

CC-Y

**THE STATE OF NEW HAMPSHIRE**

CHESHIRE, SS.  
DOCKET # 449-2012-CR-00535

8<sup>th</sup> Circuit Ct.- Dist. Div.  
APRIL TERM, 2012

**STATE OF NEW HAMPSHIRE**

v.

**IAN H. BERNARD**

**STATE'S OBJECTION TO DEFENDANT'S MOTION TO STAY  
PROCEEDINGS FOR INTERLOCUTORY APPEAL (SIC)**

**NOW COMES** the State of New Hampshire, by and through the Office of the County Attorney, and **OBJECTS** to Defendant's Motion to Stay Proceedings for Interlocutory Appeal in the above entitled case, and

In support of this Motion the State says:

1. The Defendant is charged with criminal trespass.
2. The Defendant's Motion is based on this Honorable Court's Denial of Defendant's Motion to Recuse dated April 9, 2012, and subsequent denial of Defendant's Motion for Reconsideration. Said denial was based on the fact that Mr. Adam Mueller, the party involved in the situation referenced by the Defendant in his original Motion is not a party in the instant case.
3. Defendant's instant Motion is predicated on the same facts as enunciated in the initial Motion for Recusal.
4. Defendant's original Motion for Recusal references "...Sullivan County Attorney Marc Hathaway's official criminal investigation report..." (sic) reviewing a matter involving the Honorable Judge Burke and Adam Mueller.
5. Defendant's original Motion takes statements from Attorney Hathaway's letter out of context, and gives them a meaning not intended when reviewed in the full context of the letter.
6. Attorney Hathaway's letter includes the following:

If Mr. Mueller's actions are not objectively threatening, then Judge Burke's statement to the bailiffs that 'He's threatening me, that's a criminal offense' conveys objectively false information (the conclusion that Judge Burke was being threatened) to a law enforcement officer. ... For there to be a completed crime it must be established that Judge

Burke acted with a criminal intent – that is that he knew the information was false and that he acted with the purpose of inducing the officer to believe that another had committed an offense. Evidence of criminal intent can be gathered from the alleged criminal act as well as the surrounding circumstances. Judge Burke within moments of having stated, 'he's threatening me' recognized that he had misspoken and took steps to correct the inaccurate impression he had given with both bailiffs and the police. The evidence establishes that Judge Burke's statement 'he's threatening me', is properly characterized as a truthful statement of a subjective belief; uttered in the midst of a stressful event, rather than a criminal effort to falsely induce law enforcement to believe that Mr. Mueller had committed a crime. (Emphasis added)

7. As can be seen, when read in its entirety, Attorney Hathaway's letter clearly indicates that the Honorable Judge Burke, rather than showing prejudice against the Defendant, shows a judicial official who is temperate and who immediately takes steps to correct what he quickly recognized to be an initially inaccurate impression.
8. The Defendant has not provided any evidence showing impartiality on the part of this Honorable Court, or of any wrongdoing on the part of this Honorable Court. That being the case, this Honorable Court's initial denial of the Defendant's Motion to Recuse and its subsequent denial of Defendant's Motion for Reconsideration was appropriate and no grounds have been provided by the defendant to warrant the relief he presently requests.
9. The issue is not ripe as there has been no trial as of yet, and no evidence has been presented to show that this Honorable Court has acted with prejudice toward the defendant in the instant case or in the past.

**WHEREFORE**, the State respectfully requests this Honorable Court:

- a) Deny Defendant's Motion to Stay Proceedings for Interlocutory Appeal, and;
- b) Grant other such relief that the Honorable Court deems just and equitable.

Respectfully Submitted,  
STATE OF NEW HAMPSHIRE

*David Lauren*

David Lauren, Esquire  
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**CERTIFICATE OF SERVICE**

I mailed a copy of this Objection to the defendant, Ian H. Bernard, AKA Ian H. Freeman at 63 Emerald St., # 458, Keene, NH 03431, on this 1<sup>st</sup> day of ~~April~~, 2012.

*May*

*David Lauren*

David Lauren, Esquire  
Assistant Cheshire County Attorney