

STATE OF INDIANA)
)
COUNTY OF JASPER)

FILED
IN OPEN COURT
JAN - 8 2004
JASPER CIRCUIT COURT

STATE OF INDIANA)
)
- vs -)
)
KYLE C. HAMILTON)

Kara Fishburne
Clerk of the Jasper Circuit Court

CAUSE NO.
37C01-0305-FC-201

O R D E R

This matter came on for hearing before the Court on the Defendant's Verified Motion for Appointment of Special Prosecuting Attorney.

At the conclusion of said hearing, the Court took the matter under advisement and having reviewed the same and being duly advised in the premises, now finds as follows:

The Defendant is seeking the appointment of a special prosecutor, alleging that the Prosecuting Attorney's Office has an actual conflict of interest in proceeding to prosecute this case.

In her motion, the Defendant argues that the Prosecuting Attorney has a conflict of interest for reason that these criminal charges arise out of allegations that the Defendant misappropriated her mother's assets when her mother was a protected person.

The Court further finds that a guardian ad litem was appointed to represent the interests of the Defendant's mother in a court proceeding or proceedings in the Jasper Superior Court and that James R. Lakin, an attorney-at-law and also a deputy prosecuting attorney for the 30th Judicial Circuit, represented the guardian ad litem, who was appointed to represent this Defendant's mother in

the civil proceedings. Further, that Mr. Lakin had submitted a bill to the Court for his legal services and that the Defendant had objected to the same.

The Court further finds that the Prosecuting Attorney for the 30th Judicial Circuit is Michael D. O'Neall and that the Chief Deputy Prosecuting Attorney for the 30th Judicial Circuit is Kathryn B. O'Neall.

The Court further finds that there is a second Deputy Prosecuting Attorney, who is Mr. Lakin, and that he is a part-time prosecutor and also conducts a civil practice.

The Court further finds that the Defendant's argument is well taken as to Mr. Lakin in that Mr. Lakin does have an actual conflict of interest in participating in the prosecution of these causes.

The Court further finds however, that the Prosecuting Attorney and the Chief Deputy Prosecuting Attorney for the 30th Judicial Circuit, which are Mr. Lakin's part-time employers, do not have any conflict of interest and that there has been no allegations of any conflict of interest by those parties. The Defendant only alleges that the Deputy Prosecuting Attorney's participation in a civil matter which involved the Defendant's mother creates a conflict of interest.

The Chief Deputy Prosecuting Attorney has assured the Court that Mr. Lakin is not, and will not be participating in the prosecution of this cause in any manner.

The Court fails to see how the actions of Mr. Lakin in his capacity as a private attorney in trying to protect the interests

of the Defendant's mother is grounds for disqualifying either the Prosecuting Attorney or his Chief Deputy Prosecuting Attorney from proceeding with the prosecution of this case.

The Court therefore finds that the Defendant's Verified Motion for Appointment of Special Prosecutor should be overruled and denied.

IT IS THEREFORE ORDERED AND DECREED by the Court that the Defendant's Verified Motion for Appointment of Special Prosecutor is hereby overruled and denied.

ORDERED THIS 9th DAY OF JANUARY, 2004.


E. Duane Daugherty, Judge
Jasper Circuit Court

Prosecuting Attorney

Jeffrey J. Shaw