

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

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	Case No. 1922-CR01819
vs.)	
)	
WILLIAM TISABY,)	
)	
Defendant.)	

MOTION FOR PROTECTIVE ORDER AND TO QUASH

Pursuant to Rule 25.11 and Rule 26.02(c) of the Missouri Rules of Criminal Procedure, third-party witness the Hon. Rex Burlison hereby moves for a protective order against the taking of his deposition in this matter and moves to quash the notice of such deposition and the associated subpoena purportedly served by the defendant. In support of his motion, Judge Burlison states as follows:

1. The Hon. Rex Burlison is a judge of the Circuit Court of the City of St. Louis, Twenty-Second Judicial Circuit, State of Missouri.
2. The defendant in this case is William Tisaby, who was at one time hired by the Circuit Attorney of the City of St. Louis as an investigator in connection with certain criminal proceedings later commenced against former Missouri Governor Eric Greitens.
3. Defense counsel, specifically Daniel Dailey, has noticed a deposition of Judge Burlison to be taken remotely via Zoom on Wednesday, March 16, 2022, at 9:00 a.m. A true and correct copy of the amended notice of deposition is attached hereto as Exhibit 1.
4. No subpoena for any such deposition has been properly served on Judge Burlison. Judge Burlison was recently out of town, and he returned to work on Monday, March 14, 2022,

to find that someone had left a copy of a subpoena for the deposition in his chambers during his absence.

5. A subpoena to an individual to testify in a criminal case in Missouri must be personally served on that individual. Leaving a subpoena at an individual's place of employment when he is not present is not valid service. This insufficiency of service of process, standing alone, justifies quashing the deposition and the subpoena.

6. Furthermore, Judge Burlison is currently presiding over a jury trial in this Circuit, and that jury trial is expected to continue into Thursday, March 17, 2022.

7. Consequently, due regard for the administration of justice requires that a deposition – if one is permitted to occur – be scheduled for late afternoon on Thursday, March 17, 2022 or Friday, March 18, 2022, in person at the Circuit Court.

8. Defendant should not be permitted, however, to take any deposition whatsoever of Judge Burlison in this matter. While discovery depositions by the defense are authorized by the Missouri Rules of Criminal Procedure, any such deposition necessarily must be limited to a fact witness or expert witness who can provide relevant testimony in the criminal case.

9. Judge Burlison is neither a fact witness with personal knowledge of any of the underlying events pertinent to the offenses charged in the indictment in this case nor is he an expert witness prepared to testify to any matters of opinion relevant to the case.

10. Judge Burlison presided over the criminal proceedings against then-Governor Greitens that gave rise to this case against Defendant Tisaby. However, if Defendant Tisaby committed perjury in his deposition in the Greitens case or tampered with evidence in that case, any such conduct had already occurred during interactions among Tisaby, the Circuit Attorney's Office, and counsel for Greitens before Judge Burlison was apprised of the alleged conduct in his

capacity as the judge presiding over the case. Therefore, Judge Burlison has no personal knowledge of the conduct of Defendant Tisaby, and he would not be competent to testify as a fact witness to any such conduct.

11. Judge Burlison likewise has not been retained as an expert witness in this case nor could he be given his judicial role.

12. Accordingly, the Court should quash the deposition because Judge Burlison is not in a position to give relevant fact or expert testimony in this case.

13. Counsel for Defendant Tisaby have advised the undersigned counsel for Judge Burlison that their basis for deposing Judge Burlison is explained in the defense's March 14, 2022, motion to dismiss. The suggestions in support of that motion represent that Judge Burlison was interviewed by a Detective Brennan (or Drennan) after counsel for Greitens reported Tisaby's conduct to the Police Department. The detective's report purportedly attributes to Judge Burlison a conclusion that whether or not Tisaby took notes or typed up such notes was not really material to the invasion of privacy charge against Greitens.

14. Judge Burlison may or may not have offered such an opinion to the detective. Judge Burlison may even have had to come to some legal conclusion on that point in the Greitens case to the extent necessary to rule on motions presented to him for decision in that case, but the materiality of Tisaby's statements to support a charge of perjury was not an issue presented in the Greitens case. In any event, the materiality of Tisaby's statements would be just that – a legal conclusion. It is not a matter of fact to which Judge Burlison can testify as percipient witness in the Tisaby case, and he has not been nor could he be designated as an expert witness to offer such opinions in this case.

15. Indeed, Defendant Tisaby's own motion to dismiss stresses that the materiality of Tisaby's testimony is a question of law for the court to determine, citing *State v. Fannon*, 158 Mo. 149, 59 S.W. 75 (1900), and *State v. Moran*, 216 Mo. 550, 115 S.W. 1126, 1129 (1909). It is not a jury issue, and it is not an issue for any judge other than the one currently presiding in the Tisaby case.

WHEREFORE, the Hon. Rex Burlison prays that the Court grant his motion and enter an order quashing his deposition in this matter and the associated subpoena.

Respectfully submitted,

SHANDS, ELBERT, GIANOULAKIS &
GILJUM, LLP

/s/Douglas W. King

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by means of the Court's electronic filing system on this 15th day of March, 2022 on all counsel of record.

/s/Douglas W. King