion, though unopposed, for the audio files.

b. In his 8/12/16 Order Judge Holzapfel made the following false statements regarding matters of public record in Montgomery County Case No. 2016 CV 02115: “Defendant John Rohrer has filed a civil action against two of the participants in this case, Assistant Prosecuting Attorney Jeffrey Marks and Dr. Jean Scott” and “The Defendant did not request notice until August 2, 2016”. These statements are false of record, a fact which I pointed out in a motion I filed 8/24/16 making our third objection to the frivolous continuances. While there may have been some ambiguity over my statement that I represented John Rohrer, I had thought it was clear in the context that I represented him only in the Ross County case, and would have represented his interests as a crime victim in the Sec. 2935.09 proceedings had a probable cause determination been made. It is a matter of record that John Rohrer filed no affidavit or anything else, and I filed no “civil action” or anything else in Montgomery County on his behalf. I filed Sec. 2935.09 affidavits seeking a probable cause determination. The Montgomery County court’s e-filing system instead converted what I filed into something different that I did not authorize. A review of the Montgomery County online docket shows that neither John Rohrer nor I requested service or notice in that case at all, as would be proper in the Sec. 2935.09 proceeding I was attempting to file. As to service, public record in that case shows that one “Lynn Cooper”, apparently one of the clerks in Montgomery County, requested service, but I clearly did not. In fact, as that Court’s 7/5/16 Entry found, I specifically stated that this Sec. 2935.09 proceeding was one which did not provide for notice. But this judge preferred to believe alleged perjurer Jeffrey Marks’ version of public record instead of checking the online docket for himself. As always he made his ruling, in this case to take away another one of John’s chances at a review hearing,

without regard to our evidence that the factual bases for the claimed continuance were false.

c. In his 9/9/16 "Entry" the judge falsely stated that his selected expert was selected by "agreement of the parties". As the attached affidavits indicate, Robert Fitakis reserved his right to object to the judge's selection. The record is clear that the judge's selection could not have been the defense selection, since neither I nor Robert nor our client had ever heard of the man the judge wanted. In the same Entry the judge again mis-stated the law by claiming that his selected expert was "independent" because he certainly does not meet the statutory definition of being "independent" under Ohio Rev. Code Sec. 5122.01(P) or any other relevant section.

(4) This judge continues to strip John and the public of their right to a public hearing guaranteed to them specifically by ORC Sec. 2945.40(D), as the defense has been demanding for years now, by basing his decisions instead on what are in reality secret off-the-record backroom discussions.

(5) Judge Holzapfel's relentless practice of making decisions based on off-the-record backroom discussions over our long-standing written objections creates completely unnecessary contention over what was or was not said and unavoidable inaccuracies and gaps in the trial record. Judge Holzapfel continues to conduct non-public, off-topic discussions in chambers instead of dealing with our motions which have been pending since March, 2015 but which Judge Holzapfel refuses to address publicly and on the merits.

To make things worse –

(6) This judge cherry picks which issues he will decide and which he will pretend do not

exist, to-wit:

a. As to the backroom discussions specifically, he refuses to acknowledge even the fact that I have filed written objections to the absence of a record of these.

b. This judge refuses to allow us access to copies of the audio files even of the public portion of court appearances in this case, or of contested testimony, as he did in September, 2014, forcing us to accept an incomplete transcript of much of the September, 2014 defense testimony, according to affidavits and proffers of spectators and our witness, Dr. Gregory Jansen. By ignoring our motions to obtain the audio files he prevented us from determining for ourselves whether the many "inaudible" notations made by his court reporters were really inaudible. As a result of this judge's growing hostility, my paralegals and I now have had considerable trouble even ordering a transcript anymore as the court reporters no longer return phone calls or allow my people to pay their fees in person as we used to do. As the attached affidavit of Pastor Caleb Copper indicates, at least one clerk is now refusing to provide copies of parts of the public record in this case.

c. This judge refuses to acknowledge the requirement that these hearings be public. This matter has generated a great deal of public interest, as evidenced by some three (3) filings of motions by the media to be allowed to film in the courtroom during any future evidentiary hearing. When Sharon Cretsinger on behalf of TalkwithTenney filed such a motion 9/11/14, this judge pretended she had not. When Robin Rider-Osborne filed such a motion on 8/8/16, also on behalf of TalkwithTenney, this judge again ignored her, and again when Wendy Ractliff of Periscope LLC, a documentary film company, filed such a motion on 9/6/16, this judge again pretended it did not exist. Frankly, if we could have an

outside source record, as the local rules clearly permit, we might be able to have some confidence in the integrity of subsequent transcripts – confidence we have no basis to have now with this judge’s refusals to consider allowing us to hear the audio tapes.

(7) Judge Holzapfel creates delay which he then utilizes to create more delay, as he did by dragging his feet in signing orders of transport to our experts from March, 2015 until the end of May, 2016, then punished John by vacating the 6/27/16 hearing due to delays he himself had caused.

(8) This judge demonstrates flagrant bias towards the State’s attorney, who is his attorney of record, by always assuming whatever he says is the unvarnished truth even when it conflicts with matters of record.

(9) Judge Holzapfel continues to enable his associates at ABH to eliminate email contact between me and my client because of the testimony of ABH alleged perjurer Scott that John should not be allowed to express himself online because it generates too much support for his release in the outside community. He appears to have savaged the First Amendment by impliedly labeling John “dangerous” for protected online political speech. That speech had so incensed accused perjurer Jean Scott that her testimony implied that John was dangerous for allegedly “talking to them [other patients] about the side effects of medications,” as she stated that his talking to them “would be detrimental to someone’s treatment” [9/25/16 Ts. p. 82]. This witness, as well as the judge, appear to not recognize my client’s free speech rights or that before being drugged patients have a right to hear all the information about that drug as part of informed consent. Basically the judge is allowing himself to be utilized by Jeffrey Marks to make John a political prisoner. I do not use the term lightly. During my times in the back room or on phone

conference calls with this judge, he and Marks often used to make the point that, as Marks phrased it to me in a 7/15/14 email, referring to my client's mother, Katherine Hine, he and the judge believed I was "attempting to use this platform to put the entire State of Ohio's mental health facilities on trial for something she, and maybe you, feels is wrong." This attitude persists.

(10) The judge's bias towards his own attorney, Jeff Marks, exacerbates his bias against our client because of the long-standing vendetta between the Ross County Prosecutor's office and my client's mother, Katherine Hine, an inactive attorney who previously practiced in Ross County. An email from Mr. Marks, which is a matter of record in the Montgomery County perjury case, provides some corroboration for that fact.

(11) Judge Holzapfel currently is using judicial terrorism to attempt to disrupt the division of attorney labor in this case and block the attorney-client relationship John has with me by keeping my client virtually *incommunicado*, although we have for years filed for relief from the conditions John is forced to suffer at ABH, including denial of internet access. He is attempting to erode the defense's ability to bring witnesses by the constant delays. And he is making a huge distraction out of his dislike of me to the point where he is now emailing me, as he did on 9/22/16, in an effort to get me to travel to Chillicothe where he can corner me in chambers with him over motions which can and should be addressed by co-counsel, or non-orally. He seems to believe he can micro-manage the way Bob and I share the work.

(12) Judge Holzapfel was a named defendant in the malpractice/false imprisonment case I filed in Franklin County Common Pleas Court Case No. 14 CVC11-12387. Continuing to serve as the trial judge on the issue of John's imprisonment creates the public perception

that Judge Holzapfel has a personal stake in maintaining labels for John so as to perpetuate the lie and stigma associated with “mental illness” to justify his own actions in keeping the forced drugging going as long as he did and discrediting John Rohrer by keeping him confined indefinitely. His concern seems to be to punish me, no doubt in part for having brought that case.

IV.CONCLUSION

Judge Holzapfel is creating a huge appearance of impropriety by his (1) persistent refusals to provide my client with his right to a hearing on his liberty by means of unjustified delays, (2) his frequent provably false statements, (3) his creation of an unnecessary distraction from the litigation due to his hostility to me to the point of trying to eliminate me as John’s attorney or worse, (4) his obvious bias towards protecting the prosecutor no matter what, and (4) his persistent ignoring of our right to a public hearing on the record.

Preservation of public confidence in the integrity of the judicial system is vitally important. Even “[a]n appearance of bias can be just as damaging to public confidence as actual bias.” *In re Disqualification of Murphy*, 110 Ohio St.3d 1206, 2005-Ohio-7148, 850 N.E.2d 712, ¶ 6. Accordingly, disqualification is appropriate when, as here, the public’s confidence in the integrity of the judicial system is at stake. See *In re Disqualification of Saffold*, 134 Ohio St.3d 1204, 2010-Ohio-6723, 981 N.E.2d 869, ¶ 6.

Although Judge Holzapfel has been with the case for several years and replacing him will create some disruption, the climate of judicial oppression he has created, his disrespect for the law and objective truth, and his current disregard of any appearance of

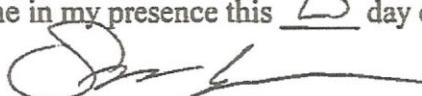
proper judicial conduct make it necessary for my client to be assigned a different judge.

It is now beyond clear that the only way John Rohrer will receive a fair six month review hearing is with a different judge.



David L. Kastner
Affiant

SUBSCRIBED AND SWORN to before me in my presence this 13 day of September, 2016.



Notary Public



Stephanie Becks
Notary Public, State of Ohio
My Commission Expires 08-29-2019

CERTIFICATION

This is to certify that on this 27 day of September, 2016, I arranged for this Affidavit of Disqualification with attachments to be transmitted electronically on this date to Jeffrey Marks at jeffreymarks@horizonview.net and to Judge Leonard Holzapfel at Holzapfel52@yahoo.com.



David L. Kastner

IN THE SUPREME COURT OF OHIO

In re Disqualification) Case No.
of Judge Leonard F. Holzapfel)
) ADDENDUM TO AFFIDAVIT OF
) DISQUALIFICATION

NOTICE OF NEW ENTRY OF RECORD

By way of supplementing the Affidavit of Disqualification that was prepared on 9/22/16, this Notice is to advise this Court that, although I have not yet received what appears to be a new Entry from the trial court in Ross County Case No. 09 CR 393, I see that the online docket as of the date of this writing, 9/24/16, indicates that Judge Holzapfel issued some sort of order dated 9/22/16 which the clerk summarizes as being for "commitment review hearing". I do not yet know whether our 3/13/15 motion for default judgment will be heard at that time, or ever. I also, of course, do not know whether the 11/4/16 date will be once again vacated.

David L. Kastner
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AFFIDAVIT OF ROBERT J. FITRAKIS

STATE OF OHIO)
)
) ss:
COUNTY OF FRANKLIN)

I, Robert J. Fittrakis, being of full legal age and being first duly sworn according to law, deposes and states as follows:

1. I have been representing John Rohrer since 2015 in various proceedings in Franklin County and in Ross County Case No. 09 CR 393 at the behest of David L. Kastner.

2. I provided my first affidavit 10/1/15 regarding what occurred during off-the-record discussions in chambers with Judge Holzapfel and state attorney Jeffrey Marks during my 9/14/15 court appearance for John in Case No. 09 CR 393. [See attached] The original of that affidavit was also attached to the Complaint in *Procedendo* filed in the Fourth District in Case No. 15-CA-3508, which as of this writing is still on an appeal as of right to the Ohio Supreme Court in Case No. 2016-0304.

3. Despite numerous defense objections filed of record in the Ross County trial court seeking that he terminate his practice of conducting off-the-record discussions in chambers, Judge Holzapfel continues to do so anyway during every court appearance which I have attended in this case. He has not to my knowledge addressed any of our motions to stop the practice.

4. I have attended court appearances before Judge Holzapfel on 9/14/15, on 8/9/16, and on 9/9/16. Each time except the most recent court appearance I have expected to proceed on the merits. I also rearranged my schedule and prepared to appear at a scheduled 6/27/16 evidentiary hearing but Judge Holzapfel continued that based on a motion of Jeff Marks, the assistant prosecutor, filed the Friday before the expected Monday hearing. Judge Holzapfel vacated the 8/9/16 hearing the morning of the hearing. I had witnesses ready on all four occasions, some having come from out of town, as I had.

5. Since March, 2015 the defense has been filing motions under Ohio Rev. Code Sec. 2945.401(J)(1)(a) for John's release because he does not fit the Ohio Rev. Code Sec. 5122.01 definition of being "mentally ill". Judge Holzapfel has to date never ruled on any of those motions or allowed John to have the Ohio Rev. Code Sec. 2945.401(C) mandated 6 month evidentiary review hearing on them.

6. The defense has been repeatedly objecting to Judge Holzapfel's ongoing refusals to conduct the Sec. 2945.401(C) mandated review hearing both in the trial court and in a separate *procedendo* action, which the Fourth District refused to hear. The *procedendo* is currently awaiting a decision from the Ohio Supreme Court in Case No. 2016-0304.

7. During several of these backroom discussions Judge Holzapfel and Jeffrey Marks expressed anger towards John's other attorney, David Kastner, and their frustration at not