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APACHE COUNTY SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF APACHE

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOSEPH DOUGLAS ROBERTS,	)	CR 2010-00047
	)	
Defendant.	)	STATE'S REQUEST FOR RECUSAL OR, IN
	)	THE ALTERNATIVE, MOTION FOR
	)	CHANGE OF JUDGE
	)	
	)	(Honorable Donna J. Grimsley)
	)	

Pursuant to Rule 10.1, Arizona Rules of Criminal Procedure, the State of Arizona, by undersigned counsel, respectfully moves for a change of judge because the State cannot received a fair and impartial trial for the reason that this Court is prejudiced against the State.

This Motion is based on the attached Memorandum.

Submitted November 27, 2012.

WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

BY /s/  
/s/ John F. Beatty  
Deputy Maricopa County Attorney

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. FACTS

On January 18, 2011, the trial judge ruled that the case at bar be dismissed with prejudice. The ruling delineated reasons for the dismissal. Among those reasons, the trial judge found that the State had violated the defendant's 6<sup>th</sup> Amendment rights by use of "flagrant and manipulative subversion." Also, the trial judge noted being "appalled by the outrageous and unethical behavior" of the State. The trial judge made definitive findings regarding the defendant's trust in the system, the defendant's constitutional rights, and the public interest.

The witnesses involved in the litigation that led to the trial judge's ruling will continue to be witnesses in future hearings and in the trial in this matter. At least two of the witnesses, Hounshell and Jaramillo, were employees of either the Apache County Attorney's Office or the Apache County Sheriff's Office at the times relevant to this proceeding. The trial court will be required to make unbiased rulings based on the evidence and arguments presented during upcoming hearings. However, with the Court's disposition toward these witnesses, the State believes it cannot receive a fair and impartial trial.

Further, as a result of that January 2011 ruling, the State filed two motions to reconsider, but the trial judge summarily denied reconsideration, refusing even to consider the merits of those motions. The trial judge released the defendant from custody the day after issuing the dismissal. The State timely appealed the dismissal, and on December 1, 2011, the Arizona Court of Appeals overturned the dismissal. On August 28, 2012, the Arizona Supreme Court denied review of the decision of the Court of Appeals.

The trial judge in this matter is also the presiding judge for Apache County, and in fact is the only sitting judge in Apache County. By information and belief, the County employs two

judges *pro tem* and four magistrates for the four justice courts. All six of these judicial officers in Apache County enjoy their authority by the permission of the presiding judge.

## II. LEGAL ARGUMENT

### CHANGE OF JUDGE IS APPROPRIATE BECAUSE A FAIR AND IMPARTIAL TRIAL CANNOT BE ACCOMPLISHED WITH THE CURRENT JUDGE

Rule 10.1(a), Arizona Rules of Criminal Procedure, provides that a party is entitled to a change of judge if a fair and impartial hearing or trial cannot be had by reason of the interest or prejudice of the assigned judge.

The trial judge has demonstrated in the January 2011 ruling, and in the summary denials of the motions to reconsider, that the State cannot receive a fair and impartial trial in this case. The witnesses from whom the trial judge has already heard testimony, and determined that they committed outrageous and unethical behavior, are entitled to fair and impartial treatment. This trial judge cannot provide such fair treatment.

## III. CONCLUSION

The State requests a change of judge pursuant to Rule 10.1, based on the interest or prejudice of the trial judge.

Submitted November 27, 2012.

WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

BY /s/  
/s/ John F. Beatty  
Deputy Maricopa County Attorney

ORIGINAL e-mailed/delivered  
November 26, 2012, to:

Clerk of the Court  
Apache County Superior Court  
70 W. 3<sup>rd</sup> South  
St. Johns, AZ 85936

COPY e-mailed/delivered  
November 27, 2012, to:

Honorable Donna J. Grimsley  
Apache County Superior Court  
P.O. Box 365  
St. Johns, AZ 85936  
Judge of the Superior Court

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BY /s/  
/s/ John F. Beatty  
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