

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'clock \_\_\_\_ 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. )  
 )  
 )  
 ) **MATTHEW ALLAN ALLMARAS,** )  
 )  
 ) DOB: 07/18/1982 )  
 ) SSN: XXX-XX-7459 )  
 ) IDOC: 122507 )  
 )  
 ) *Defendant.* )

Case No. **CRF 2014 20024**

**ORDER DENYING MOTION TO  
DISQUALIFY ALTERNATE JUDGE  
PURSUANT TO I.C.R. 25(a)(6)**

The Court, having reviewed defendant’s Motion to Disqualify Alternate Judge Pursuant to I.C.R. 25(a)(6) filed on August 11, 2017, the Court file, and I.C.R. 25(a)(6), finds defendant’s motion is untimely.

Defendant argues the first notice that the undersigned could be an alternate presiding judge was filed on July 30, 2015. Mot. to Disqualify Alternate Judge Pursuant to I.C.R. 25(a)(6), at 3. The first notice providing parties and their attorneys with notice that the undersigned could be an alternate presiding judge was actually the Amended Notice of Pre-Trial Conference and Trial filed April 30, 2015, more than twenty-seven months ago. Thus, the defendant’s Motion filed August 11, 2017, is untimely.

Idaho Criminal Rule 25(a)(6) defines presiding judge as one who would “preside at trial or at any other hearing or proceeding in the case.” The undersigned has been listed consistently since April 30, 2015, as an “Alternate Presiding Judge.” Defendant’s argument that, “Further, the notices and orders filed up to the June 28, 2016 [?] failed to provide any notice as to the possibility that an alternate judge could preside over anything but the Pretrial Conference and Jury Trial”, is without merit. Mot. to Disqualify Alternate Judge Pursuant to

I.C.R. 25(a)(6), at 4. Notice has been consistently given that the undersigned may be an “Alternate Presiding Judge”, and the applicable rule defines presiding judge as one who would “preside at trial or at any other hearing or proceeding in the case”. The Order Assigning District Judge filed July 28, 2017, assigns the undersigned “to take jurisdiction of the above entitled action”, which essentially assigns the undersigned to the “trial”, any future “hearing”, and all “proceedings” in this case from that date forward.

Defendant argues, “The last notice or order that provided a list of alternate judges was the *Notice of Pretrial Conference and Trial* filed June 28, 2016 that set the Pretrial and Jury Trial hearing dates as July 22, 2016 and July 26, 2016 respectively; after that date, no other notice or order included a prospective list of alternate judges that may hear the matter.” Mot. to Disqualify Alternate Judge Pursuant to I.C.R. 25(a)(6), at 4. If defendant is arguing that a later notice which does not set forth a list of alternate presiding judges trumps an earlier notice which did set forth a list of alternate presiding judges, such argument finds no support in any case law from the Idaho appellate courts. Such argument is contrary to the holding in *State v. Schaffer*, 112 Idaho 1024, 1026-27, 739 P.2d 323, 325-26 (1987). Such argument finds no support in the language of I.C.R. 25(a)(2):

(2) Time for Filing. A motion for disqualification without cause must be filed within seven days after service of a written notice setting the action for status conference, pre-trial conference, trial or for hearing on the first contested motion, or within 14 days after the service of a written notice specifying who the presiding judge or magistrate to the action will be, whichever occurs first. The motion must be filed before the commencement of a status conference, a pre-trial conference, a contested proceeding or trial in the action.

Idaho Criminal Rule 25(a)(2) is not capable of being interpreted any other way than to require, “A motion for disqualification without cause [to] be filed within seven days after service of a written notice setting the action for ...pre-trial conference [or] trial...”. That notice was first made in this case on April 30, 2015. Defendant had until May 7, 2015, to file his

motion for disqualification without cause, and did not do so.

Finally, defendant, appropriately, has not requested a hearing on his Motion to Disqualify Alternate Judge Pursuant to I.C.R. 25(a)(6). Idaho Criminal Rule 25(a) is silent on the need for a hearing where the motion is made without cause, where I.C.R. 25(b) via (c) requires a hearing on a motion made to disqualify with cause. In a motion to disqualify without cause, the only inquiry is the timeliness of the motion, and "...such motion shall be automatic if timely filed." *Schaffer*, 112 Idaho at 1026, 739 P.2d at 325. Thus, this Court decides defendant's Motion to Disqualify Alternate Judge Pursuant to I.C.R. 25(a)(6) without a hearing.

**IT IS ORDERED** that the defendant's Motion to Disqualify Alternate Judge Pursuant to I.C.R. 25(a)(6) is DENIED as it is untimely.

DATED this 15<sup>th</sup> day of August, 2017.

\_\_\_\_\_  
JOHN T. MITCHELL District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of August, 2017 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Jeanne Howe  
Prosecuting Attorney -  
Administrative Judge

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY

BY: \_\_\_\_\_  
Deputy