

THE COURIER

OF MONTGOMERY COUNTY

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DA's Office seeks judge's recusal from child solicitation case



The Montgomery County District Attorney's Office filed a motion Tuesday for the recusal of the 9th state District Court Judge Kelly Case from hearing the Michael Burl Massingill online solicitation of a minor case that was recently the subject of a fifth mandamus filed by the DA's Office against the judge.

This is the same criminal case in which the judge recently withdrew a discovery order request by Garcia to produce all documents produced by the local Internet Crimes Against Children Task Force, which investigates individuals actively trading in child pornography and search the Internet for underage children to lure into sexual relationships.

Case withdrew the order upon the acceptance by the Court of Appeals of the fifth mandamus action filed against him by the District and County Attorney's offices. The mandamus sought to prevent the implementation of the discovery order, citing its overbroad attempt to turn over every investigation and investigative technique used by the ICAC task force.

For Tuesday's hearing, there was a second motion for discovery, an application for a gag order to keep prosecutors from discussing the case publically and a motion to quash the indictment against Massingill.

After Case declined to hear a motion Monday to quash subpoenas for eight law enforcement officials issued by Massingill's defense attorney Gilbert Garcia, the DA's Office filed for Case's recusal, saying it became obvious he was not considering the motion to quash on its merits and that he had colluded with Garcia on the issue.

Garcia issued subpoenas for District Attorney Brett Ligon, County Attorney JD Lambright, First Assistant Phil Grant, Bureau Chief Bill Delmore and prosecutors from the county and district attorney's offices to appear in court Tuesday morning, but the hearing ended abruptly about an hour into proceedings.

The law requires that witnesses called to testify have material information on the specific case in question, but Grant says all but one of the attorneys subpoenaed are not involved in the criminal matter and do not meet the requirements for a lawful subpoena.

"At the end of the day, we're not really sure what Gilbert is trying to get at, when we don't have any material knowledge of this particular case," Grant said. "We felt like we were put in a position where we had to file the motion for recusal."

Garcia, who lost the Montgomery County District Attorney election to Ligon in 2012, criticized the attorneys of appearing late to court and questioned the timing of the DA's Office motion for recusal.

"It appears Ligon was satisfied with Judge Case sitting on the bench for the first hour of the hearing, until Ligon was called to testify," Garcia said in an email. "The activities that occurred today in open court should be examined very carefully and each line of the official transcript should be reviewed to determine the motivation behind Grant's Motion to Recuse."

"While I decline to comment on the facts of the pending criminal case, I encourage a thorough review of today's proceedings. I want to ensure that justice is done and I want to protect my client's due process rights to have a fair trial."

Grant noted that when Garcia was called to the witness stand before Ligon, Garcia objected and the Case refused to allow prosecutors to question him and said the hearing was unfair.

The motion for Case's recusal is pending a decision by local administrative Judge Olen Underwood, who is soon expected to set a hearing date for the motion.