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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 50087-2022
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-21-34839
v.)	
)	MOTION FOR SEVENTH EXTENSION
AARON ANSON VON EHLINGER,)	OF TIME FOR FILING
)	APPELLANT'S REPLY BRIEF
Defendant-Appellant.)	
_____)	

Aaron Von Ehlinger, moves this Court for an order extending the time in which the Appellant's Reply Brief will be due until March 29, 2024. This motion is based on the attached declaration.

DATED March 22, 2024.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
State Appellate Public Defender

DECLARATION

I, Erik R. Lehtinen, declare under penalty of perjury, pursuant to the law of the State of Idaho, that the following is true and correct:

(1) This case was initially assigned to State Appellate Public Defender Eric D. Fredericksen, who drafted and filed the Appellant's Brief on behalf of Mr. Von Ehlinger.

(2) In late-September 2023, Governor Little selected Mr. Fredericksen to head a new statewide trial-level public defender's office. Mr. Fredericksen left the Office of the State Appellate Public Defender ("SAPD") just a week after his new appointment was made public.

(3) When Mr. Fredericksen left, I became the interim director of the SAPD, effective September 25, 2023. While acting as the interim director, I also continued fulfilling the duties of my former position, Chief of the Appellate Unit. As if two jobs were not enough, I also covered most of Deputy State Appellate Public Defender Emily Joyce's caseload, as she had left the SAPD just a few days before Mr. Fredericksen did.

(4) Upon Mr. Fredericksen's departure, I reassigned this case to myself.

(5) Although taking on Ms. Joyce's and Mr. Fredericksen's cases was far from ideal under the circumstances, I simply had no one else to whom I could assign most of those cases. In FY2023, which ended June 30, 2023, the SAPD opened 719 new Appellate Unit cases. This was the highest single-year case count in the SAPD's 25-year history, and it represents a 19.2% increase over the Appellate Unit's pre-pandemic average (603.2 cases as of the end of FY2020).

(6) Unfortunately, the SAPD is simply not built to absorb a nearly 20% spike in its caseload, as it lacks the excess capacity to handle cases exceeding the historical average of around 600 new cases per year. The only "shock absorber" in the system is to request extensions of time from this Court. However, that is an imperfect solution, as delays continue to mount as attorneys fall farther behind for as long as the overall caseload stays above a 600 case per year rate. SAPD attorneys cannot even begin catching up until cases drop below that rate for a sustained period.

(7) The SAPD's crushing caseload continued into the first half of FY2024. As of January 1, 2024, the SAPD was on pace to open 698 new Appellate Unit cases in FY2024. This was still nearly 16% above the pre-pandemic average, and it still greatly exceeds the SAPD's capacity.¹ Accordingly, the SAPD is still falling further behind on its cases.

(8) Exacerbating the problems associated with a nearly 20% increase in the Appellate Unit caseload is that the SAPD has been unable to hire qualified attorneys to fill its attorney vacancies.

(9) During the 2023 legislative session, the Idaho Legislature appropriated funds for the SAPD to hire a new attorney in its Capital Litigation Unit. That funding became available on July 1, 2023, and the hope was to hire an attorney who could help with Appellate Unit cases in the short term, before transitioning fully to the Capital Litigation Unit in the long term. However, for the last nine months, the SAPD has been unable to fill that position with a qualified attorney.

(10) In addition, the Appellate Unit has two vacancies caused by the departures of Ms. Joyce and Mr. Fredericksen in late-September 2023. The SAPD has been unable to fill those positions as well.² Thus, the Appellate Unit is not only laboring under a caseload that is nearly 20% higher than capacity, but it is doing so with two out twelve positions vacant, *i.e.*, a 16.7% reduction in attorneys.

(11) As noted, there really is no "shock absorber" in the system, other than requesting extensions from this Court. Nevertheless, I am doing what I can to lighten the load on the overwhelmed Appellate Unit attorneys. The SAPD's three Capital Litigation Unit attorneys are now working part-time

¹ There *may* be some light at the end of the tunnel. While month-over-month case numbers have fluctuated wildly in FY2024 (making it difficult to definitively identify a trend), new case appointments dipped in December 2023, January 2024, and February 2024. Based on this, I am cautiously hopeful that the post-pandemic case surge has already peaked, and that new case appointments may now be on a downward trajectory. However, even if the surge in new appointments has peaked, the peak will not reach individual attorneys until Clerk's Records and Reporter's Transcripts are received in all (or most) of those cases, and that is likely still six to eight months away. It will then take many more months to get caught up.

² The SAPD is currently in the process of hiring an attorney to fill one of the two open Appellate Unit positions; however, this new hire is not available to start at the SAPD for a number of months.

on Appellate Unit cases (as their capital case caseloads permit).³ Additionally, although there is no dedicated budget to do so, we are scraping together funds to contract a handful of cases out to private attorneys. I do not anticipate that either of these measures will provide dramatic relief for the Appellate Unit; however, every little bit helps.

(12) In the meantime, I have reviewed the lengthy record in this case (the Clerk's Record is 366 pages long; the Reporter's Transcript is 719 pages long; and there are more than 1500 pages of exhibits), the Appellant's Brief, and the Respondent's Brief and, in my professional judgment, an Appellant's Reply Brief is needed. However, while that brief is partially written, I have not yet completed it.

(13) In addition to my work on this case, as well as my many other duties as director of the SAPD, I have spent significant time in recent weeks working on briefs in other cases. Specifically, I recently prepared and filed an Appellant's Brief in *State v. Frizzell*, No. 50061-2022, and an Appellant's Brief in Support of Petition for Review in *State v. Fell*, No. 49556-2022. Both of those cases were previously assigned to Ms. Joyce.

(14) Most notably for purposes of the current motion, I was recently drawn into a legislative matter that took me away from my work on this case. Specifically, on March 15, 2024, the Senate Judiciary & Rules Committee held a hearing on House Bill 515, which would have made capital punishment available for the crime of lewd conduct with a minor. Since that bill contained a fiscal note that did not acknowledge the exorbitant cost of such a change in Idaho law to Idaho's taxpayers, I had to devote a few days to coming up with detailed estimates of the fiscal impact of that legislation on the SAPD, and then testifying as to those estimates before the Committee. Those efforts set back my timeline to complete the brief in this case.

(15) Accordingly, I request an extension of seven (7) days in this case, which would make the Appellant's Reply Brief due on March 29, 2024.

³ Recently, one of these three Capital Litigation Unit attorneys provided notice of her intent to leave the SAPD. Her last day at the SAPD is today, March 22, 2024, and the SAPD will be left with yet another open position to try to fill. Further, her departure will likely curtail my ability to assign additional Appellate Unit cases to Capital Litigation Unit attorneys.

(16) Six extensions of time have already been granted for the reply brief in this case, and no requests for extensions have been denied.

(17) I can assure the Court that the Appellant's Reply Brief **will** be filed on or before March 29, 2024.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 22, 2024, I caused a true and correct copy of the foregoing MOTION FOR SEVENTH EXTENSION OF TIME FOR FILING APPELLANT'S REPLY BRIEF and DECLARATION to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

ERL/eas