

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

In re:)	
)	
Grand Jury Proceeding)	
)	
vs.)	
)	Division: 1
William Tisaby)	

**MOTION TO QUASH, OR IN THE ALTERNATIVE,
TO CLARIFY THE SEARCH WARRANT**

COMES NOW the Circuit Attorney's Office ("CAO"), by the undersigned Assistant Circuit Attorney and Special Assistant Circuit Attorney, and Kimberly M. Gardner, in her capacity as the Circuit Attorney for the City of St. Louis, Missouri, by the undersigned counsel, to file this Motion to Quash, or in the Alternative, to Clarify the Search Warrant ("Motion"). This Motion contests the validity of the Search Warrant ("Warrant") issued by this Court on February 21, 2019. Given the narrow scope of the Special Prosecutor's grand jury investigation, the Motion contests the Warrant for three reasons: 1) the Warrant places the safety, security, and privacy of the people of St. Louis at risk, 2) the Warrant is unconstitutional because it lacks particularity, and 3) the Warrant is being employed as a tool to undemocratically usurp the discretion and authority of the elected Circuit Attorney. Accordingly, this Court must quash this extrajudicial Warrant.

In the alternative, this Court should hold a public hearing at a time when counsel are present in the courtroom to clarify the Warrant's unconstitutional scope by narrowing it and the

security protocols the Special Prosecutor has in place, if any, to protect the people of St. Louis from the release of highly sensitive grand jury material.¹

In support of this Motion, the undersigned counsel state the following:

I. INTRODUCTION

The Special Prosecutor was appointed to conduct a very narrow perjury investigation. This investigation must be narrow, in part, because any investigation into the internal operations of the elected Circuit Attorney must have very serious safeguards. Nonetheless, the Special Prosecutor has taken steps to expand his investigation into places where he has no authority, the Search Warrant at issue being a significant example.

The Warrant demands an unconscionable number of electronic communications and files stored on the CAO's servers that are wholly unrelated to any reasonable interpretation of the Special Prosecutor's appointment. This information includes private information, such as the health and financial information of witnesses, subjects, and targets of grand jury investigations. Unlike the elected Circuit Attorney, it remains unclear what the unelected Special Prosecutor's security protocols are to protect this highly sensitive information from disclosure — inadvertent or otherwise. Should this sensitive information be disclosed to unvetted individuals or a third-party, then certain members of St. Louis public will have their safety, security, and privacy placed at risk.

The Warrant's far-ranging scope is unconstitutional. The Warrant's terms are vague, have no workable time period limitation, and fail to identify an exact location to be searched and document custodians.

Finally, through the Warrant, and the underlying investigation, the Special Prosecutor seeks to undermine the position of elected Circuit Attorney Kimberly Gardner, who is an African-

¹ It is important to note that any delay here does not prejudice the Special Prosecutor's investigation in any way. Regardless of this investigation, the CAO will maintain any data that it is required to under the law. A decision as significant and sensitive as this should not be rushed.

American woman successfully reforming the criminal justice system. The Warrant imperils the CAO's work in protecting the citizens of St. Louis because compliance will not only place very sensitive information at risk of release, but will require considerable resources by the CAO's staff that will necessarily be diverted from fighting crime.

II. FACTUAL BACKGROUND

A. The Warrant Places at Risk the Safety, Security, and Privacy of the People of St. Louis

The Warrant places the safety, security, and privacy of certain St. Louis people at risk. There is no guarantee that the Special Prosecutor — a private citizen — has the security protocols in place to protect the highly sensitive information the Warrant seeks. If this information is compromised, then victims' personal residence, health, and financial information is put at risk and targets of violent crime and corruption may learn of investigations. If the Special Prosecutor's information, collected via the Warrant, is breached, then certain St. Louis people under investigation or previously under investigation — including judges, elected officials, and police officers — stand to have their reputations irreparably tarnished even if the CAO never charged them. *See* Ex. A (Affidavit of Rachel Smith in Supp. of Kimberly M. Gardner's and the Circuit Attorney's Office Mot. to Quash, or in the Alternative, Mot. to Clarify the Search Warrant) ("Smith Affidavit").

There remain questions about the safety and security information in the custody of the Special Prosecutor, including whether the Carmody McDonald law firm and the Carmodys themselves possess the technology and security practices necessary to protect the sensitive information already in its possession as well as the information demanded by the Warrant. There are obvious questions to be answered, including:

- Where is the Special Prosecutor storing data related to this investigation?

- Which of the Special Prosecutor's employees and contractors have access to the data related to this investigation? Who has vetted them to have this access?
- How is the Special Prosecutor's data related to this investigation protected from outside hacking?
- What protections have been put in place to ensure that all data (including all communications) is being retained as required by Missouri law, including the Open Records Act?
- Where does all of the Special Prosecutor's data go at the close of his investigation and who is responsible for providing that information to those who may request it under Missouri's Sunshine Law?

Undersigned counsel attempted to begin addressing these and other technical issues with the Special Prosecutor before requesting relief from the Court. As shown in Exhibit D, counsel wrote the Special Prosecutor on February 27 (two days after being engaged), stating that:

Executing that search warrant, particularly without agreed-upon safeguards in place, would greatly jeopardize confidential, sensitive information that could put the public at risk as well as jeopardize ongoing investigations and prosecutions. Accordingly, we request that you postpone execution of the warrant until we can speak with you about its scope and the manner in which the Electronically Stored Information ("ESI") collection would be handled.

As shown in Exhibit E, the Special Counsel declined to discuss these technical and other issues with counsel prior to execution of the Warrant. As mentioned, the lack of security protocols for such sensitive grand jury information places the safety, security, and privacy of certain St. Louis people at risk.

B. The Warrant's Wide-Ranging Scope Is Unconstitutional

On February 21, 2019, this Court granted the Special Prosecutor a sweeping, invasive Warrant for data in the custody of the CAO. The Warrant eclipses any reasonable bounds of any authority granted to the Special Prosecutor by his appointment. The untethered scope of the Warrant is especially concerning because it is part of an investigation that simply is not predicated on the law. The Special Prosecutor has been granted narrow authority to evaluate "allegations of perjury" related to "Cause No. 1822-CR00642." Ex. C (Order Appointing Special Prosecutor at 1,

June 29, 2018). Any purported misstatements that justified the Special Prosecutor's appointment cannot support the elements of perjury (let alone any far-fetched idea that any misstatements were caused by any member of the Circuit Attorney's Office). To the extent the Special Prosecutor is also investigating the suborning of perjury, petitioners are curious what Missouri statute they are operating under.²

The Special Prosecutor's investigative authority is limited to whether William Tisaby made a material factual misstatement in a discovery deposition. The caption of this matter is "In re Special Counsel vs. William Tisaby" and an affidavit filed to support the Special Prosecutor's appointment is focused solely on Mr. Tisaby's testimony alone.³ The Warrant also states the information collected is "believed to have been used as a means for committing the felony of [] Perjury."⁴ Ex. F (Warrant).

Despite the Special Prosecutor's limited authority, the Warrant contains thirty-one different, independent search terms for content searches of emails *and* general files. The terms are vague. They include "[n]otes," "[b]ullet [p]oints," "[i]nvestigative [n]arrative," "[p]reservation of [e]vidence," "[v]ideo," "[t]ape" and "[m]alfunction." *Id.* The Warrant does not specify any required relationship or connection between any of the terms and the Special Prosecutor's

² Importantly, the common law crime of "suborning perjury," that has been referenced publicly in this matter, simply does not exist in Missouri. *See* ABC 30 News, *St. Louis Circuit Attorney Kim Gardner Team Under Grand Jury Perjury Investigation*, ABC St. Louis (Jan. 22, 2019), <https://abcstlouis.com/news/local/st-louis-circuit-attorney-kim-gardner-team-under-grand-jury-perjury-investigation>. Accordingly, even if there were knowing material misstatements (which is questionable), those knowing misstatements can only give rise to prosecution of the person who made them, no one else.

³ "The St. Louis Metropolitan Police Department is conducting an investigation of William Tisaby regarding perjury allegation." Mot. Hr'g Tr. at 11:18-20, Feb. 21, 2019 (Mr. Jerry Carmody speaking).

⁴ Perjury requires proof that "with the purpose to deceive, [a person] knowingly testifies falsely to any material fact upon oath or affirmation legally administered, in any official proceeding before any court, public body, notary public or other officer authorized to administer oaths." Mo. Rev. Stat. § 575.040 (2017). "A fact is material, regardless of its admissibility under rules of evidence, if it could substantially affect, or did substantially affect, the course or outcome of the cause, matter or proceeding." *Id.* Thus, without proof of a "material" fact, there can be no criminal prosecution. It is difficult to understand how Mr. Tisaby's notes could ever be material when there exists a complete videotape of the single interview at issue.

investigation. From the Warrant's face, the presence of any one term in any one email or file on any server will bring that information into the Warrant's vast reach.

The Warrant's overbreadth is obvious after an inspection of its search terms. For instance, several of the terms are so generic as to sweep in tens of thousands of mostly irrelevant data. The word "notes" alone can be found in over one hundred thousand emails, virtually all of which are unrelated to the actual purview of the Special Grand Jury. Ex. B (Affidavit of Michael Chenot in Supp. of Kimberly M. Gardner's and the Circuit Attorney's Office Mot. to Quash, or in the Alternative, Mot. to Clarify the Search Warrant) ("Chenot Affidavit").

The CAO's computer system cannot be generally searched for the Warrant's terms without having to include emails. Even if such a method is found, the terms listed would likely produce thousands, if not tens of thousands of documents. Ex. B (Chenot Affidavit). With the CAO's current computer system, the Warrant's terms would produce any email or document with the terms without regard to the term's connection to Special Grand Jury's investigation and absolutely would yield documents well outside the scope of any lawful investigation. Ex. B (Chenot Affidavit).

The Warrant also violates the CAO's duty to protect confidentiality, work product, and attorney-client privilege. For example, trial attorneys will share their trial notes or outlines with the team leader or colleagues seeking their review of an attorney's plan for a trial. The document itself will either be labeled "notes" or contain the word "notes" and be an electronic file stored on the Office server. The email communication seeking legal analysis is likewise stored on the Office email archiver. Both the document and the email are protected as confidential, work product, and privileged by the CAO and are subject to the Warrant. This Warrant ignores the CAO's confidentiality, work product, and attorney-client privilege duties.

Given the sensitive nature of the electronic information sought, such a seizure must be conducted in a manner to limit the risk to improper release of the electronic information. The Warrant makes no provision for the safeguarding, storage, or maintenance of the integrity of the electronic information sought.

C. The Unelected Special Prosecutor is Using the Warrant as Tool to Usurp the Discretion and Authority of the Elected Circuit Attorney

On August 2, 2016, Gardner won the democratic primary for Circuit Attorney with approximately 47 percent of the vote against three others, the closest of whom received about half of her vote total. Gardner, with significant experience as an Assistant Circuit Attorney, ran on the promise to “reform[] a broken system.”⁵ Running unopposed, the citizens of the City of St. Louis elected Ms. Gardner as their Circuit Attorney on November 6, 2016. Ms. Gardner is the first African-American woman to be elected Circuit Attorney in the over 250-year history of St. Louis.⁶ Since January 1, 2017, Ms. Gardner has served as the City’s chief prosecutor. Her office is charged with managing and conducting all criminal cases, business, and proceedings over which the Circuit Court of the City of St. Louis has jurisdiction. *See* Mo. Rev. Stat. § 56.450 (1979). Elections matter, and the people of St. Louis elected Gardner to seek justice in the manner she sees best for the community. The CAO has no statutory duty to investigate or pursue charges against an individual simply because law enforcement officers may desire it; to the contrary, Missouri entrusts charging decisions to her judgment of the evidence presented. *See* Mo. Rev. Stat. § 56.470 (1979).

⁵Multimedia, *Ad for St. Louis circuit attorney candidate Kim Gardner*, St. Louis Post-Dispatch (July 22, 2016), https://www.stltoday.com/news/multimedia/ad-for-st-louis-circuit-attorney-candidate-kim-gardner/youtube_6c6e795f-8ac3-514d-b099-33578b0d111a.html.

⁶ *A Brief History of St. Louis*, St.Louis-Mo.gov (last visited Mar. 4, 2019), <https://www.stlouis-mo.gov/visit-play/stlouis-history.cfm>.

Circuit Attorney Gardner's efforts are meeting with real success. Even during her brief tenure, St. Louis has seen a 16 percent drop in violent crime overall, with a 26 percent decrease in the number of homicides and a 25 percent decrease in the number of robberies.

Nonetheless, the Circuit Attorney is under a near-constant barrage of criticism from the St. Louis Police Department ("Department") for her statutorily-authorized decisions to investigate allegations of misconduct within the Department itself. For example, in 2017, the Circuit Attorney sought First Degree Murder charges against Department member Jason Stockley for the shooting of Anthony Lamar Smith. In August 2018, her office placed twenty-eight Department officers on an "exclusion" list, based upon concerns about the individual officer's veracity. The Department strongly denounced this action (but did not provide evidence that the officers were wrongly on the list). More recently, the Circuit Attorney filed charges in the widely reported incident of alleged officer misconduct related to a game of "Russian Roulette," wherein an officer was fatally shot by a colleague while on duty on January 24, 2019. In response, the Department initially claimed the incident was an accident.

The Department's animosity toward the Circuit Attorney's efforts resulted in the unprecedented appointment of this Special Prosecutor. Now, the unelected Special Prosecutor is using the Warrant to usurp the power of the St. Louis-elected Circuit Attorney.

III. ARGUMENT

A. Standard of Review

The appellate court reviews the trial court's ruling on a motion to quash under an abuse of discretion standard. *See Miscellaneous Docket Matter No. 1 v. Miscellaneous Docket Matter No. 2*, 197 F.3d 922, 925 (8th Cir. 1999) (internal citations omitted).

B. The Warrant Fails the Particularity Requirement Because Its Terms Are Too Vague

The Warrant is fatally flawed because it is not sufficiently particular. “[T]he fourth amendment requires that the government describe the items to be seized with as much specificity as the government’s knowledge and circumstances allow, and warrants are conclusively invalidated by their substantial failure to specify as nearly as possible the distinguishing characteristics of the goods to be seized. The *particularity requirement* is met if the warrant’s description enables the searcher to reasonably ascertain and identify the items to be seized.” *State v. Douglass*, 544 S.W.3d 182, 192 (Mo. banc 2018) (internal quotations and citation omitted) (emphasis added);⁷ *State v. Hardy*, 497 S.W.3d 836, 838 (Mo. Ct. App. S.D. 2016); *State v. Johnson*, 677 S.W.2d 330, 331 (Mo. Ct. App. E.D. 1984).

The Warrant is vague for at least two reasons. First, the “property” to be seized pursuant to the Warrant is “any and all stored electronic email communications and files stored on the St. Louis Circuit Attorney’s Office’s server” from January 1, 2018 to June 30, 2018. Ex. F (Warrant). The scope of the property to be seized is data that contains any one of thirty-one enumerated search terms. *Id.* The Warrant’s numerous deficiencies in its description of the property to be seized are each independent reasons to find the Warrant vague and thus, fatally flawed.

Second, the Warrant fails to link its search terms to the alleged commission of a crime as required. *See United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995) (holding that a failure to link the crime and the documents rendered the warrant invalid); *see also State v. Watson*, 715 S.W.2d 277, 280 (Mo. Ct. App. S.D. 1986) (“The requirement of particularization is relative. Thus, a description is valid if it is as specific as the circumstances and the nature of the activity under investigation permit.”) (internal quotations omitted). Given that “[t]he modern development of the personal computer and its ability to store and intermingle a huge

⁷ “Article I, section 15 of the Missouri Constitution protects against unreasonable searches and seizures to the

array of one's personal papers in a single place increases law enforcement's ability to conduct a wide-ranging search into a person's private affairs," courts are moving toward requiring that "warrants for computer searches must *affirmatively limit* the search to evidence of specific federal crimes or specific types of material." *State v. Bachman*, No. A14-0996, 2015 WL 46547, at *4 (Minn. Ct. App. Jan. 5, 2015) (quoting *United States v. Otero*, 563 F.3d 1127, 1132 (10th Cir. 2009)); *see also United States v. Ganas*, 755 F.3d 125, 135 (2d Cir. 2014) (quoting *Otero* and noting that, "[i]f anything, even greater protection is warranted"). The Warrant's imprecision allows it to seize all manner of data wholly untethered to any investigation. Accordingly, the Warrant's free-wheeling review of the CAO's data fails the particularity requirement.

C. The Warrant Fails the Particularity Requirement Because It Has No Limited Time Period

The Warrant has no effective time period. *See Kow*, 58 F.3d at 427 (invalidating a warrant where the affidavit indicated that the criminal activity began at a specific time period but the warrant was not limited to a particular time frame). Here, the Warrant targets all "stored" information on the "servers" for six months. But, as described above, any number of files or emails spanning *years* may have been "stored" on a server during the six-month period. The Warrant does not provide any means for an individual executing the search to "ascertain or identify" a document containing a search term which was created in December of 2017 and a document containing the same search term which was created in January of 2018. As long as both were "stored" on a server during the six-month period, the Warrant seizes both. Moreover, the Warrant does not provide any means for an individual to "ascertain or identify" a file or email that was created prior to the six-month period, but was saved as a new version or else archived within

same extent as the Fourth Amendment." *State v. Johnson*, 354 S.W.3d 627, 630 (Mo. banc 2011).

the six-month period. The Warrant opens the CAO to search back years and thus, the Warrant must be clarified or quashed.

In addition to the “stored” information problem, the Warrant has no time boundary because it seeks archived information. The Warrant will obtain archived information from time periods entirely unrelated to the Special Prosecutor’s investigation. Indeed, given the amount of data amassed over the course of multiple years prior to the Warrant’s January 1, 2018 start date, it is reasonable to assume that the search will result in the seizure of more irrelevant archived data than relevant archived data.

The Warrant’s unlimited time period is particularly troubling given that the incident that is under investigation occurred on a single day during a single deposition. The six-month period chosen largely appears random.

Thus, the lack of a reasonable time period makes this Warrant invalid.

D. The Warrant Fails the Particularity Requirement Because It Does Not Identify a Place to be Searched

A valid search warrant must “[i]dentify the . . . place . . . which is to be searched, in sufficient detail and particularity that the officer executing the warrant can readily ascertain . . . what he or she is to search.” Mo. Rev. Stat. § 542.276 (2013) (emphasis added). The Warrant does not identify any location for the search. Instead, it merely provides that the search is to be conducted for data that is “being kept or held in the City and State in, (sic) Stored on the Server(s) of the City of St. Louis’ Circuit Attorney’s Office, located in St. Louis, Missouri.” Ex. F (Warrant). A server is a computing machine or program. It is not a location. A server can take many forms depending on whether its function is to process email, facilitate printing, act as a registry or catalogue, provide shared disk access, facilitate web applications, or handle communications between computers on a network. A server could be consolidated into a single device, or distributed across a network of computers or other machines. The Warrant

provides no address where a server may be located, nor does it provide any detail that would allow a person to ascertain which “servers” fall within the Warrant’s ambit. Even if it could be argued that a server is a reasonably definite location in the CAO, the Warrant does not define “server.” This lack of a definition means there is no telling whether the search is to be conducted on physical servers located at the CAO, off-site CAO servers linked to a “cloud,” or servers located at the personal residence of a CAO attorney. The failure to describe a particular location is yet another reason why the Warrant is invalid.

E. The Warrant Fails the Particularity Requirement Because It Does Not Specify Document Custodians

The Warrant fails to identify the document custodians or *whose* information is subject to search. The Warrant exposes the data of any person who has a file or email on a server in the “Circuit Attorney’s Office” to a search. Ex. F (Warrant). The Warrant’s failure to identify applicable custodians means electronic information that is irrelevant will be seized. Emails and files sent, received, or created by attorneys or personnel who have nothing to do with the Special Prosecutor’s investigation will be encompassed in the overly broad scope of the Warrant. In the case of emails, these could extend to confidential communications attorneys may send or receive to third party attorneys throughout the course of a case. If the counsel’s last name was “Simpson,” and the email was received between January 1, 2018 and June 30, 2018, it would be seized pursuant to the Warrant. Thus, this Warrant is unconstitutional and the Court should rule accordingly.

F. The Warrant Has No Regard for Confidentiality, Work Product, nor Attorney-Client Privilege

The Warrant provides no mechanism to safeguard documents which are confidential, work product, or attorney-client privileged. As discussed, the Warrant would take the trial notes from

the CAO trial attorneys. Those notes are confidential, work product, and attorney-client privileged. Accordingly, this Court cannot let this Warrant stand.

IV. CONCLUSION

WHEREFORE, the CAO and the Circuit Attorney request that this Honorable Court grant its Motion to Quash the Warrant. In the alternative, this Court should hold a public hearing at a time when counsel are present in the courtroom to address the Warrant's unconstitutionality and clarify the Special Prosecutor's security protocol and adherence to state law.

Respectfully submitted,

/s/ Rachel Smith MBE#

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EXHIBIT A

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

In re:)
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Grand Jury Proceeding)
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vs.)
) Division: 1
William Tisaby)

**AFFIDAVIT OF RACHEL SMITH IN SUPPORT OF
KIMBERLY M. GARDNER'S AND THE CIRCUIT ATTORNEY'S OFFICE
MOTION TO QUASH, OR IN THE ALTERNATIVE,
MOTION TO CLARIFY THE SEARCH WARRANT**

I, Rachel Smith, hereby declare as follows:

1. I am the Chief Trial Counsel of the City of St. Louis' Circuit Attorney's Office.
2. The Office of Circuit Attorney is charged with managing and conducting all criminal cases, business, and proceedings over which the Circuit Court of the City of St. Louis has jurisdiction. We do this by pursuing justice for all citizens within the highest standards of ethical behavior and professionalism.
3. As Chief Trial Attorney, I supervise the felony trial teams and legal divisions of the Circuit Attorney's Office.
4. As a prosecutor in the Circuit Attorney's Office, I have handled numerous grand jury investigations. Those investigations ranged from a review of the suspected criminal conduct of police officers, public officials, and members of the Bench to specific criminal cases and reports on the conduct of public entities. Some of those investigations resulted in public

information; many of them remain closed to public dissemination. I believe electronic parts of the files on these investigations were located on the servers of the Circuit Attorney's Office during the period identified by the Warrant.

5. On June 27, 2018, the unelected City Counselor brought suit in the Circuit Court of the City of St. Louis, on behalf of the Police Department, seeking the appointment of a special prosecutor.

6. The Circuit Attorney's Office opposed this effort. Nonetheless, on June 29, 2018, Circuit Court Judge Mullen signed an order appointing Gerard T. Carmody and Carmody MacDonald P.C. as the Special Prosecutor to "aid in the Department's investigation and to pursue criminal charges and prosecution should the investigation reveal probable cause to believe criminal activity occurred in connection with Cause No. 1822-CR00642."

7. Regarding the Search Warrant ("Warrant") at issue here, the usage of terms like "Notes," "Video," "Perjury," "Bullet Points," "Recording," and "Tape" is pervasive in the investigation and prosecution of criminal offenses. Based on my experience, I believe this Warrant would sweep up nearly every investigatory or trial file in the Office.

8. These files contain sensitive, confidential, work product, and attorney-client privileged information that should not be casually turned over to anyone, let alone the Special Prosecutor with a jurisdiction limited to a single investigation involving William Tisaby on the cause number 1822-CR00642.

9. In particular, files on the Circuit Attorney's servers will relate to ongoing investigations, including particularly sensitive investigations concerning homicides, sexual assaults, public corruption, and law enforcement misconduct.

10. The servers also contain files on personnel records, employment matters, budget materials and items related to the administration of the Circuit Attorney's Office and the supervision of its staff. The proposed search terms will likely capture these files as well.


11. The Warrant contains no safeguard to prevent the unauthorized review of this information. The Warrant contains no safeguard to direct what should happen to this information should it be improperly seized or accidentally released.


12. The Warrant places the privacy, safety, and reputation of various citizens of St. Louis at risk because there is no guarantee that the Special Prosecutor — a private citizen — has the security protocol to protect the highly sensitive information the Warrant seeks. Should this electronic information be compromised, the St. Louis people could have their privacy compromised because the CAO's grand jury investigations contain certain people's private health information and financial information. Also, if this information is compromised, then the unmasking of targets of violent crimes makes St. Louis less safe, since those targets may never be apprehended. Finally, if the Special Prosecutor's information, collected via the Warrant, is breached, then the St. Louis people under investigation — including judges, elected officials, and police officers — stand to have their reputations irreparably tarnished even if CAO never charged them.

13. As another example, my Office continues to investigate potentially illegal conduct by public officials and/or officers. The integrity of these ongoing investigations would be compromised by their disclosure to the public, or to officers or other officials outside the Circuit Attorney's office.

14. Given the large quantity of protected data encompassed by the Warrant, my Office would be forced to spend countless hours creating a privilege log for the thousands of documents over which we would assert privilege or other reasons not to disclose them.

I aver under penalty of perjury that the foregoing is true and correct.


Rachel Smith
Chief Trial Attorney,
Circuit Attorney's Office, City of St. Louis

3-4-19
Date 

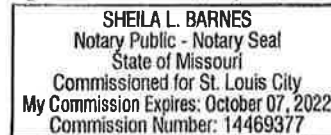
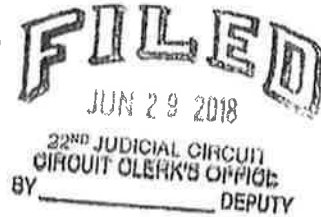


EXHIBIT C

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**



IN RE MOTION FOR)	
APPOINTMENT OF SPECIAL)	Cause No.
PROSECUTOR)	Division No. 1

ORDER APPOINTING SPECIAL PROSECUTOR

The Court has before it the motion of the Police Division, City of St. Louis, Missouri, for the disqualification of the Circuit Attorney's Office and for the appointment of a special prosecutor. The Police Division asserts the Circuit Attorney has a conflict of interest because there is currently underway an investigation into allegations of perjury "committed by persons associated with the Circuit Attorney's Office related to Cause No. 1822-CR00642," and "the Circuit Attorney is a potential witness to the alleged criminal activity." The motion was brought pursuant to § 56.110 RSMo. The matter was heard and taken under submission on June 27, 2018.

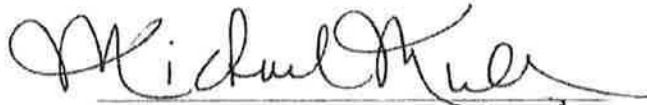
This Court has both the statutory authority, pursuant to §§ 56.110 and 206.230 RSMo where appropriate, as well as the inherent authority to disqualify counsel. State ex rel. Horn v. Ray, 325 S.W.3d 500, 511 (Mo.App.E.D. 2010). The Court also has the inherent authority to appoint a special prosecutor, see State ex inf. Fuchs v. Foote, 903 S.W.2d 535, 537 (Mo. 1995), in addition to statutory authority.

The Court now finds the Circuit Attorney's Office has a conflict of interest and hereby appoints Gerard T. Carmody, and Carmody MacDonald P.C. and its resources as Special Prosecutor to request subpoenas to aid in the Police Division's investigation and to pursue criminal charges and prosecution should the investigation reveal probable cause to believe criminal activity occurred in connection with Cause No. 1822-CR00642.

EXHIBIT C

It is further ordered that said Special Prosecutor shall possess the same powers as the duly elected prosecutor for the purposes of the matter for which he is appointed.

SO ORDERED:

A handwritten signature in black ink, appearing to read "Michael K. Mullen", written over a horizontal line.

Michael K. Mullen, Presiding Judge

Dated: June 29, 2018

EXHIBIT D

VIA EMAIL

February 27, 2019

Mr. Gerard T. Carmody
Carmody MacDonald
120 S. Central Avenue
St. Louis, MO 63105
gtc@carmodymacdonald.com

Dear Mr. Carmody:

We have been retained to represent Circuit Attorney Kim Gardner with respect to the pending Special Counsel investigation.

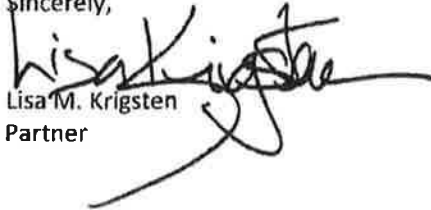
There are several matters that we would like to discuss with you. The most pressing matter relates to the search warrant for material from the Circuit Attorney's Office's computer server that you intend to execute on Monday, March 4, 2019. Executing that search warrant, particularly without agreed-upon safeguards in place, would greatly jeopardize confidential, sensitive information that could put the public at risk as well as jeopardize ongoing investigations and prosecutions. Accordingly, we request that you postpone execution of the warrant until we can speak with you about its scope and the manner in which the Electronically Stored Information ("ESI") collection would be handled.

To that end, we would like to meet with you in the next couple of weeks. Given that the investigation has been pending for several months, and that you already have been provided a significant amount of ESI by the Circuit Attorney's Office, we believe that our request to have the search warrant's execution postponed at least until after such a meeting is reasonable and in the interests of justice.

Please let us know by Thursday morning, February 28, if you will agree to our request for a meeting prior to the execution of the search warrant.

Thank you in advance for your consideration. We look forward to speaking with you soon.

Sincerely,



Lisa M. Krigsten
Partner

Roy L. Austin, Jr.
Partner
Harris, Wiltshire & Grannis, LLP
raustin@hwglaw.com
202.730.1333

EXHIBIT E

Carmody MacDonald

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Direct Dial: (314) 854-8688

February 28, 2019

VIA EMAIL ONLY

Ms. Lisa M. Krigsten
Dentons US LLP
4520 Main Street
Suite 1100
Kansas City, MO 64111
lisa.krigsten@dentons.com

Mr. Roy L. Austin, Jr.
Harris, Wiltshire & Grannis, LLP
1919 M Street N.W., 8th Floor
Washington, D.C. 20036-3537
raustin@hwglaw.com

Re: Grand Jury Investigation

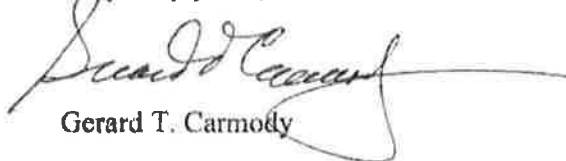
Dear Ms. Krigsten and Mr. Austin:

This acknowledges your February 27, 2019 letter regarding your representation of Circuit Attorney Kimberly Gardner.

While we are agreeable to discussing matters with you, we cannot agree to a postponement of the tendering of documents from the Circuit Attorney's Office as it is Judge Michael Mullen's Order that dictates when the documents are to be produced. As such, we will expect the production to occur on Monday, March 4, 2019, at 12:00 p.m.

Although my schedule does not permit a meeting prior to Monday, please propose alternative dates after March 5 for such a meeting.

Very truly yours,



Gerard T. Carmody

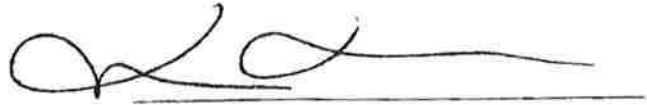
GTC/ap

EXHIBIT F

1/20/20

premises searched, and that you thereafter return the property so taken and seized by you, together with a duly verified copy of the inventory thereof and with your return to this warrant to this Court to be herein dealt with in accordance with law.

Witnessed my hand and seal of the Court on this 21 day of February, 2019.

A handwritten signature in dark ink, consisting of a large, stylized 'J' followed by a horizontal line extending to the right.

Honorable Judge

Clark
5/20