

STATE OF NEW HAMPSHIRE

Superior Court

Merrimack, ss.

August Term, 2025

State of New Hampshire

No. 217-2024-CR-1167

v.

Anna Barbara Hantz Marconi

MOTION TO CONTINUE TRIAL

The defense respectfully requests that this Court continue the jury trial currently scheduled to begin September 2, 2025, because the case is not and cannot be ready for a fair trial on that date.

On July 1st, the defense renewed the October 2024 motion to disqualify. That renewed motion is scheduled to be heard on August 8th. The Attorney General moved, on July 2nd, with the assent of the defense, to “extend all pretrial litigation deadlines for the State and the Defendant until fifteen (15) days after receipt of this Court’s order on the Renewed Motion.” Thus, even if the Court rules on the renewed motion on August 8th, the deadlines for motions in limine and other pretrial litigation will be Monday, August 25th, seven days after the August 18th final pretrial conference and one week before the scheduled start of the trial. That simply does not leave enough time for the filing of pretrial motions and objections, as well as preparing for trial after rulings on the pending motions. Moreover, if the Court denies the renewed motion to disqualify, the defense will likely seek pretrial review by the New Hampshire Supreme Court. As detailed below, such an important issue warrants pretrial review.

In addition, eight motions to dismiss and a motion for bills of particulars remain pending and undecided as of this filing. When those motions are decided, the orders will likely be substantial and will require significant time to review. Yet, trial is now one month away. The

defense cannot properly prepare for trial without knowing which charges will be tried and without the bills of particulars. Even if the motions were decided today, the defense would have to review the orders and determine what they mean as far as the trial. The defense would then have the right to seek reconsideration of any denied motions. And, as with the renewed motion to disqualify, the defense would evaluate the option of seeking pretrial review by the Supreme Court. Considering the unique circumstances in this case and the issues raised, pretrial review by the Supreme Court would be appropriate.

Furthermore, four Justices of the New Hampshire Supreme Court are witnesses in this case. Yesterday, counsel for the Supreme Court filed a motion seeking to limit or bar the testimony of the Justices. The legal issues raised in that motion are unprecedented in New Hampshire and are by no means routine or simple. Even if the issues are adequately briefed and decided in the next few weeks, here again the defense will not have enough time to evaluate the rulings, seek reconsideration if necessary, seek pretrial review by the Supreme Court if necessary, and still be adequately prepared for trial.

There are simply “too many moving parts” and too many unresolved issues for this case to be fairly tried on September 2, 2025. There have been no prior continuances. The parties have raised and litigated important and, in many respects, unprecedented issues. Understandably, it has taken the Court a significant period of time to address those issues and that process remains incomplete. A continuance would not result in any prejudice to the State. To the contrary, a continuance would allow the case to be properly prepared for trial and avoid forcing the defense to trial under unfair circumstances. The Court should exercise its discretion and continue the case for approximately sixty (60) days.

BACKGROUND AND PROCEDURAL CONTEXT

1. Trial is scheduled to start with jury selection on September 2, 2025. The final pretrial conference is scheduled for August 18, 2025.

2. In April 2025, the defense filed eight motions to dismiss and one motion for bills of particulars. The State objected to all nine motions and the defense replied to the State's objections. This Court held a hearing on the motions on May 20, 2025, and has yet to rule on the motions.

3. On July 1, 2025, the defense renewed its October 2024 motion to disqualify the Attorney General's Office and dismiss all indictments.

4. The following day, attorneys for the New Hampshire Department of Justice asked the defense to agree to extend deadlines for all pre-trial matters in this case pending this Court's ruling on the Renewed Motion. The parties agreed that all such deadlines would be extended until fifteen days after receipt of this Court's order on the Renewed Motion. The following day, this Court granted the State's assented-to motion.

5. The State then filed its objection to the defense's Renewed Motion on July 11, 2025, and the defense replied on July 21, 2025.

6. On July 22, 2025, the defense inquired with the State about its position regarding a motion to continue. Defense counsel outlined the concerns set forth in this motion. The State responded that it objects to a continuance but would suggest a status conference.

7. On July 24, 2025, this Court scheduled a motion hearing for August 8, 2025.

LAW

8. The Sixth and Fourteenth Amendments to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution protect an accused's rights to a fair trial, effective assistance of counsel, and due process.

9. “Without adequate time to prepare a defense, a criminal defendant’s right to effective assistance of counsel is reduced to a mere pretense.” *State v. Linsky*, 117 N.H. 866, 890 (1977) (citing *Powell v. Alabama*, 287 U.S. 45 (1932)).

10. “The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court.” *State v. Czekalski*, 169 N.H. 732, 740 (2017). *See also Linsky*, 117 N.H. at 879. Trial courts are granted that discretion because “the trial judge is in a better position to determine whether there is an actual need for a continuance or if the defense is engaging in dilatory tactics.” *Id.*; *see also* N.H. R. Crim. P. 15(b)(4)(E) (non-exclusive list of grounds and acknowledging the trial court’s power to grant continuances in the interest of justice); *see generally* McNamara, NH Practice Series: Criminal Practice & Procedure § 26.02 (2025)

11. While “[t]here are no mechanical tests to determine when due process has been violated by the denial of a continuance,” courts must instead consider “the totality of the circumstances.” *Linsky*, 117 N.H. at 880. *See also State v. Barham*, 126 N.H. 631, 640 (1985). Nevertheless, the New Hampshire Supreme Court has identified an underlying philosophy regarding continuances. In *Appeal of Morin*, 140 N.H. 515, 518 (1995), the Court discussed the general principles that apply to requests for continuances in all types of proceedings. Trial courts and state agencies should first be guided by “the paramount objective of rendering justice.” *Id.* (quoting *Allegro v. Afton Village Corp.*, 87 A.2d 430, 432 (N.J. 1952)) (internal quotations omitted). Although a trial court has broad discretion, the trial court “must follow fair procedures and provide due process.” *Morin*, 140 N.H. at 519 (citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1985)). The Court emphasized that “we will not hesitate to reverse” if a trial court abuses its discretion by “failing to follow fair procedures.” *Id.* Those statements mirror those of the United States Supreme Court in *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964), that “a myopic insistence

upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality.”

RESOLUTION OF THE PENDING MOTIONS REQUIRES A CONTINUANCE.

12. This Court’s rulings on the pending motions will dramatically affect the future course of this case.

13. If the Court grants the Renewed Motion to Disqualify, the Attorney General’s Office would be disqualified and any prosecution involving an unconflicted prosecutor would begin anew. Necessarily, the September 2, 2025, trial would have to be rescheduled. If the Court also holds that the indictments must be dismissed, then the new, unconflicted prosecutor will have to reconsider whether to bring charges and whether to go back to a grand jury.

14. Similarly, were this Court to grant all or some of the eight pending motions to dismiss, some of the seven pending charges may be eliminated and both parties’ trial strategies would shift accordingly. Furthermore, when the Court rules on the motions, the parties will have ten days to file a motion to reconsider. *See* N.H. R. Crim. P. 43(a).

15. Furthermore, the defense respectfully suggests that its Renewed Motion to Disqualify and its motions to dismiss on First Amendment grounds involve issues that may materially advance the termination of the litigation, are necessary to protect Justice Hantz Marconi from substantial and irreparable injury, and present the opportunity to decide issues of general importance in the administration of justice. As such, either the defense, pursuant to RSA 491:17 and N.H. Sup. Ct. R. 8(1), or the State, pursuant to RSA 606:10 and N.H. Sup. Ct. R. 8(1), may pursue pretrial review of this Court’s rulings on any one of the pending motions. Because of the unique circumstances of this case and the position of the accused, the sitting members of the New Hampshire Supreme Court would be expected to recuse themselves, as they have already done in other related matters, such that substitute justices would need to be appointed pursuant to

RSA 490:3. Either this Court or the New Hampshire Supreme Court could stay the proceedings pending resolution of any interlocutory appeal or other request for review. Were the Supreme Court to accept an interlocutory appeal, it is nearly impossible that full briefing, and possibly argument, could be completed before the September trial date. And, in any event, if the parties were working on that, there would not be enough time to also be preparing for trial.

16. In short, standing alone, the ten pending motions before this Court and the potential for additional litigation regarding those motions are sufficient reason for a continuance.

THE CURRENT TRIAL SCHEDULE LEAVES INADEQUATE TIME
TO BRIEF AND ARGUE OTHER SUBSTANTIAL PRETRIAL MOTIONS

17. As noted above, at the request of the State, with the assent of the defense, and on Order of this Court, the deadlines relating to all pretrial litigation have been extended until fifteen days after receipt of this Court's Order on the Renewed Motion to Disqualify. Assuming, *arguendo*, that this Court were to rule on the motion on August 8, 2025, the day of the hearing on the motion, the new pretrial motion deadline would be Monday, August 25, 2025. *See* N.H. R. Crim. P. 35(f).¹ That deadline would already conflict with N.H. R. Crim. P. 15(b)(3) requiring motions in limine to be filed "no less than ten calendar days prior to the final pretrial conference," which is currently scheduled for August 18, 2025. Furthermore, parties' answers or objections would then be due September 4, 2025, after trial would have already started. *See* N.H. R. Crim. P. 35(i)(1).²

¹ As described *supra*, given the substantive and unresolved issues identified in the defense's Renewed Motion to Disqualify and the ruling's potential impact on this prosecution, this Court may prefer a written order, which, of course, could take more time.

² The State has already filed two motions in limine and a motion to quash. Pursuant to this Court's July 3, Order, the defense objections are not due until August 25, 2025, again, after the scheduled August 18, 2025 final pretrial conference.

18. Of course, the Court could order a schedule different than what is already ordered and what is in the rules, but to what legitimate end? Of course, Justice Hantz Marconi seeks an expeditious resolution of the case and would like nothing better than to be exonerated and return to the bench. However, this is exactly the opposite of the kind of case that should be rushed and pushed to trial. No one is in custody. There have been no prior continuances. The circumstances warranting a continuance arise from entirely legitimate and important pretrial litigation.

19. The State properly recognized that it should not litigate other matters while the Renewed Motion to Disqualify is pending and thus sought to extend all other deadlines. The parties agreed to that deadline of 15 days after the decision on the Renewed Motion. Nevertheless, the State has now filed two motions in limine and a Motion to Quash. The motion to quash will be heard on August 8th but the other motions have not been scheduled for a hearing. The defense expects to file its own motions in limine and other pretrial motions. The subject of those motions depends on the Court's ruling on the pending motions to dismiss, which will surely take time to read and analyze. Moreover, according to the agreement of the parties and the order of this Court, those defense motions are not due until fifteen days after the Court decides the renewed motion to disqualify, which would be a week after the final pretrial conference.

20. If this were not complicated enough, the parties subpoenaed state officials. Both the State and the defense have subpoenaed justices of the New Hampshire Supreme Court to testify at trial. The Judicial Branch, through Attorney Erin Creegan, has just filed a Motion to Clarify which appears to seek to bar, or at least limit, the testimony of the justices. Both the State and the defense are expected to file responses to Attorney Creegan's motion. This Court may desire to hear oral argument in light of the unprecedented nature of the issue in New Hampshire, as well as the significant and competing demands of due process, compulsory process, judicial independence, and testimonial privilege.

21. Also, the defense subpoenaed Attorney General Formella and the State has moved to quash. *See* St. Mot. Quash. The clerk has notified the parties that this motion will be heard on August 8th and so the defense is filing a response. Here again, however, the defense is constrained in its response since it does not yet know which, if any, charges will proceed to trial. The relevance of any testimony naturally depends on the charge or charges being tried.

SIGNIFICANT DISCOVERY ISSUES REMAIN UNRESOLVED

22. If the foregoing were not enough, the defense is still seeking discovery from the State that has yet to be provided and may require motions before this Court pursuant to N.H. R. Crim. P. 12(b)(6).

23. As this court is aware, the defense has been seeking complete discovery since October 2024. *See Renewed Mot.* at ¶ 5; *Reply St. Obj. Mot. Disqualify* at ¶ 2. So far, the State has provided ten tranches of discovery between December 2024 and July 2025, the most recent on July 23, 2025, in response to the defense’s fourth written request. Nevertheless, the defense believes that the State still possesses requested material. For example, since October of 2024, the defense has been asking the State to produce records of Sununu’s meetings with other judges or justices. In writing, the State has twice denied possessing such evidence. Yet, the discovery produced by the State indicates that such meetings occurred. *See* D209 (Sununu meeting with MacDonald during a swearing in ceremony); D138-39 (Sununu acknowledging meeting with Justices, including former Justice Hicks).

IN LIGHT OF THESE NUMEROUS AND SIGNIFICANT
UNRESOLVED MATTERS, A CONTINUANCE SHOULD BE ORDERED

24. The foregoing concerns demonstrate that a continuance is necessary. The defense’s need for a continuance is legitimate and substantial. It is not dilatory or contrived. As even the State has conceded, the litigation thus far “is to be expected” because, while it disagrees “with

the legal theories advanced and remedies requested by [the] Defendant, it is [the] Defendant's right, as an accused in a criminal case, to engage [in] this type of pre-trial litigation." *St. Obj. Woodward-Griffith's Mot. Stay* at ¶ 1.

25. Neither the State nor the defense has requested a prior continuance. The defense's only request was a two-week extension on the pretrial motion deadline. *See Assented-To Mot. Extend Deadline* (April 2, 2025). The State has requested three extensions. *See St. Mot. to Extend* (Nov. 13, 2024); *St. Assented-To Mot. Extend Deadline Obj.* (March 28, 2025); *St. Assented-To Mot. Extend Deadline Objs.* (April 23, 2025). Of course, both sides assented to the others' requests. Moreover, the parties agreed to the State's July 3, 2025, Motion to Extend which, as noted above, pushed all pretrial deadlines until fifteen days after this court's Order on the Renewed Motion to Disqualify, and thus, past the final pretrial conference. In terms of briefing and argument, neither side can complain that the other has been anything but diligent in handling this case.

26. Delay will not prejudice either side. To the contrary, it will allow for full briefing and argument on a host of important legal issues and provide the needed additional time for trial preparation. This is not a situation where witnesses may die or memories may fade. *See State v. Colbath*, 130 N.H. 316, 320 (1988). Instead, a continuance is, in fact, necessary for the resolution of important legal issues and to arrange for the presentation of important witness testimony, possibly including the Attorney General himself, justices of the New Hampshire Supreme Court, and one justice of the superior court.

27. The defense is pointing out the need for a continuance a month in advance of trial, not at the last minute.

28. The defense is not requesting an open-ended or indefinite continuance. Rather it is acknowledging the reality of the number of pending and unresolved motions that will impact the

course of proceedings and the pretrial litigation that is to come. The defense believes a continuance of approximately sixty (60) days, as this Court's calendar permits, would be sufficient.

29. Finally, it bears noting that this is an unprecedented criminal prosecution of a sitting justice of the New Hampshire Supreme Court across seven indictments for alleged behavior that even the percipient witnesses did not consider criminal. Many of the indictments are charged as inchoate crimes. It would be an understatement to acknowledge that this case has raised a host of novel constitutional questions requiring extensive briefing and argument. Many of the specific issues have never been addressed by courts in this state. Simply put, it is in the "best interest of justice" for this Court to grant a continuance. N.H. Crim. P. 15(b)(4)(E).

CONCLUSION

30. For all of the foregoing reasons, the defense requests a continuance of the trial for at least 60 days. A waiver of speedy trial rights is attached to this motion in accordance with court rules.

WHEREFORE the defense respectfully requests the Court grant this motion and continue the trial for at least sixty (60) days.

Dated this 1st day of August, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Guerriero, do hereby certify that Senior Assistant Attorney General Dan Jimenez and Assistant Attorney General Joseph Fincham are registered e-filers in the Court's electronic filing system and that when filing this motion, I am electing for them to receive a copy of the document through the electronic filing system's system for electronic service.

/s/ Richard Guerriero

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v.

Anna Barbara Hantz Marconi

SPEEDY TRIAL WAIVER

I, Anna Barbara Hantz Marconi, the accused in the above referenced matter, have discussed the motion to continue my trial with my attorney, Richard Guerriero. He has explained to me my right to a speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and under part 1, article 15 of the New Hampshire Constitution. I know that I am not obligated to waive that right but, after consulting with my attorney, I do so knowingly, intelligently, and voluntarily. Specifically, I hereby waive my speedy trial rights for 90 days, after the currently scheduled trial date of September 2, 2025.

Dated this 1st day of August, 2025.

/s/ Anna Barbara Hantz Marconi
Anna Barbara Hantz Marconi, Defendant

Counsel communicated with Anna Barbara Hantz Marconi who has authorized counsel to sign electronically on her behalf.

/s/ Richard Guerriero
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