

STATE OF MINNESOTA
COUNTY OF BECKERIN DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

State of Minnesota,

Court File No. 03-CR-24-654

Plaintiff,

v.

**MOTION TO CONTINUE
AND FOR OTHER RELIEF**

Nicole Lynn Mitchell,

Defendant.

Nicole Lynn Mitchell, at the insistence of counsel, moves to continue her trial until the first available date after May 19, 2025. The legal authority for this request is Minn. Stat. § 3.16 and caselaw interpreting it.¹ Specifically, *State ex rel. Sviggum v. Hanson*, a 2007 case decided by the Minnesota Court of Appeals, holds:

Section 3.16 does not prohibit legislators from participating in judicial proceedings. *It only authorizes the postponement of a judicial or quasi-judicial proceeding in which a legislator is involved as a party, attorney, or*

¹ Section 3.16 reads in pertinent part:

“No cause or proceeding ... in which a member ... of ... the legislature is a party, attorney, or witness shall be tried or heard during a session of the legislature or while the member ... is attending a meeting of a legislative committee or commission when the legislature is not in session. The matter shall be continued until the legislature or the committee or commission meeting has adjourned.

The member ... may .. waive this privilege. The cause or proceeding ... may then be tried or heard at a time that will not conflict with legislative duties.”

witness while the legislature is in session ... Section 3.16 thus affords legislators [this] privilege, which they are free to exercise or to waive[.]²

Nicole's continuance request should therefore be granted as matter of settled law.

Next, to provide the Court an opportunity to hear oral argument on the matter, Nicole requests that the motions *in limine* hearing scheduled for January 14, 2024 at 2:00 p.m. in Detroit Lakes, Minnesota be converted to a hearing on this motion. In short, because Nicole's continuance request is grounded in § 3.16 and caselaw interpreting it, the need for a motions *in limine* hearing is now far less pressing because, if a continuance is granted, a trial would not occur until late-May 2025. Instead, a better use of the January 14th hearing is to discuss this motion.

Finally, Nicole requests permission to appear remotely for the January 14th hearing. The reason for this request is simple: it's the first day of the 2025 Minnesota state legislative session and her appearance is required by the state constitution.³ To thus avoid a quasi-constitutional crisis and/or prospective separation-of-powers fight between the state's judicial and legislative branches, the Court should permit Nicole to appear for the hearing remotely from her office at the state capitol. This

² 732 N.W.2d 312, 317–18 (Minn. Ct. App. 2007) (emphasis).

³ See Minn. Const. art. IV, § 16 (“In all elections by the legislature members shall vote *viva voce* and their votes shall be entered in the journal.” And since the election of legislative officers is slated to occur on January 14th, Nicole is required to be present, in-person, at the state capitol that day.) (emphasis).

allows her to fulfill both her duties related to her employment and her duties related to this case. Additionally, given that Becker County is part of the state's remote-hearing pilot program, Nicole's request is not overly burdensome or onerous on the state, the Court, or the Court's staff. Given all this, Nicole requests the Court's permission to appear remotely for the January 14th hearing—whether it be on the motions *in limine*, the motion to continue, or both.

CONCLUSION

For these reasons, Nicole Lynn Mitchell, at the insistence of counsel, respectfully requests that the Court grant her three requests:

- 1) To continue her trial until after May 19, 2025;
- 2) To convert her January 14th motions *in limine* hearing into a hearing on the motion to continue; and
- 3) To permit her to attend the January 14th hearing remotely.

Dated: January 10, 2025

Respectfully submitted,



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