

**CCS ENTRY FORM  
JASPER CIRCUIT COURT  
RENSELAER, INDIANA**

**CASE NUMBER:** 37C01-0305-FC-201  
37C01-0210-FC-507

**CAPTION:** STATE OF INDIANA v KYLE S. HAMILTON

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

Jeffrey J. Shaw, (#15265-46) files:

**Verified Motion for Appointment of Special Prosecutor.**

**GRANTED/DENIED.**

Hearing set for \_\_\_\_\_, 2004 at \_\_\_\_\_ a.m.

Submitted by:

Jeffrey J. Shaw (#15265-46)  
1005 1/2 Calumet Avenue  
Valparaiso, IN 46383  
PHONE: (219) 465-0959

Opposing Counsel:

Jasper County Prosecutor's Office  
128 N. Cullen Street, Rensselaer, IN 47978

\*\*\*\*\***(TO BE DESIGNATED BY THE COURT)**\*\*\*\*\*

This CCS Entry Form shall be:

- Placed in case file;
- Discard after entry on the CCS;
- Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk
- There is no attached order; or  
The attached order shall be placed in the RJO: Yes  No

DATE: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
**JUDGE, JASPER CIRCUIT COURT**

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF JASPER     )

IN THE JASPER CIRCUIT COURT  
SITTING AT RENSSELAER, IN

STATE OF INDIANA,                    )  
                                  )  
Plaintiff,                                )  
                                  )  
vs.                                        )  
                                  )  
KYLE S. HAMILTON                    )  
                                  )  
Defendant.                              )

CAUSE NO: 37CO1-0210-FC-507  
                                  37CO1-0305-FC-201

**VERIFIED MOTION FOR APPOINTMENT OF SPECIAL PROSECUTOR**

Comes now the Defendant, KYLE S. HAMILTON, by and through counsel, Jeffrey J. Shaw, and now requests the appointment of a special prosecutor and in support now alleges:

1. Counsel represents Defendant, KYLE S. HAMILTON, on both of the above referenced cause numbers.
2. The cause numbers have been ordered consolidated for purposes of trial (filed H.I.).
3. The set of facts that led to the filing of these charges against the Defendant are numerous and complex. A short summary includes that:

On September 11, 2000, the alleged dependent adult -- Martha Ham -- created through Attorney Ned Tonner the following documents: a pour-over will; a revocable trust containing most of her property; a recorded Power of Attorney; an appointment of health care representative and directions for care. Ham appointed her only daughter, the Defendant, KYLE S. HAMILTON, to all of the decision-making positions under these estate planning documents.

Defendant, KYLE S. HAMILTON, is still the only heir to any trust or estate of deceased adult, Ham. She will receive still any residual amounts of money remaining in the trust after payment

of all bills.

In a certain sense of the word, the State of Indiana has alleged four counts of criminal conduct by the Defendant for "stealing" (forgery, fraud and exploitation) monies that rightfully belong to her alone in this world.

On February 20, 2001, Jasper Superior Court No. 1 determined Martha Ham was incapacitated and appointed Defendant, KYLE S. HAMILTON, guardian over Martha Ham's person (not estate because a valid Power of Attorney in Hamilton's favor already existed).

On March 20, 2002, Attorney John Potter was appointed Guardian Ad Litem by agreement of the parties.

On August 13, 2002, Attorney Richard Comingore was appointed "successor guardian" over the person of Martha Ham (not estate as a valid Power of Attorney still existed in favor of Defendant). He was ordered to file necessary actions to remove Defendant, KYLE S. HAMILTON, as trustee under the Trust and to investigate whether any criminal conversions had taken place.

On August 15, 2002 Comingore filed an action seeking his appointment as "successor trustee." On August 23, 2002 (without proper notice/due process to Defendant) this was approved.

On February 1, 2003, Martha Ham, the alleged dependent adult died.

On February 6, 2003, Comingore petitioned to open the estate of Ham. He requested Potter be appointed interim personal representative. Now Comingore and Potter had dual roles. Comingore, as successor trustee, sought approval and authority to pay bills and marshal assets on behalf of the trust. A legal proceeding under Cause No. 37D01-0208-TR-0310 and a guardianship proceeding under Cause No. 37D01-0102-GU-048 were initiated.

Jasper County Deputy Prosecuting Attorney James R. Lakin also played a role in the facts leading to the criminal charges in this case. Lakin filed a petition on April 7, 2003, to the

guardianship court to pay a bill for his legal services. Lakin was hired as an attorney to represent the guardian ad litem, Attorney John Potter. Defendant has objected to the payment of the bill due to a lack of authorization on behalf of the guardianship court to allow such a hiring. In short, Lakin provided legal services to Potter, who was acting as a guardian for Ham, who, in turn, provided all decision-making interest via her estate planning documents to Defendant herein. Lakin has a financial interest, potentially, in seeing Defendant convicted of the charges filed. This is a conflict of interest.

4. Under Indiana Code § 33-14-1-6, a circuit court judge may appoint a special prosecutor when in his belief, he finds by clear and convincing evidence, after a hearing that an actual conflict of interest exists. Avoiding the appearance of impropriety in a criminal prosecution is also a consideration for a circuit court judge.

5. Defendant requests a hearing to establish that an actual conflict of interest exists which should prevent the Jasper County Prosecuting Attorney's Office from pursuing this case. Defendant requests the appointment of a Special Prosecutor to continue, if necessary, the prosecution.

WHEREFORE, Defendant, by counsel, respectfully requests that a special prosecutor be appointed in this matter, after a hearing on the issue, and for all other relief.

Respectfully submitted,

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Jeffrey J. Shaw, #15265-46  
1005 ½ Calumet Avenue  
Valparaiso, IN 46383  
(219) 465-0959

I affirm under the penalty for perjury the foregoing assertions are true to the best of my belief.

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Jeffrey J. Shaw, #15265-46