

Name: Jodi Arias
Booking No: P458434
Facility Address: 2939 W. Durango Street
City, State, & Zip: Phoenix, AZ 85009

MICHAEL K. JEANES, CLERK
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA)
)
 vs.)
)
 Jodi Ann Arias)
 Defendant.)
)

Case No. CR-2008-031021-001
MOTION TO CHANGE COUNSEL

I, Jodi Arias, hereby request that
L. Kirk Nurmi be withdrawn as my counsel of record, and that
another attorney be substituted as my attorney in all future
proceedings in the trial court.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and
correct.

Executed on: 10/17/13

Jodi Arias
Defendant

cc: Honorable Sherry Stephens
L. Kirk Nurmi
Jennifer Willmott
Juan M. Martinez

Honorable Sherry Stephens:

October 14, 2013

I am writing this letter to request a change of counsel for my first chair attorney, Kirk Nurmi. I have not spoken to him since May 23, 2013. We have had no communication, even indirectly, and I have a trial coming up, or at the very least, a settlement conference. I am not as prepared as I could or should be because I have not had the benefit of having a full team meeting with attorneys I trust. In fact, the last full team meeting was in August 2012, 14 months ago.

According to the ABA's Death Penalty Guidelines, Mr. Nurmi's representation falls short across the board:

1. "Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust with the client, and should maintain close contact with the client.... Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case...."

Kirk Nurmi's duty to "maintain close contact with the client" was shirked almost immediately following the court's 2011 decision to meet his demands of a pay increase. After leaving the Office of the Public Defender, he instructed his secretary to hang up on me if he was not in the office rather than allow her to do one of the most fundamental things secretaries are typically paid to do: relay a message. When I expressed the need as his client to be able to leave a message for my first chair attorney,

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ney, he would not modify his seemingly arbitrary policy (arbitrary because he refused to tell anyone why he decided to have his office's secretary hang up on me rather than take a message), but instead instructed me to call another team member (mitigation specialist, investigator, or second chair attorney) and make them play secretary on his behalf despite their being saddled with their own workloads pursuant to their positions on the team, and the additional fact that I was not their sole client. What makes his decision all the more rattling was that one of the stipulations for his remaining on the case was that OPDS pay for these calls which would have otherwise come at a then-cost of \$2.65 each. Therefore, because OPDS was footing the bill and it was no money out of Mr. Nurmi's pocket, there is no reason other than spite that he implemented this rude and absurd policy designed to block my attempts at communicating with him. If anything, this only served to drive a wedge between what was fast becoming a broken attorney/client relationship.

Mr. Nurmi and I do not have a "continuing interactive dialogue." In fact, we have had no dialogue for almost five months. "A relationship of trust" was destroyed long before I stopped talking to him. The beginning of the end was when he began adopting a lazy attitude towards investigating my case, and instead of tracking down real leads, in 2012 he squandered county resources on chasing an out-of-state pen pal for reasons said pen pal and I both remain unclear of to this day. For this expensive and unnecessary trip, he brought along his co-chair, Jennifer Willmott, and investigator, Bud Barton, and then instructed these team members and mitigation specialist, Maria De la Rosa to lie to me about this trip. Meanwhile, real potential witnesses and leads were be-

ing neglected and were never followed up on as time stretched ever further and memories became fuzzier.

2. "A lawyer can also frequently earn a client's trust by.... demonstrating a willingness to advocate for [her]."

In an unguarded moment in 2012, while expressing my discontent about his quality of representation and lack of thorough investigation, I said, "I deserve an attorney who wants to fight for me," to which he responded, "You're not entitled to that." Our opposing positions sound, at best, debatable given the notes in the ABA Guidelines, but what is especially of note is that Kirk Nurmi's comment shows without equivocation that this attorney I believed (and still believe) I deserved, one that at the very least demonstrates a "willingness to advocate" for me, is most certainly not him. Despite seeing him in court when he argues motions, he has failed to investigate meaningful mitigation witnesses. Any chance at rebuilding trust has been compromised given that I know he doesn't like me and expressed exactly that to a jury who was tasked with deciding whether I live or die. Even before he took me down several notches before the jury, he had made his sentiment uncomfortably obvious by the way he treated me and refused to answer my case-related questions. Such things as these have compounded over the last 2.5 years and steadily chipped away at the trust I once had in him, ultimately destroying it completely.

3. "Many capital defendants are, in addition, severely impaired in ways that make effective communication difficult: they may have mental illnesses or personality disorders that make them

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highly distrustful or impair their reasoning and perception of reality... they may be depressed or even suicidal, or they may be in complete denial in the face of overwhelming evidence. In fact, the prevalence of mental illness and impaired reasoning is so high in the capital defendant population that '[i]t must be assumed that the client is emotionally and intellectually impaired.' "

Kirk Nurmi has little to no tolerance for my emotional and psychological shortcomings. An example of this was when this court offered the option of playing the sex tape to the jury in a closed hearing and my attorneys turned down this option. Upon learning this, I had an emotional reaction such that the rest of the day's proceedings were cancelled. I could not speak or be reasoned with or form rational thoughts beyond the horrors of exposing Travis and myself. Other team members made commendable efforts to help me understand that this decision was not made to humiliate Travis's family or me, but that it backed up my testimony (e.g., Travis expresses his pedophilic desires on the tape and talks about his sexual experience with others, and I display no jealousy when discussing his planned trip across the border). Mr. Nurmi, however, in his utter poverty of people skills, simply said to me with contempt, "You're not going to get your way just because you throw a tantrum." Judge, this was no tantrum. Far from it. This was a full-blown emotional meltdown. I wasn't throwing a fit, I was falling apart. Having known me for 3.5 years at that point, Kirk Nurmi should have easily discerned this, but his failure to do so shows he lacks the capacity for empathy and chooses anger over attempting to understand any impairment his client may be experiencing.

in direct relation to the case and court proceedings. His anger towards me that day gives further reason why I cannot trust him with my life. While this is one example, there have been innumerable incidents in which he has treated me the same.

4. "A lawyer can also frequently earn a client's trust by assisting [her] with problems [she] encounters in prison [jail].....

Accordingly, such advocacy is an appropriate part of the role of defense counsel in a capital case. Indeed, a lawyer who displays a greater concern with habeas corpus doctrine than with recovering the radio that prison authorities have confiscated from the client is unlikely to develop the sort of relationship that will lead to a satisfactory legal outcome."

A comparable example in my situation involving Kirk Nurmi is that in 2011, I released books from my cell property which were intended as gifts. The State immediately subpoenaed them because I had written notes in the margins showing similarities between Christianity and Buddhism. The State found my notes to be of no evidentiary value and did not object to this court's suggestion that they be released from evidence. Kirk Nurmi, however, dropped the ball here. Knowing full well how important these books were to me and how much it meant to give them to the friend for which they were intended, he instead decided to let them continue collecting dust for what has now been years at the Mesa Police department despite my pleas to the contrary and despite their having no significance in my case. What further caused our relationship to deteriorate is that Mr. Nurmi would offer no viable reason for his decision. He would not even offer a bad reason.

He refused to give any reason at all, again leaving the only reason being spite and further fueling the bad blood between us. While this example may seem trivial to the court, his unwillingness to talk to me or explain his decision demonstrates that our lack of communication began years ago.

5. "Often so-called 'difficult' clients are the result of bad lawyering - either in the past or present. Simply treating a client with respect, listening and responding to [her] concerns, and keeping [her] informed about the case will often go a long way towards eliciting confidence and cooperation."

Kirk Nurmi stopped treating me with respect long ago. While he was with the Office of the Public Defender, when I called him, I was treated like a client with whom he was willing to discuss the case. After leaving the Office of the Public Defender and after receiving a substantial pay increase, whenever we interacted, especially when I called, he began treating me like an interruption to his day and a thing he was obligated to deal with. This, of course, was only when my call was accepted and his secretary did not, per his instruction, hang up on me.

Kirk Nurmi does not listen or respond to my concerns. If anything, he is deaf to them. I am requesting an opportunity to give the court a specific example of this in an ex-parte fashion due to its nature and to show the court how Mr. Nurmi's failure to listen and respond, and even properly advise me, adversely affected my testimony at trial.

Also along the lines of Mr. Nurmi's failing at his duty to listen and respond is his poor memory, which has been the source of deep

frustration on my part. In the court's ruling on my previous motion to change counsel (June 2013), it stated that Kirk Nurmi's breadth of knowledge of my case would be difficult to replicate. I respect the court's first ruling, but I must respectfully disagree with that assertion. Mr. Nurmi has forgotten more about my case than he remembers, and therefore the breadth of knowledge one would think he has after four years on this case is lost to him. He seems unable to access the majority of this knowledge via his own memory.

For example, Mr. Nurmi said he could not remember any mention in text messages of Travis having sex with other people, but spelled out in detail is a conversation between Travis and Chaitanya Lay in which the pair rendezvous at his house for a sexual liaison, and afterward, Travis suggests that Ms. Lay must have been surprised by his skill in bed, to which she concedes.

He also "forgot" to impeach three State's witnesses at trial. (I do not refer to the one who perjured himself, Estéban Flores, nor the one who changed his testimony from his real findings to fit the theory the State wished to get before the jury, Kevin Horn.) Most prominently is Deanna Reid, who, in previous recorded statements, denied she had ever had sex with Travis and claimed she believed he was a virgin at the time he died. Then under oath, she testified that she and Travis did have sexual relations (because for the State's case, it was now important that she admit it, whereas before it was important that she deny it). Mr. Nurmi failed to impeach her credibility for lying on record. Whether this was in fact due to his poor memory or simply a poor strategical decision, I am left to guess because he refused to communicate with me as to why there was no impeachment. Either way, the damage is the same.

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Several times, I've tried to gain clarification on things we've previously discussed, but he has no recollection of these things. Nobody's memory is perfect, and lapses here or there are not unacceptable, but Kirk Nurmi's memory lapses (or what suspiciously appear more like selective memory) have occurred with alarming frequency. What is more dangerous is that despite his forgetting some important facts he denies the existence of others with such confidence that I sometimes trusted he was correct until I found that the facts or evidence did actually exist.

6. "To communicate effectively on the client's behalf in... addressing a jury... counsel must be able to humanize the defendant. That cannot be done unless the lawyer knows the inmate well enough to convey a sense of truly caring what happens to [her]."

With the exception of my obsessed haters, most people don't care about what happens to someone they don't like. Mr. Nurmi admits that 90% of the time he doesn't like me, and his sentiment has adversely affected his ability to "convey a sense of truly caring what happens" to me.

7. "[J]ury will be less likely to empathize with defendant if it does not perceive a bond between the defendant and [her] attorney."

Certainly the lack of a bond could be perceived by anyone who observed the defense table while Kirk and I were seated there. Except for one segment during one day, we sat apart throughout the entire trial and basically ignored each other. People from around the country have written to me complaining of his posture towards me (the most recent one saying, "Tell Kirk to stop acting like he doesn't like you. It looks bad."). If observers can spot this on the screen,

one can imagine how much more obvious this was to jurors sitting in the same room for nearly five months. Yet even if by closing arguments there was any lingering doubt in a juror's mind that there was no bond between attorney and client, Kirk Nurmi made sure it was vanquished by informing jurors that "Nine days out of ten I don't like Jodi Arias." Consequently, his comment most likely made the jury less inclined to "empathize with defendant."

8. "Ongoing communication by non-attorney members... does not discharge the obligation of counsel at every stage of the case to keep the client informed of developments and progress in the case, and to consult with the client on strategic and tactical matters."

Kirk Nurmi has attempted to visit me at the jail once since trial ended, and that was early June. He also attempted to visit with me at the courthouse once last month. I did not accept either visit and wouldn't do so because I do not trust his advice and especially do not trust how he might conduct himself towards me because I know from personal experience that he is curt, rude and condescending. To put it in the simplest terms (and please forgive the casual language), I am left feeling like crap about myself and my future every time I interact with him. Conversely, Jennifer treats me with kindness and dignity. Her manners don't run off when I ask questions. She takes time to explain what's going on. Rather, Kirk seems determined to keep me in the dark about developments in the case, offering clipped retorts in response to my questions regarding my situation, a legal procedure relevant to my case, or the reason for a de-

cision made on my behalf. His favorite response to questions I ask seems to be, "Do you want me to explain years of law school?" This nonanswer has been thrown back at me so many times, I have begun to believe that he uses it to disguise his inadequacies. That, or he doesn't care about or respect his client enough to provide a thoughtful answer. This consistent behavior has bred great distrust and contempt on my part over the last 2.5 years and has destroyed any good will we once had.

In my motion to change counsel filed in June 2013, Kirk Nurmi disagreed with the assertions I made then, and may also disagree with the ones I've made herein, to which I must say, of course he disagrees. He earns \$225/hour on my case. Anyone with a whisper of financial common sense would disagree. There is a clear conflict here in that his financial interest is greater than my legal interest, for what attorney would not move to withdraw after nearly five months of his client refusing to talk to him? The answer: an attorney who has no desire to vacate the gravy train. Even of the attorneys with comparable or greater hourly rates, few can boast the steady hours Kirk Nurmi is able to bill the county and for the length of years at which he has done so. While I do not begrudge him any compensation no matter the rate (except as it continues to distort his belief that somehow this current arrangement with his client works), it is easy to see why he has not yet moved to withdraw: he gets to continue earning what he has since 2011, except now he no longer has to deal with his client.

In 2011, I fought very hard to keep Mr. Nurmi on my legal team because I naively believed in his skill after the court ruled in my favor on a few important pretrial motions. Mr. Nurmi set forth specific stipulations by which he agreed to remain on the case, and they were

granted to provide me with a continuity of representation. Unfortunately, though all of Kirk's demands were met, the court's goal and mine of continuity was not. It is like night and day. I haven't seen the sun since. His representation became lazy, our attorney/client relationship went downhill, he became surly almost overnight, he began being rude to my family, and he stopped answering my questions the way a professional should his client. Most importantly, I no longer trust him and we have not communicated in almost five months. Neither has Mr. Nurmi made any attempts to communicate with me through any other team members. Yet even if he had found it important enough to attempt any kind of communication with his client via other team members, as I have pointed out to the court, this is not what the ABA Guidelines tell him to do. To rely on a third party to relay everything would be a dangerous version of the telephone game.

As stated in the ABA Guidelines, I am entitled to the counsel of two attorneys, which I don't currently have, and it is counsel's duty to establish and maintain a relationship of trust and ongoing communication, which Mr. Nurmi has not done. Jennifer Willmott alone, while skilled, is not sufficient in that she is one person and does not meet the requisite two attorneys. Additionally, this dynamic is unthinkable and unworkable. Everything rests on her. Mine was her first capital trial. The ABA Guidelines demand that I have two attorneys. How am I to participate in a settlement conference or prepare for trial or sentencing if I am not meeting with my whole team? Under no uncertain terms, I am entitled to two attorneys with whom I am able to confer and reach important

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decisions about my case and my future. In order to restore my representation to a state that comports with these guidelines, I am requesting a change of counsel for first chair only.

Respectfully,

Jodi Arias