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ISB No. 6428

Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

LORI NORENE VALLOW a/k/a
LORI NORENE DAYBELL,

Appellant.

Case No. 51091-2023

Fremont County Case No.
CR22-21-1624

**AMENDED¹ MOTION TO
AUGMENT AND SUSPEND THE
BRIEFING SCHEDULE**

The Appellant, Lori Norene Daybell, respectfully moves the Court under Idaho Appellate Rule 30 to augment the record on appeal in this case with records relevant to the appeal from two other closely related cases in the district court. Appellant's counsel has the majority of the records that he seeks to augment here – which will be lodged contemporaneously with this motion – but has been unable to obtain all of them

¹ Appellant amends her 1/20/25 motion solely on page 7 (item No. 9) to provide the correct dates and case numbers for the sealed conflict of interest hearings in the precursor cases, based upon more precise information of when the hearings occurred.

because they are under seal in the other cases. A list of the items to be augmented is included at the end of the motion, starting on page 6.

Because Appellant Daybell does not yet have all the necessary records, she further moves the Court to suspend the briefing schedule until such time as the records have been augmented to the record on appeal.

PROCEDURAL BACKGROUND

Lori Daybell anticipates raising claims, among others, alleging constitutional error regarding the district court's handling of the State's motion to disqualify her retained counsel. The records she seeks to augment are relevant to those claims.

On May 25, 2021, the State charged Chad and Lori Daybell in a single indictment. (Clerk's Record (CR), pp. 52-62.) The district court determined that they should have separate case numbers with separate filings in each case, though the district court originally intended that the cases would be tried together (they were not). (Proposed Augmented Record (Aug. Rec.), pp. 160-61.) The clerk assigned Chad Daybell's case as CR22-21-1623. (*Id.*) Lori Daybell's case number was CR22-21-1624. (*Id.*) Early on, the district court found that Lori Daybell was not competent to be tried, and it stayed Case No. CR22-21-1624. (CR, p. 73.) Chad Daybell's case moved forward.

An issue soon arose regarding the status of Lori Daybell's retained counsel, Mark Means. On July 27, 2021, the State filed a motion in both cases, seeking to disqualify Mr. Means. (CR, pp. 39-81.) The State contended that Mr. Means had briefly represented

Chad and Lori Daybell jointly in the spring of 2020, after Lori had been arrested on placeholder charges but before Chad had been charged. (*Id.*) The State claimed that Mr. Means therefore had a conflict of interest and should be disqualified from representing Lori. (*Id.*)

The district court allowed the State's disqualification motion to be litigated under Chad Daybell's case number, CR22-21-1623. Mr. Means, Lori's attorney, attempted to intervene in Chad's case, but the district court denied his motion. (Proposed Aug. Rec., p. 220.) Yet the district court heard argument from the State and Chad Daybell's attorney on this issue, and it admitted exhibits, over the course of three sealed hearings: on August 30, 2021; September 8, 2021; and October 8, 2021. (Conf. Aug. Tr., 8/30/21 and 10/8/21.)² The court also took judicial notice of the entire file in another related case that the State had previously filed against Lori Daybell, *State v. Lori Norene Vallow a/k/a Lori Norene Daybell*, Fremont County Case No. CR22-20-0838. (*See* Conf. Aug. Tr., 8/30/2021, p. 24 (taking judicial notice). In that precursor case, Mr. Means's alleged conflict had also been briefed, heard, and decided (the magistrate court denied disqualification). *See* Ex. A, B, and C. The district court relied, in part, on those proceedings.

² Counsel is providing transcripts of the August 30 and October 8 hearings under seal by hand delivery to the Court. For an unknown reason, the district court clerk added the sealed transcript for the September 8 hearing to the the confidential transcript record on appeal in the present case. The other two sealed hearings, on August 30 and September 8, were not added but are necessary for a complete record as to this issue.

On December 28, 2021, the district court granted the State's motion and disqualified Mr. Means as Lori Daybell's counsel. (CR, pp. 457-73.) The decision and order of disqualification was filed in Lori Daybell's case. (*Id.*)

Ms. Daybell believes that this unique procedure and the disqualification of her counsel implicated several of her constitutional trial rights, including her Fourteenth Amendment right to be present at all critical stages of the prosecution, her right not to have substantive proceedings occur while she is incompetent, and her Sixth Amendment right to counsel of choice. She anticipates raising versions of these claims in her brief.

**EXCEPTIONAL CIRCUMSTANCES SUPPORT THE REQUEST
AND ANY CORRESPONDING DELAY**

As the Appellant, Ms. Daybell bears the burden of ensuring that this Court "is provided a sufficient record for review of the district court's decision." *State v. Herrera*, 164 Idaho 261, 271, 429 P.3d 149, 159 (2018) (citation omitted). Relatedly, she has a right under the Fourteenth Amendment to the effective assistance of counsel on her direct appeal. *Evitts v. Lucey*, 469 U.S. 387 (1985). As an indigent appellant, she further has a right under the Equal Protection Clause of the Fourteenth Amendment to complete transcripts and records at state cost that are necessary to show error. *Mayer v. City of Chicago*, 404 U.S. 189, 195 (1971).

The brief in this case is currently due on or before January 30, 2025, on a fifth extension. It is not counsel's typical practice to seek that many extensions in a routine

case, but this case has proven to be far from routine. It has taken counsel significantly longer than usual to review this record, uncover these potential issues, and chase down the additional records that support them. That is partly because the record is enormous and spread out over multiple cases. It is partly because of the way in which the records on appeal have been organized, particularly the transcripts, which were not arranged chronologically but from the date that they were filed. The difficulty has been increased by the wholesale sealing of records and hearings throughout these cases. Lori Daybell's counsel has only recently been able to get bits and pieces of the confidential records from the related cases, even as to issues that bear directly on Ms. Daybell's constitutional rights. To date, counsel believes that he now has *most* of the records that would support the appellate issues noted above, but there are others that should be disclosed to the parties and added to this record.

Ms. Daybell is presently serving several consecutive life sentences, and another brief delay does not prejudice her. She is also currently facing serious charges in Arizona, where she is housed. She has one shot at a direct appeal. It should be thorough and complete.

For these reasons, Ms. Daybell respectfully requests that the Court suspend the briefing schedule and order the following transcripts, exhibits, and records – all relevant to the constitutional issues noted – to be augmented into the record on appeal and provided to the parties in this case.

TRANSCRIPTS AND RECORDS TO BE AUGMENTED

I.

UNSEALED Records, filed with this Court contemporaneously.

- (1) Partial Clerk's Record on Appeal, in *State v. Chad Guy Daybell*, CR22-21-1623, paginated as **Aug. Rec, pp. 1-436.**³

SEALED Records, filed with this Court contemporaneously under seal.

- (2) Sealed Transcript of August 30, 2021 Motion Hearing filed in *State v. Chad Guy Daybell*, CR22-21-1624 (filed on July 5, 2024) (**Conf. Aug. Tr. 8/30/21**);
- (3) Sealed Transcript of October 8, 2021 Ex Parte Hearing filed in *State v. Chad Guy Daybell*, No. CR22-21-1624 (Filed on July 17, 2024) (**Conf. Aug. Tr. 10/8/21**);
- (4) Sealed State's Memorandum Re: Issue of Conflict, filed July 28, 2020 in *State v. Lori Norene Vallow a/k/a Lori Noren Daybell*,. CR22-20-0838; paginated as **Conf. Aug. Rec., pp. 1 -7**; and
- (5) Sealed Defendant's Memorandum in Re: Conflict Issue, filed July 28, 2020 in *State v. Lori Norene Vallow a/k/a Lori Norene Daybell*, CR22-20-0838; paginated as **Conf. Aug., Rec. pp. 8-33.**

³ Due to the large size of the unsealed Clerk's Record in Chad Daybell's companion case, counsel is presently seeking to add only that portion of the Clerk's Record up to the district court's December 28, 2021 ruling disqualifying Mr. Means as Lori Daybell's counsel. Several filings within that section of the Clerk's Record are relevant to the issue.

II.

Currently Unavailable to Counsel⁴

SEALED RECORDS

- (6) Sealed Motion to Intervene, filed August 25, 2021 in *State v. Chad Guy Daybell*, CR22-21-1623, to be paginated starting at **Conf. Aug. Rec., p. 34 et seq.**; and
- (7) State's Exhibit 4, an audio recording admitted at the sealed September 8, 2021 Hearing on the State's Motion to Disqualify Counsel in *State v. Chad Guy Daybell*, CR22-21-1623 (*See* Conf. Tr. 9/8/21, at 34 (admitting State's Ex. 4.)

SEALED HEARINGS TO BE TRANSCRIBED – Case Nos. CR22-20-0755/CR22-20-0838

- (8) Sealed Hearing of **July 20, 2020** *sua sponte* motion hearing on conflict of interest in *State v. Lori Norene Vallow a/k/a Lori Norene Daybell*, CR22-20-0838; Exhibit A.
- (9) **July 27, 2020**, *sua sponte* sealed motion hearing on conflict of interest in *State v. Chad Guy Daybell*, Case No. **CR22-20-0755**, and **July 28, 2020** sealed hearing in *Lori Norene Vallow a/k/a Lori Norene Daybell*, **CR22-20-0838**. *See* Exhibits B, C.

These hearings in the magistrate division involved the same conflict of interest issue. *See* Exhibits A, B, and C, attached. The district court in the present case took

⁴ Appellant's counsel cannot provide these records with this motion because he does not have them, despite his requests to the district court clerk. Appellant is therefore seeking an order from this Court to the Fremont County District Court Clerk, the custodian of these records, to obtain them (or, in the case of the transcript, have it prepared and filed), augment them to the record, and provide copies to the parties and this Court.

judicial notice of the entire case file in Case No. CR22-20-0838. To appellate counsel's knowledge, these hearings were held over Zoom and have not yet been transcribed. There was no assigned court reporter, as the hearing was recorded by FTR. Ms. Daybell seeks an order requiring the hearings to be transcribed and added to the Confidential Transcript Record in this appeal.

CONCLUSION

Appellant Lori Daybell seeks an order from this Court (1) suspending the briefing schedule, (2) augmenting the records that Ms. Daybell is providing contemporaneously to the Record on Appeal, and (3) ordering the additional relevant records noted herein to be prepared, provided to the parties, and augmented to the Record on Appeal.

After the record has been augmented, she asks the Court to reset the date for her appellate brief within a reasonable time.

Respectfully submitted on this 30th day of January 2025.

/s/Craig H. Durham
Craig H. Durham
Attorney for Appellant

CERTIFICATE OF SERVICE

The foregoing has been served on the following on this 30th day of January, 2025,
by filing through the Court's e-filing and serve system.

KENNETH JORGENSEN
ecf@ag.idaho.gov

Attorney for Respondent

/s/Craig H. Durham
Craig H. Durham