

DISTRICT COURT, EL PASO COUNTY, COLORADO 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903	DATE FILED: January 25, 2023 11:27 AM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ANDERSON ALDRICH, Defendant	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Megan Ring, Colorado State Public Defender Joseph Archambault #41216 Chief Trial Deputy Michael Bowman #48652 Deputy State Public Defender 30 East Pikes Peak Avenue, Suite 200 Colorado Springs, Colorado 80903 Phone: (719) 475-1235 Fax: (719) 475-1476 Email: springs.pubdef@coloradodefenders.us	Case No. 22CR6008 Division 21
<p>MOTION FOR COURT ORDER REQUIRING THE DISTRICT ATTORNEY’S OFFICE, UNITED STATES ATTORNEYS, AND EVERY OTHER LAW ENFORCEMENT AGENT TO REMOVE ALL ATTORNEY-CLIENT PRIVILEGED MATERIAL IN THEIR POSSESSION</p> <p>[D-19]</p>	

Mx. Anderson Aldrich¹, by and through counsel, moves the Court to ORDER that the District Attorneys’ Office, the United States Attorney’s Office, and any other member of law enforcement who is possession of attorney-client privilege information—specifically the material specified in [P-3] People’s Notice of Deposit—to remove all such material from their files and ORDER that they are not allowed to access or view the material. Mx. Aldrich states:

1. On Friday, January 20, 2023 at 12:26pm, the state filed a notice of deposit with the court and tendered to the court material that: (a) has not been provided to defense counsel; and (b) is protected by attorney-client privilege and confidentiality.
2. The prosecution for some reason has shared this material with the United States Attorney’s Office in violation of Mx. Aldrich’s attorney-client privileges. *See* Objection to Court Taking Possession of Attorney-Client Privileged Material [D-15], filed 1/20/23, Exhibit B, DA investigator report.

¹ Anderson Aldrich is non-binary. They use they/them pronouns, and for the purposes of all formal filings, will be addressed as Mx. Aldrich.

3. Despite a specific letter sent to the District Attorney on January 20, 2023, and [D-15]. Mx. Aldrich has not received any response from any of the District Attorneys assigned to this case. *See* Exhibit A, 1/20/23 letter from defense to prosecution. This is both unethical, and inexcusable, that attorneys who were and may still be in possession of attorney-client privilege material have not and will not respond to Mx. Aldrich's counsel to address their violation. "When the prosecutor receives as specific and relevant request, the failure to make any response is self, if ever, excusable." *United States. Agurs*, 427 U.S. 97, at 106 (1976).
4. The District Attorney has, in a highly unusual move, immodestly staffed this case with four lawyers. Undersigned and his office are unaware of any other case in which the District Attorney has used such ample resources. Yet, none of these four lawyers will respond to Mx. Aldrich's counsel's letters². Even though these attorneys have not taken the reasonable steps they are ethically required to. *See* C.R.P.C. 4.4 comment 1.
5. A prosecutor must comply with higher ethical standards than those demanded of typical lawyers because he or she is "a judicial officer sworn to uphold the constitution and obligated to refrain from invalid conduct" that may prejudice a defendant. *See Domingo-Gomez v. People*, 125 P.3d 1043, 1049 (Colo. 2005); *DeGesualdo v. People*, 364 P.2d 374, 378 (Colo. 1961). Thus, the unique role of a prosecutor as both a state representative and a legal advocate requires that his behavior in court further the state's interest in guaranteeing a just proceeding rather than any personal interest the prosecutor himself may have in "winning" a case. *See DeGesualdo*, 364 P.2d at 378.
6. The accused have a due process right to be treated with fairness by the prosecution. *See* U.S. Const. amend. XIV; Colo. Const. art. II, § 25; *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly."); *People v. Romero*, 745 P.2d 1003, 1009-10 (Colo. 1987) (citing *Santobello v. New York*, 404 U.S. 257 (1971)). The prosecutor "owes a duty to the accused as well as to the state; and abuse of a defendant, baseless insinuations against his witnesses, and acts of disrespect toward opposing counsel comport neither with that duty, nor with the dignity of the office of public prosecutor." *Hillen v. People*, 149 P. 250, 253 (Colo. 1915).
7. Mx. Aldrich has a constitutional right to counsel. U.S. Const. amend. VI, XIV; Colo. Const. art. II § 16. "Attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications. C.R.E. 502 (f)(1). C.R.E. 502 outlines when a waiver exists and the limitations of such a waiver. *See* C.R.E. 502.

² This pattern has occurred of the District Attorney not furnishing discovery to Mx. Aldrich and then when Mx. Aldrich tries to get the District Attorney to respond to requests for discovery, counsel gets no response.

8. “The burden of establishing such a waiver [of attorney client privilege] rests with the party seeking to overcome the privilege.” *People v. Madera*, 112 P.3d 688 (Colo. 2005) (quoting *Wesp v. Everson*, 33 P.3d 191, 198 (Colo. 2001)). “The general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production through subpoena or court order.” *Hickman v. Taylor*, 329 U.S. 495, 512 (1947).
9. Mx. Aldrich has provided no waiver of either attorney-client privilege or confidentiality, and the Court has made no such finding. Although Mx. Aldrich has already made it explicitly clear in [D-2], that they were asserting their right to attorney-client privilege, Mx. Aldrich is making it again explicitly clear here. Mx. Aldrich objects to the District Attorney’s Office, the U.S. Attorney’s Office, the Court any members of the judiciary, and any agents and employees of state of federal law enforcement accessing ANY material that implicates attorney-client privilege.
10. NO ONE except counsel for Mx. Aldrich should be in possession of attorney-client privilege material related to Mx. Aldrich. *See Id; Taylor*, 329 U.S. 495. It appears that the District Attorney may or may not still be in possession of attorney-client privileged material. It appears clear that the U.S. Attorney’s Office and the Colorado Springs Police Department are in possession of attorney-client privileged material. There is no legal basis for these entities to have violated attorney-client privilege and there is no legal basis for these entities to retain possession of this material.
11. The court has repeatedly denied defense counsels arguments as they relate to the setting of the proof evident / presumption great hearing in this case. *See* Tr. 12/6/22; Tr. 1/13/23. Nevertheless, proceeding to proof evident / presumption great hearing while the district attorney and law enforcement has been violating Mx. Aldrich’s attorney-client privilege by recording their professional visits at the jail and disseminating records to other law enforcement agencies while simultaneously stonewalling Mx. Aldrich’s attempts to recover the materials, assess the situation, would be highly inappropriate.
12. In the current course of events – the state’s vast expenditure of resources to prosecute Mx. Aldrich, the state’s yet-unchecked illegal and unethical surveillance of attorney-client meetings, the state’s illegal and unethical dissemination of attorney-client meetings, the state’s refusal to discuss the matter with counsel, and the fast-tracking of the prosecution – is completely unacceptable and violates Mx. Aldrich’s due process rights to fundamental fairness and to be treated fairly by the prosecution. *Supra paras.* 5-6.
13. Mx. Aldrich demands a forthwith hearing on this matter.

Mx. Aldrich moves this Court to order that the District Attorneys’ Office, the United States Attorney’s Office, and any other member of law enforcement who is possession of attorney-client privilege information—specifically the material specified in [P-3] People’s Notice of

Deposit—to remove all such material from their files and order that they are not allowed to access or view the material, and for the entities to certify to this Court that they have excised this material from their network and servers by January 27, 2023. To that end, Mx. Aldrich requests the Court enter the attached order. *See* Exhibit A.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Joseph Archambault #41216
Chief Trial Deputy



Michael Bowman #48652
Deputy State Public Defender

Dated: January 25, 2023

Certificate of Service

I certify that on January 25, 2023, I served the foregoing document electronically through Colorado Courts E-Filing to all opposing counsel of record.
s/skoslosky