

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

IN RE: APPOINTMENT OF SPECIAL)
PROSECUTOR) No. 2016-MR-865

**RESPONSE TO THE OBJECTION TO PETITION TO INTERVENE,
OR IN THE ALTERNATIVE TO THE APPOINTMENT OF RANDOLPH
COUNTY STATE'S ATTORNEY**

Now comes the Petitioner, Macon County, by its attorneys, Featherstun, Gaumer, Stocks, Flynn & Eck, LLP, and for its Response to the Objection filed by John L. Davis, attorney for Gregory Mattingly, Petitioner, in the above referenced cause, the undersigned states:

1. The Objection filed by Petitioner should be dismissed because the Petitioner no longer has standing. The Petitioner's prayer that a Special Prosecutor be appointed has been granted. The issue raised by the Intervenor is whether the Special Prosecutor should be an Illinois State's Attorney. The only issue is who should be the Special Prosecutor not if the Court should appoint a Special Prosecutor; therefore, Petitioner/Objector lacks standing in this matter. Without waiving this objection, Intervenor further sets forth its response to the Objection below.

2. Under no circumstances does Macon County (Intervenor) infer or allege that the Court herein did not perform its duty in this case. Intervenor does unequivocally state that the Petitioner as an officer of the Court has failed to fulfill its duty as an officer of the Court herein for the reasons set forth below.

3. The pertinent part of the Statute authorizing the Appointment of a private attorney or Special Prosecutor states:

(a-20) Prior to appointing a private attorney under this Section, the court shall contact public agencies, including, but not limited to, the Office of

Attorney General, Office of the State's Attorneys Appellate Prosecutor, or local State's Attorney's Offices throughout the State, to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county and shall appoint a public agency if they are able and willing to accept the appointment... 55 ILCS 5/3-9008 (a-20) 2016.

This Statute was amended effective January 1, 2016. The Statute that originally addressed this issue was adopted in 2012 and is set forth below:

§ 3-9008. Appointment of attorney to perform duties. (a) Whenever the State's Attorney is sick or absent or unable to attend, or is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend, the court in which said cause or proceeding is pending may appoint some competent attorney to prosecute or defend such cause or proceeding, and the attorney so appointed shall have the same power and authority in relations to such cause or proceeding as the State's Attorney would have had if present and attending the same. Prior to appointing a private attorney under this subsection (a), the court shall contact public agencies, including but not limited to the Office of Attorney General, Office of the State's Attorneys Appellate Prosecutor, and local State's Attorney's Offices throughout the State, to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county. 55 ILCS 5/3-9008(a) 2014.

4. The Petition for appointment of Special Prosecutor was filed by attorney John L. Davis who is representing Greg Mattingly a Macon County Board member who is appointed to serve on the Macon County Finance Committee.

5. The position of Intervenor is that the Petitioner herein is an Officer of the Court and therefore, as the Petitioner, has a duty to advise the Court that State's Attorney's throughout the entire state must be contacted in order to fully comply with the Statute. The Objection goes on to state that the financial cost must not, and should not be the determining factor in selecting a Special Prosecutor. That allegation is indicative of the fact that the Petitioner is not acting in good faith as an officer of the Court because cost is to the County and ignores the spirit and intent of the above Statutes.

6. The statutory history of these Statutes originated as a result of the appointment of a Special Prosecutor that was appointed to investigate the State's Attorney in McHenry County, Illinois. One of the chief supporters of this law was Senator Jack D. Franks from McHenry County.

7. The enclosed legislative's transcript reflects that McHenry County was forced to hire a Special Prosecutor that left its tax payers with a bill of approximately One Million Dollars (\$1,000,000.00) and also faced a \$650,000.00 bill in attorney's fees to defend its State's Attorney. The defense fees were ultimately settled for approximately \$300,000.00 (See Exhibit "A" State Senate Transcript dated May 22, 2012 and Macon County Blog dated September 22, 2011).

8. This Statute to appoint a private attorney as a Special Prosecutor also states:

An Order granting authority to a Special Prosecutor must be construed strictly and narrowly by the Court. The power and authority of a Special Prosecutor shall not be expanded without prior notice to the County. In the case of the proposed expansion of a Special Prosecutor's Powers and authority, a County may provide the Court with information on financial impact of an expansion on the County... 55 ILCS 5/3-9008 (c)

9. The only reasonable interpretation of these statutory provisions is that the financial burden placed upon a County in the appointment of a Special prosecutor is clearly an issue and the claims by the Petitioner's counsel that financial consideration is not and should not be a determining factor fails to recognize the clear and unequivocal intent of the legislation regarding this matter.

10. The Petition filed by the County clearly illustrates that the law firm herein and Macon County have no prior relationship with Mr. Walker, Randolph County State's Attorney.

11. Further, under no circumstances is this law firm disparaging the qualifications or talents of Stephanie Wong.

12. The Objection goes on to allege that Mr. Walker, Randolph County State's Attorney and Mr. Scott the Macon County State's Attorney are both members of similar State's Attorney's Associations in the state of Illinois. The Petition goes on to state that the appointment of a State's Attorney to investigate another State's Attorney creates the appearance of impropriety even if there is no real basis.

13. This is another example of the Petitioner ignoring their duty as an Officer of the Court by ignoring the above Statute which specifically provides that, prior to appointing a private attorney under this section, the Court shall contact public agencies... or local State's Attorney's Offices throughout the state to determine a public prosecutor's availability to serve as a Special Prosecutor at no cost to the County and shall appoint a public agency if they were able and willing to accept the appointment. (Emphasis added).

14. Petitioner's claim that Mr. Scott and Mr. Walker both belong to similar State's Attorney's Associations and therefore there is a bias to overrule the appointment of Mr. Walker is absurd. If this were true then members of local bar associations would be foreclosed from opposing each other in court or for that matter, all members of the State Bar Association would be barred from opposing each other.

15. However, if the Petitioner's counsel believes there is a bias or prejudice, we invite the Court to hold an evidentiary hearing to determine what, if any, prejudices Mr. Walker may have regarding this matter.

16. The undersigned states that he was contacted by the Macon County Board Chairman to explore this issue. Upon reviewing the Statute, the undersigned contacted

the Appellate Prosecutor's Office to discuss this matter. After a conversation with Chad Hillgoss from the Appellate Prosecutor's Office, it was determined that the Appellate Prosecutor's Office had a conflict even if they appointed somebody from another counsel of their office that did not serve the Fourth Appellate District. However, the Appellate Prosecutor agreed that in light of the Court's Order, soliciting a State's Attorney anywhere throughout the state would be compliant with the Statute and respectful of judicial economy regarding the Court's time to solicit State's Attorney's throughout the state.

17. The undersigned not only represents Macon County but represents other counties throughout Central Illinois. In the course of representing multiple counties, it is not unusual for State's Attorney's throughout the state to receive inquiries regarding their willingness to act as a Special Prosecutor. Attached hereto marked Exhibit "B" with names redacted is a request of the Moultrie County State's Attorney to act as a Special Prosecutor in a murder case in Cook County.

18. The Objection infers that the State's Attorney in Randolph County is too far removed from Decatur, Illinois. Chester, Illinois is 169 miles from Decatur, Illinois. Sullivan, Illinois is 189 miles from Chicago, Illinois.

19. The Petition to Appoint a Special Prosecutor should be filed to protect residents of Macon County and the integrity of the office of the Macon County State's Attorney. The Objection to intervene ignores the clear Statutory obligations and ignores the financial expense imposed upon the residents of Macon County.

WHEREFORE, Macon County, by its attorneys Featherstun, Gaumer, Stocks, Flynn & Eck, LLP, respectfully requests that the Court overrule the Objection herein and

this case at no cost to the County except for room and board and the mileage expenses and Macon County pay the fees and costs of the investigator selected by Jeremy Walker, and for such other relief as the Court deems just and proper.

BY: FEATHERSTUN, GAUMER, STOCKS,
FLYNN & ECK, LLP, Its Attorneys,

BY: _____

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