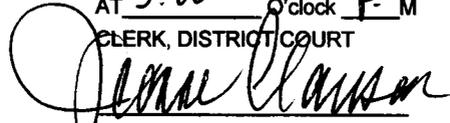


FILED Jan. 26, 2021

AT 5:00 o'clock P-M
CLERK, DISTRICT COURT


Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
Plaintiff,)

vs.)

PATRICK AUGERLAVOIE,)
DOB: 05/01/1976)
SSN: xxx-xx-9554)
IDOC: 95055)
Defendant.)

Case No. **CR28-20-18674**

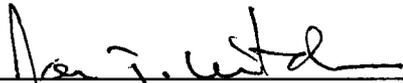
**ORDER DENYING DEFENDANT'S
MOTION REQUESTING ORDER TO
DISQUALIFY PRESIDING JUDGE
PURSUANT TO I.C.R. 25(b)**

On January 6, 2021, defendant, through counsel, filed defendant's Motion Requesting Order to Disqualify Presiding Judge Pursuant to I.C.R. 25(b). In that motion, counsel for defendant requested a hearing. Indeed, a hearing on a motion to disqualify for cause under I.C.R. 25(b) is **mandatory** under I.C.R. 25(c). On January 8, 2021, counsel for plaintiff filed an Objection to Defendant's Motion to Disqualify, pointing out that counsel for defendant had failed to file an affidavit, as required by I.C.R. 25(c). In spite of that warning by the plaintiff, at no time since has counsel for defendant filed an affidavit in support of the motion to disqualify for cause. At defendant's January 26, 2021, arraignment hearing which was scheduled and noticed for hearing by the Court, counsel for defendant sought to withdraw her client's motion to disqualify for cause. The Court did not allow such a withdrawal of the motion because, under I.C.R. 25(d) "On the filing of a motion for disqualification, the presiding judge has no authority to act further in the action except to grant or deny the motion for disqualification." Thus, this Court had no discretion other than to decide the defendant's motion to disqualify for cause. Indeed, I.C.R. 25

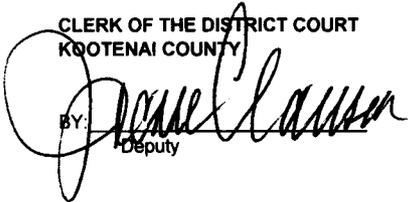
makes it abundantly clear that this Court could not have presided over defendant's arraignment without deciding the motion to disqualify for cause first.

IT IS ORDERED that the defendant's Motion Requesting Order to Disqualify Presiding Judge Pursuant to I.C.R. 25(b) is DENIED 1) because counsel for defendant failed to comply with I.C.R. 25(c), and 2) on the merits (or lack thereof) as no "grounds on which disqualification is based and the facts relied upon in support of the motion" were set forth as required by I.C.R. 25(c).

DATED this 26th day of January, 2021.


JOHN T. MITCHELL District Judge

I hereby certify that on the 27th day of January, 2021 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:
Defense Attorney - Jeanne Howe *pd@taxo.kc.gov.us*
Prosecuting Attorney - Stanley Mortensen *kc@paicourts.kc.gov.us*

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY: 
Deputy