

**IN THE CIRCUIT COURT OF ST. LOUIS CITY, MISSOURI
22ND JUDICIAL CIRCUIT
CITY OF ST. LOUIS MUNICIPAL DIVISION**

CITY OF SAINT LOUIS,)

Plaintiff,)

Cause No.: D00676025-8
D00676026-6

v.)

JANIS MENSAH,)

Defendant.)

MOTION TO DISQUALIFY

COMES NOW Defendant, through counsel, and moves the Court pursuant to Missouri Supreme Court Rule 4, Rules of Professional Conduct 4-1.7 and 4-1.11 to disqualify the Saint Louis City Counselor's Office in the above-styled cause numbers. As grounds, Defendant states:

Statement of Facts

1. Defendant Janis Mensah was a member of the Detention Facility Oversight Board (DFOB), as established by Saint Louis City Ordinance 71430, until December 13, 2023.
2. Specifically, Defendant Mensah first served as the Chair of the Detention Facility Oversight Board, and then as the Vice-Chair of the Detention Facility Oversight Board.
3. The DFOB and its constituent members are authorized to work in conjunction with the head of the City's Division of Corrections of the Department of Public (the "Commissioner") and the City Counselor's Office to review complaints and initiate and oversee criminal accountability investigations.
4. Relevant to this action for Trespassing, the Detention Facility Oversight Board authorizing ordinance states: "The DFOB shall be provided access to City detention

facilities at any time upon notice to the Commissioner and without conditions or requirements as to the timing or form of such notice.” Ordinance 71430.

5. The Detention Facility Oversight Board is represented by the City Counselor’s Office. Ordinance 71430.
6. Members of the City Counselor’s Office attend every Detention Facilities Oversight Board meeting and provide legal instruction to the members of the board. See generally, City of St. Louis, Missouri, *Detention Facilities Oversight Board Meeting Videos*, https://www.youtube.com/playlist?list=PL03m33dygN_u5gl133vCO4-Kz9WzTFO7k.
7. Indeed, the authorizing legislation states that if the DFOB seeks to have other counsel, it must “send a written request to the City Counselor that the City Counselor procure and contract for independent legal counsel to advise the DFOB.” Ordinance 71430.
8. Indeed, the City Counselor’s Office sent Defendant Mensah and the other DFOB members a Confidentiality Agreement that instructs the DFOB members that they “must act according to legal advice provided by the City Counselor” and that if a board member is subject to legal process relating to their services on the DFOB, they “will notify the City Counselor’s Office.” See Exhibit 1, Proposed Confidentiality Agreement.
9. Defendant Mensah is charged with municipal ordinance violations in the above-styled cause numbers. The charging documents for these violations are authorized and signed by Richard Sykora, City Counselor, City of St. Louis Missouri, acting as prosecutor.

LEGAL STANDARD

Missouri Supreme Court Rule 4 governs the professional conduct of the Missouri Bar and Judiciary. Rule 4-1.7 Conflict of Interest: Current Clients governs all attorneys barred in Missouri and reads:

(a) Except as provided in Rule 4-1.7(b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under Rule 4-1.7(a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Mo. S. Ct. R. 4-1.7.

Rule 4-1.11: Special Conflicts of Interest for Former and Current Government

Officers and Employees governs here, where the municipal prosecutor is an employee of the City Counselor's Office. Rule 4-1.11 reads:

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 4-1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under Rule 4-1.11(a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule 4-1.11.

Mo. S. Ct. R. 4-1.11.

A conflict can be imputed in one of two ways: either (1) by the Rules of Professional Conduct, or (2) by the appearance of impropriety test – i.e., whether “a reasonable person with knowledge of the facts would find an appearance of impropriety and doubt the fairness of the trial” to the defendant. *State ex rel. Peters-Baker v. Round*, 561 S.W.3d 380, 385 (Mo. 2018) (referencing *State v. Lemasters*, 456 S.W.3d 416 (2015))(emphasis added)(internal citations omitted). “Even if an assistant prosecutor's conflict is not imputed to the remainder of the office under the Rules of Professional Conduct, the remainder of the prosecutor's office must be disqualified if a reasonable person with knowledge of the facts would find an appearance of impropriety and doubt the fairness of the trial.” *Lemasters*, 456 S.W.3d 416 at 424. A Defendant does not need to demonstrate actual prejudice to show an appearance of impropriety; “Prosecuting officials, like Caesar's wife, ought to be above suspicion.” *State v. Burns*, 322 S.W.2d 736, 742 (Mo.1959):

ANALYSIS

This case presents an unusual—and highly inappropriate—case where the City Counselor’s Office of the City of St. Louis is both purporting to represent members of the Detention Facilities Oversight Board in their task to provide oversight of the City Jails but is also prosecuting the Vice Chair of the board for actions taken when attempting to conduct said oversight. This has set up the Gordian Knot in which the City’s Board Vice-Chair was attempting to conduct oversight prescribed by City legislation that the City Counselor’s office was advising them on; while doing so, the City’s Jail Commissioner then called the police; the City’s police officers arrested the City’s Board Vice-Chair; and now the same City Counselor’s office is seeking municipal charges against the City’s Board Vice-Chair. Mr. Sykora and all other prosecutors employed by the City Counselor’s

office have an conflict of interest under the Missouri Rules of Professional Conduct, and this case more than demonstrates an appearance of impropriety. Defendant asks this Court to disqualify the City Counselor's office in its entirety.

A. Charges Were Sought against Defendant Mensah While the City Counselor's Office was Engaged in Concurrent Representation

Rich Sykora is a prosecutor employed by the City Counselors office. Following the August 31, 2023 arrest, on September 7, 2023, Mr. Sykora signed charging documents initiating two municipal ordinance violation cases against Defendant Mensah. At that time, Defendant Mensah was still the Vice Chair of the Detention Facilities Oversight Board. This is a clear, straightforward, concurrent conflict of interest as defined by the Missouri Rules of Professional Conduct as the City Counselor's office is representing Defendant Mensah as a Board Member of the DFOB and is directly adverse to Janis Mensah in prosecuting them as a defendant in the instant cause numbers.

When the problem is *concurrent* representation and not *successive* representation, Rule 4-1.11 does not control, and instead the applicable rules are Rules 4-1.7 (“a lawyer shall not represent a client if the representation involves a concurrent conflict of interest”) and 4-1.10 (“none of [the lawyers in a private firm] shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so”). *State v. Lemasters*, 456 S.W.3d 416, Mo. banc 2015).

In *State of Missouri v. Ross*, 829 S.W.2d 948, 949-50 (Mo. banc 1992), a criminal defendant was represented in an associated civil suit by a lawyer who also served as a part-time Assistant Prosecutor. Although his civil lawyer was not the same prosecutor handling the criminal matter, the Missouri Supreme Court held the entire prosecutor's office must

be disqualified given the conflict of interest, the appearance of impropriety, no evidence of insulation, and the failure to give the client the opportunity to have representation free of any conflict. *Id.* Indeed, the Court instructed that from that point forward: “In every case—upon discovery by any party or counsel of the potential conflict of interest—that person shall disclose the conflict in open court in the presence of the defendant. Absent a waiver of the conflict of interest by the defendant, a special prosecutor shall be appointed. If the defendant has waived, or then chooses to waive, the conflict, the prosecuting attorney shall still show before the start of trial that the individual attorney(s) with the potential conflict have been insulated.” *Id.*

Because there was simultaneous representation creating a concurrent conflict of interest, the City Counselor’s office could only so engage if Defendant Mensah had been fully informed and waived the conflict. Defendant Mensah has not done so. Under Rule 4–1.7, because Defendant Mensah did not expressly waive the conflict, an attorney representing them as a Board Member could not—at the same time—represent the City for purposes of bringing criminal charges against him for his conduct as a board member. The City Counselor’s office owes a duty of loyalty to the members of the DFOB, and that duty is inconsistent with the prosecution of those members. And, because Rule 4–1.7 did not permit one lawyer to represent both, Rule 4–1.10 prohibited two lawyers in the same firm from doing so. *See Lemasters*, 456 S.W.3d at 423-24 (citing *Ross*, 829 S.W.2d at 950–51). For these reasons, the City Counselor’s office should be disqualified.

B. Even to the Extent the City Counselor’s Office No Longer Represents Defendant Mensah, there Is Still An Appearance of Impropriety

It is true that since the charges were filed in this matter, Defendant Mensah has quit the DFOB. Defendant Mensah takes the position that any amount of concurrent representation necessitates disqualification. However, even to the extent this conduct falls under Rule 4-1.11, there are still two issues: first that there has been no timely screening, and second, that there is still the appearance of impropriety.

Screening could in some situations mean that former representation by a member of the City Counselor's office would not be imputed to the rest of the City Counselor's office. But under *Lemasters*, "even a thorough and successful screening process may not be sufficient to remove the appearance of impropriety and dispel the resulting doubt when it is the prosecutor herself, i.e. 'the boss,' who supposedly is being screened from the remainder of her employees." *Lemasters*, 456 S.W.3d at 425. There is no screening that would be sufficient to remove the appearance of impropriety because it is the City Counselor's Office as an entity that is statutorily obligated to represent Mensah as a DFOB member. But also – it is clear that no screening effort took place here, at all, given that the charging documents were filed while Defendant Mensah was still a client of the City Counselor's Office. Because there can be no real evidence of insulation, screening will not work to erase the conflict.

Moreover, the appearance of impropriety necessitates that the entire City Counselor's Office should be disqualified. "As a quasi-judicial officer, the prosecuting attorney must avoid even the appearance of impropriety." *State ex rel. Burns v. Richards*, 248 S.W.3d 603, 603-05 (Mo. banc 2008). Here, the City Counselor's Office has consulted privately and advised publicly with Defendant Mensah about their role as a Board Member tasked with conducting oversight over the jail. The City Counselor's office has also

advised and participated in conversations between the Jail Commissioner and Defendant Mensah. Both Jail Commissioner's knowledge of who Defendant Mensah was and their statutory right to be in the jail to conduct oversight are key issues in this case. But here there is a very real concern the "that the prosecutor has obtained confidential information while representing defendant that can be used while prosecuting her." *Burns*, 248 S.W.3d at 605.

WHEREFORE, Defendant asks this Court to disqualify the City Counselor's Office as prosecutors in this matter; for a hearing on this motion; and for such other relief as the Court deems necessary.

December 21, 2023

Respectfully Submitted,

/s/ Maureen G. V. Hanlon

Maureen G. V. Hanlon, #70990

ArchCity Defenders

440 N. 4th St., Suite 390

St. Louis, MO 63102

855-724-2489, Ext 1008

314-925-1307 (fax)

mhanlon@archcitydefenders.org

CERTIFICATE OF SERVICE

A true and accurate copy was served on the Clerk of the Court and Municipal Prosecutor on this 21st day of December, 2023.

/s/ Maureen G. V. Hanlon