

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

STATE OF MISSOURI,)
)
 Plaintiff,)
) Cause No.: 2022-CR01301-01
 vs.)
)
 MARK MCCLOSKEY,)
)
 Defendant.)

DEFENDANT'S MOTION FOR REMAND

COMES NOW Defendant, by and through undersigned counsel, and respectfully requests that this honorable court remand the proceedings to the associate court so that the Special Prosecutor may present the case to the grand jury. As grounds therefore, Defendant states as follows:

1. On July 20, 2020, the complaint was filed initiating criminal charges against Defendant. Specifically, one count of Unlawful Use of a Weapon.
2. On July 29, 2020, Defendant filed a Motion to Disqualify the Circuit Attorney's Office, on the grounds that there existed an appearance of impropriety on the part of Circuit Attorney Kim Gardner.
3. On August 5, 2020, the circuit attorney filed a Response to the Motion to Disqualify.
4. On September 10, 2020, Defendant filed a supplemental Motion to Disqualify.
5. On or about October 8, 2020s, the CAO secured an indictment from the Grand Jury, charging Defendant with one count of Unlawful Use of a Weapon, and one count of Tampering with Physical Evidence.

6. On December 10, 2020, Judge Thomas Clark granted the Motion to Disqualify, on the grounds that there existed an appearance of impropriety on the part of the Circuit Attorney, imputed to the entire Circuit Attorney's Office, which cast doubt on the fairness of the proceedings, and mandated the disqualification of the Circuit Attorney and the CAO.
7. The Circuit Attorney sought a Writ of Prohibition relative to the disqualification order in the Missouri Court of Appeals, Eastern District. This was denied. The Circuit Attorney sought a Writ of Prohibition in the Missouri Supreme Court. This was also denied.
8. Pursuant to RSMo 540.140, the prosecuting attorney shall be allowed to present information to the grand jury, and to interrogate witnesses before them.
9. As the matter was presented to the grand jury during the pendency of the Motion to Disqualify, the grand jury indictment was secured under the cloud of the appearance of impropriety. The concerns about the fairness of the trial implicate the grand jury proceeding. To dispel the concerns, the Special Prosecutor should have the opportunity to present evidence to the grand jury.

WHEREFORE, Defendant respectfully requests that this matter be remanded to the associate court for further proceedings.

Respectfully submitted,

ROSENBLUM, SCHWARTZ, & FRY, PC

By: /s/ Joel J Schwartz
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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021 the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the City of St. Louis, Missouri Prosecuting Attorney's Office.