

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22CRS50676

STATE OF NORTH CAROLINA)
)
)
v.)
)
MICHAEL BLOCH)
)

**MOTION FOR COMPLIANCE
WITH NCGS 7A-49.4 REGARDING
CALENDARING OF CASES
FOR TRIAL**

NOW COMES THE DEFENDANT, by and through undersigned counsel, respectfully moves this honorable Court for an order requiring the State to comply with N.C.G.S. § 7A-49.4 regarding the calendaring of criminal cases for trial in the Superior Court. In support of this motion, Defendant states the following:

1. During the week of June 5, 2023 trial week, Co-Counsel for Defendant appeared in Court after phone and email conversation with the State of North Carolina in order to set trial on the above captioned case due to an expert witness being hospitalized.
2. In open Court, recorded by the Clerks, and on the record, the State of North Carolina, by and through Assistant District Attorney Morton, selected the trial date of the week of September 11, 2023 with the understanding that the above captioned case would be pushed out long enough to ensure first priority on the trial calendar, to which defense agreed.
3. Communications with the prosecutor (See Exhibit A) from that day forward waived back and forth but resulted in an email correspondence from the prosecutor stating that the trial date was indeed the week of September 11, 2023 with the understanding that a Murder plea would occur Monday afternoon at 2pm leaving the jury to come in the morning of September 12, 2023.
4. On August 25, 2023, ADA Morton emailed Counsel for the Defendant (See Exhibit B) and stated:

“Walter:

Just wanted to let you know the Bloch case has not been scheduled for the week of 9/11. There are many defendants in custody for trial that are scheduled for that week instead. Also, due to the murder plea on Monday, the jury is not coming in until Tuesday. I think we both agree the case probably can't be tried in 4 days.”

5. Counsel for Defendant emailed the prosecutor for clarification and the prosecutor again reiterated the same. (See Exhibit C)
6. It is the law in North Carolina that trial dates in criminal cases may not be unilaterally set by the District Attorney, without input from counsel for the Defendant, in court and on the record.
7. N.C.G.S. § 7A-49.4(b)(5) states:

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.
8. Defense was not consulted on this unilateral removal of the above captioned case and the Defendant does not wish to prolong this trial considering the statements of the State in open court.
9. Defendant has three minor school aged children and resides in the State of Virginia. Mr. Bloch and his wife are both necessary witnesses for his defense and must be in Court for this trial. Mr. Bloch has incurred substantial expense to ensure that family members were flown in from outside the State of Virginia to care for these minor children during this trial.
10. Counsel for Mr. Bloch has witnesses who are necessary witnesses and Active Duty MARSOC Operators with the United States Marine Corps who are consistently in a state of flux and not guaranteed to be available on future Court dates thereby robbing Mr. Bloch of his constitutional right to a fair trial.
11. Expert Witnesses have been secured for Mr. Bloch's defense who are professionals in the State of North Carolina and have cleared their schedules to be present for defense of this case.
12. Mrs. Bloch is a Federal employee in the intelligence agencies of the United States Government and has requirements of clearance anytime she travels due to the Secret nature of the work she does. This requires months advanced notice to ensure availability and avoid a potential of substantial alarms from unexpected absence from the role she fills.
13. The Defendant understands the seriousness of this trial and is prepared to exercise his constitutional right to a trial after exhausting all other avenues of disposal by negotiations for pleas, requests to divert to VTC, and requests for change of venue to another VTC which deals with his level of charges; however, a fair trial cannot be had with unilateral changes of the trial date by the State of

North Carolina in this matter which undoubtedly may bankrupt the Bloch family forcing no other resolution of a plea from the defendant because of the unauthorized changes by the State.

14. **WHEREFORE**, Mr. Bloch respectfully requests this Court ORDER the State of North Carolina to comply with the Trial Date set by the State of North Carolina of September 11, 2023 and ensure that Mr. Bloch's case is not buried at the bottom of the priority Calendar to allow both the State and Defense to provide a fair trial under the protections of the United States and North Carolina Constitution. Furthermore, Mr. Bloch prays this Court enter an order striking any proposed calendaring of this case for a later date without full compliance with NCGS 7A-49.4(b).

Respectfully submitted,

This the _____ day of _____, 2023.



Walter H. Rodriguez, Esq.
N. C. State Bar No. 48666
3566 Henderson Drive
Jacksonville, NC 28546
Tel: 910-333-9000
Fax: 910-333-9114

CO-COUNSEL FOR DEFENDANT

Certificate of Service

This shall certify that a copy of the foregoing **MOTION FOR COMPLIANCE** (with attachments) was this day served upon the District Attorney for the 5th Judicial District, via Hand Delivery, at the address set forth below:

Office of the District Attorney for the 5th Judicial District
602 Anne Street
Jacksonville, NC 28540

This the ___ day of _____, 20_____..

Walter H Rodriguez

Walter H Rodriguez, 48666
Attorney For Defendant
Starling Law Firm, PLLC
112 Old Bridge Street
Jacksonville, NC 28540
(910) 333-9000
Co-Counsel

Re: State v. Michael Bloch

Walter Rodriguez [REDACTED] >

Thu 5/25/2023 5:42 PM

To: Morton, Michele E. [REDACTED]

Cc: Lee, Ernest R. [REDACTED] >; Maultsby, Michael D. [REDACTED] >

Understood. I will anticipate telling my client September 11th.

I will leave him on telephone standby for the calendar call on 6/5. Thank you for getting back to me on this matter.

Sincerely,

Walter H. Rodriguez, Esq.

Starling, Rodriguez, & Associates, PLLC

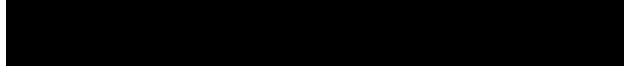
3566 Henderson Drive

Jacksonville, NC 28546

[REDACTED]

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On May 25, 2023, at 4:51 PM, Morton, Michele E. 
wrote:

If we can't schedule it earlier than September, please plan on September 11th.

[<image001.png>](#)

Michele Morton

Violent Crimes, Assistant District Attorney

Prosecutorial District 5

North Carolina Judicial Branch

602 Anne Street

Jacksonville, NC 28540

O (910) 478-3708

F (910) 478-3611

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[<image003.png>](#)

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[<image005.png>](#)

From: Walter Rodriguez [REDACTED]

Sent: Thursday, May 25, 2023 3:29 PM

To: Morton, Michele E. [REDACTED]

[REDACTED] D.

Subject: Re: State v. Michael Bloch

Two issues in July, 1) I will be out of the country until the 8th. 2) I have motion hearings on a rape case outside of Onslow but that may be continued.

Two issues in August, 1) I believe Mike has set the Doherty matter for trial on the week of 8/7/23. 2) my annual camping trip is scheduled for the week of 8/14/23 with the kids and my staff is filing that tomorrow.

September does not seem to be an issue.

Sincerely,

Walter H. Rodriguez, Esq.

Starling, Rodriguez, & Associates, PLLC

3566 Henderson Drive

[REDACTED]

[REDACTED]

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On May 25, 2023, at 2:29 PM, Morton, Michele E. [REDACTED]
wrote:

Walter:

I have received notice of expert but your request for continuance did not state which expert needed the continuance. I did not know if it was one you already filed or a new expert.

I will get back to you about a proposed date. Are there any other weeks in July/August/September you are not available?

[<image001.png>](#)

Michele Morton

Violent Crimes, Assistant District Attorney
Prosecutorial District 5

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From: Walter Rodriguez [REDACTED]

Sent: Thursday, May 25, 2023 12:45 PM

To: Morton, Michele E. [REDACTED]
[REDACTED]

Subject: Re: State v. Michael Bloch

Michele,

Notice of the expert witnesses has been filed. There are two. The same witnesses that you referred to in your prior email. Dr. Gilbert and Dr. Piramzadian.

I will be out of the country that trial week. Secured leave forms were submitted a few months ago. Let me know what your thoughts are.

Sincerely,

Walter H. Rodriguez, Esq.

Starling, Rodriguez, & Associates, PLLC

3566 Henderson Drive

Jacksonville, NC 28546

[REDACTED]

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On May 25, 2023, at 12:32 PM, Morton, Michele E.

[REDACTED]

wrote:

Walter:

I need notice of the expert witness secured by the defendant you refer to in your below e-mail.

Based on the unavailability of a necessary witness and an expert witness for the week of June 5th, I think it is very likely a Judge will grant your request. Based on that and the approval of Ernie Lee, I will consent to a continuance. I propose we set the case for trial the week of 7-3.

[<image001.png>](#)

Michele Morton

Violent Crimes, Assistant District Attorney

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From: Walter Rodriguez [REDACTED]
Sent: Wednesday, May 24, 2023 12:57 PM
To: Morton, Michele E. [REDACTED]
Cc: Lee, Ernest R. [REDACTED]; Maultsby, Michael D.
[REDACTED]
Subject: Re: State v. Michael Bloch

Michele,

For clarity purposes, the notice of expert witnesses and notice of defense was filed the first week of May and served on the DA's office.

The motion to continue was filed and served yesterday when I learned of the issues with our expert and our witness coming from out of State. I spoke to your legal assistant to attempt to get a message to you but have not heard back. I left a voicemail and have not heard back. I sent an email the other day and have not received a response.

The email is no longer a necessary component at this time but in the other two communications I inquired as to whether there would be agreement to continue the case and whether the defendant would need to be present (or could remain on telephone standby). I offered a number of concerns revolving around this continuance and now there appears to be more.

- 1) A necessary witness is out of the state and unable to be in the state for testimony during the week unexpectedly.
- 2) An expert witness secured by the defendant as part of his defense has encountered medical issues which resulted in hospitalization and ongoing medical complications making them unavailable to safely come to court to testify.
- 3) Bill Peregoy has indicated, as number 1 priority, he is prepared for a 4 day trial and will be proceeding.

I recite these items here because I am concerned that you did not receive my inquiries after I made them based on this email.

Feel free to make a list of items you are requesting from my experts and I will discuss them with our witness (health issues providing an opportunity) at my earliest possible convenience.

Sincerely,

Walter H. Rodriguez, Esq.

Starling, Rodriguez, & Associates, PLLC

3566 Henderson Drive

Jacksonville, NC 28546



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not wish to receive similar electronic messages from us in the future, please respond to the sender requesting no further email communication.

On May 24, 2023, at 10:24 AM, Morton, Michele E.

 wrote:

Walter:

I am in receipt of your notice of defense of automatism, notice of expert witnesses Dr. Arin Permazadian and Dr. Tobi Gilbert, and motion to continue. Thank you for providing those to me and let me know if I am missing anything you have recently filed.

With regard to your notice of experts, I don't think I have the underlying data/information for which they relied upon to form their opinion. I'll file a motion.

With regard to your motion to continue, can you be specific as to which expert witness is unavailable.

Thanks,

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Michele Morton

Violent Crimes, Assistant District Attorney
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RE: State v. Bloch

Morton, Michele E. [REDACTED]

Thu 8/10/2023 9:01 AM

To: Walter Rodriguez [REDACTED] >; Lee, Ernest R. [REDACTED]

Bloch will be set 9/11.



Michele Morton

Violent Crimes, Assistant District Attorney

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From: Walter Rodriguez [REDACTED]

Sent: Monday, August 7, 2023 5:13 PM

To: Lee, Ernest R. [REDACTED]

Michael Bloch

Morton, Michele E. [REDACTED]

Fri 8/25/2023 1:48 PM

To:Walter Rodriguez [REDACTED]

Cc:Lee, Ernest R. [REDACTED]

Walter:

Just wanted to let you know the Bloch case has not been scheduled for the week of 9/11. There are many defendants in custody for trial that are scheduled for that week instead. Also, due to the murder plea on Monday, the jury is not coming in until Tuesday. I think we both agree the case probably can't be tried in 4 days.



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