

FILED UNDER SEAL
THE SUPREME COURT OF WISCONSIN
Case Nos. 2013AP2504-2508-W
Case Nos. 2014AP296-OA
Case Nos. 2014AP417-421-W

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OF WISCONSIN

Case Nos. 2013AP2504 - 2508-W

STATE OF WISCONSIN ex rel. THREE UNNAMED PETITIONERS,
Petitioner,

v.

THE HONORABLE GREGORY A. PETERSON, John Doe Judge,
THE HONORABLE GREGORY POTTER, Chief Judge, and
FRANCIS D. SCHMITZ, Special Prosecutor
Respondents,

L.C.#s 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

UNNAMED MOVANT NO. 6's
MEMORANDUM IN OPPOSITION TO INTERVENORS' MOTION TO AMEND THE
SECRECY ORDERS

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v.

THE HONORABLE GREGORY A. PETERSON, John Doe Judge, and
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Respondents,

L.C.#s 2012JD23, 2013JD1, 2013JD6, 2013JD9, 2013JD11

Case Nos. 2014AP417 - 421-W

STATE OF WISCONSIN ex rel. FRANCIS D. SCHMITZ, Special
Prosecutor,
Petitioner,

v.

THE HONORABLE GREGORY A. PETERSON, John Doe Judge,
Respondent,
and

EIGHT UNNAMED MOVANTS,
Interested Parties.

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Unnamed Movant No. 6 joins the arguments of Unnamed Movant No. 2 in their entirety. In addition, the Intervenor's Motion to Amend the Secrecy Orders should be denied as to any secret or sealed documents that were obtained from, or relate to, Unnamed Movant No. 6 because the Intervenor's lack any authority to continue any case against Unnamed Movant No. 6 or to bring any case against him in the future. Given that Intervenor's cannot proceed against Unnamed Movant No. 6, there is no justification

for allowing even more people to search through Unnamed Movant No.6's improperly seized documents.

Unnamed Movant No. 6 is a resident of Dodge County. Therefore, **only** the District Attorney for Dodge County may bring a criminal action against Unnamed Movant No. 6. Under Wis. Stat. § 978.05(1), each District Attorney shall:

[H]ave **sole responsibility** for prosecution of all criminal actions arising from violations of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from violations of other laws arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, **that are alleged to be committed by a resident of his or her prosecutorial unit ...**

Wis. Stat. § 978.05(1) (emphasis added); see also *State ex rel.*

Two Unnamed Petitioners v. Peterson, 363 Wis.2d 1, 87-88, 2015

WI 85 ¶ 115 (2015) (explaining the role of the five District

Attorneys that originally initiated investigations and citing

Wis. Stat. 978.05(1)); *State v. Jensen*, 324 Wis.2d 586, 604-05,

2010 WI 38 ¶ 33 (2010) (rejecting an interpretation of a statute

that would infringe on a District Attorney's authority under

Wis. Stat. § 978.05(1)).

Here, however, "Dodge County District Attorney Kurt F. Klomberg ... [did] not intervene into this matter for any purpose [and] intends that Dodge County Case No. 13JD6 be closed with no further investigative or appellate action." Dodge County

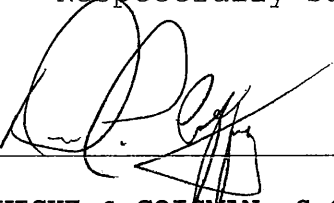
District Attorney Kurt F. Klomberg's Notice of No Intervention Pertaining Only to Dodge County Case No. 13JD6, ¶ 2 (Dec. 10, 2015). D.A. Klomberg further notified this Court that he did "not seek the appointment of any other attorney to continue any action related to the Dodge County portion" of these cases. *Id.* ¶ 3. To avoid any doubt, D.A. Klomberg made clear that he also did "not authorize any other District Attorney to further any U.S. Supreme Court review as it pertains to the Dodge County portion of this investigation..." *Id.* ¶ 21. Therefore, under Wis. Stat. § 978.05(1), Intervenors may not proceed against Unnamed Movant No. 6.

Given that the Intervenors are not authorized to act on behalf of Dodge County and cannot bring any action against Unnamed Movant No. 6, they lack any authority to proceed against Unnamed Movant No. 6. Therefore, there is no justification to allow new attorneys to search through his documents.

For the reasons stated herein and in Unnamed Movant No. 2's opposition, the Court should deny Intervenor's Motion in its entirety.

Dated February 1, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D. Coffey', written over a horizontal line.

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CERTIFICATE OF SERVICE

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I hereby certify that on this date I caused service of the
accompanying Memorandum in Opposition to Intervenor's Motion to
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Dated at Washington, DC, February 1, 2016

A handwritten signature in dark ink, appearing to read 'E. Meyers', is written over a horizontal line.

Edward Meyers