

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY, ILLINOIS

IN RE: )  
 ) 18-MR-158  
APPOINTMENT OF SPECIAL PROSECUTOR )

**ORDER DENYING MOTION TO VACATE  
AND SUPPLEMENTAL MOTION TO VACATE**

This matter came before the Court for hearing upon the Knox County Board's Motion to Vacate and Supplemental Motion to Vacate the Court's January 25, 2019, Order Granting Amended Motion for the Appointment of Special Prosecutor and the Court, being fully advised in the premises, now finds as follows:

1. It has jurisdiction over the parties and subject matter herein.
2. On December 27, 2018, a Motion for the Appointment of Special Prosecutor was filed by the Knox County State's Attorney.
3. On January 14, 2019, the Motion for the Appointment of Special Prosecutor was denied without prejudice.
4. On January 16, 2019, an Amended Motion for the Appointment of Special Prosecutor was filed by the State's Attorney. In support of the Amended Motion, the State's Attorney alleged, among other things that, *"At this time, the State's Attorney's Office is unable to fulfill duties in prosecuting JD and JA cases in Knox County. In this particular case the reason for requesting the appointment of a Special Prosecutor is: the current staffing levels of the State's Attorney's Office is inadequate to properly fulfill the duties of State's Attorney's Office in prosecuting juvenile cases."*
5. In granting the State's Attorney's Amended Motion, this Court specifically found, that

the Knox County State's Attorney had established a *prima facie* case that he was unable to fulfill the duties of his office in attending to the prosecution of juveniles for delinquency or protecting juveniles from neglect or abuse, for the following reasons:

- a. In 2016, the Knox County State's Attorney's Office had its total number of Assistant State's Attorneys reduced from 5 to 4 when the juvenile Assistant State's Attorney's position was eliminated by the Knox County Board for funding reasons.
  - b. Since 2016 the staffing levels of the State's Attorney's Office were inadequate to properly fulfill the duties of the State's Attorney's Office in prosecuting juvenile cases.
  - c. The Assistant State's Attorneys assigned for prosecuting juvenile cases were also responsible for prosecuting felony cases.
  - d. The number of felony cases in Knox County the assigned Assistant State's Attorneys were handling, approximately 400 cases per year, was more than twice the American Bar Association recommended guideline for felony caseloads, that being 150 cases per year.
  - e. The approximate 400 cases per year were in addition to their juvenile caseload.
  - f. The assigned Assistant State's Attorneys were handling approximately 200 juvenile cases per year.
  - g. Due to the time requirements necessary for the assigned Assistant State's Attorneys to attend to the felony caseload, the assistants were longer able to adequately prosecute juvenile cases.
  - h. Due to the assignment of duties given to other Assistant Sate's Attorneys within the office of the State's Attorney, and the constraints placed upon the assignment of them by contractual obligations with the Illinois Attorney General's Office for child support enforcement, other Assistant State's Attorneys were not available to reassignment to assist in the prosecution of felony or juvenile cases.
  - i. The State's Attorney has tried to have filled the vacancy and deficiency in his office since 2016, but has been unable to do so.
6. On March 1, 2019, the Knox County Board filed its Motion to Vacate and on March 7,

2019, its Supplemental Motion to Vacate this Court's Order of January 25, 2019. In its Motion to Vacate and its Supplemental Motion to Vacate, the County Board asserts that the Court's January 25, 2019, Order should be vacated for the following reasons:

- a. The State's Attorney is using the Court's Order to extort concessions from the County Board in litigation and on other issues unrelated to the appointment of a special prosecutor.
- b. The State's Attorney threatens the County Board with the great expense of a special prosecutor unless it agrees to salary increases for other employees in the State's Attorney's office.
- c. The alleged emergency need for an additional prosecutor in the State Attorney's Office no longer exists.
- d. Following the entry of the Court's January 25, 2019, Order, the State's Attorney and the County Board reached an agreement whereby the County Board agreed to authorize the hiring of a new Assistant State's Attorney with a salary of up to \$47,000 and the State's Attorney agreed to forestall the appointment of a special prosecutor.
- e. The State's Attorney repudiated the hiring agreement with the County Board and is now demanding an increased salary for the hiring of a new Assistant State's Attorney at \$54,000, as well as increases in the salaries of his current Assistant State's Attorneys and staff.
- f. The State's Attorney is now threatening the County Board to refuse to perform fine collection on behalf of Knox County in order to extract concessions from the County Board.

7. Of the foregoing six reasons expressed by the County Board in the previous paragraph as a basis for vacating this Court's Order of January 25, 2019, only one, subparagraph 6(c) is actionable by this Court. The remaining five, subparagraphs 6(a), (b), (d), (e), and (f) are conflicts of a political in nature between the County Board and the State's Attorney, of which this Court will not become involved.

8. On January 25, 2019, in ruling on the State's Attorney's Amended Motion for the

Appointment of Special Prosecutor, this Court simply found that, “*Taking the facts as alleged in the Amended Motion for the Appointment of Special Prosecutor, along with the affidavits and supporting documentation, the Amended Motion establishes a prima facie basis that the Knox County State's Attorney is and would be unable to fulfill the duties of his office in attending to the prosecution of juveniles for delinquency or protecting juveniles from neglect or abuse.*” (See paragraph 15 of this Court’s Order of January 25, 2019. That finding of the Court was based upon the following objective facts:

- a. The Knox County State’s Attorney had established that the reduction of the number of his Assistant State’s Attorneys in 2016 had brought about a chronic condition that prevents him from fulfilling his statutory duties.
- b. The ratio of the number of cases handled in counties comparable to Knox to the number of assistant state’s attorneys established that the Knox County State’s Attorney’s Office is understaffed.
- c. The number of cases handled by ASA Stuckart and ASA Kerr greatly exceeded the ABA recommended guidelines for the number of felony cases to be handled by an attorney.
- d. The State’s Attorney had sought to address the inadequacies of his office, but to date his efforts have been unsuccessful.

9. Clearly, none of the subjective arguments raised by the County Board, that is, the State’s Attorney is using the Court’s Order to extort concessions from the County Board in litigation; the State’s Attorney threatens the County Board with the great expense of a special prosecutor unless it agrees to salary increases for other employees in the State’s Attorney’s office; the State’s Attorney and the County Board reached an agreement whereby the County Board agreed to authorize the hiring of a new Assistant State’s Attorney; the State’s Attorney repudiated the hiring agreement with the County Board and is now demanding an increased salary, are objective facts that have bearing or are relevant to the issue of whether or not the Knox County

State's Attorney is and would be unable to fulfill the duties of his office in attending to the prosecution of juveniles for delinquency or protecting juveniles from neglect or abuse. The assertions raised by the County Board all relate to conduct of the State's Attorney, subsequent to the Court's determination that there was an attorney inadequacy in the State's Attorney's Office. The gist of the County Board's argument is that State Attorney Pepmeyer has corrupted the intent of this Court's Order of January 25, 2109, (which found and addressed the attorney inadequacy in the State's Attorney's Office) into his use of it to extort the County Board by demanding higher salaries for his existing employees under the threat of hiring an even more expensive special prosecutor. Once again, while such arguments may or may not be true, it is not for this Court to decide the merits of these arguments as they involve conflicts of a political in nature between the County Board and the State's Attorney and have no bearing upon whether or not State's Attorney is unable to fulfill the duties of his office in attending to the prosecution of juveniles for delinquency or protecting juveniles from neglect or abuse.

10. In support of its motion to vacate the County Board also raises the argument that the emergency need for an additional prosecutor in the State's Attorney's Office no longer exists. The County Board asserts that the Court found that the chronic need for an additional prosecutor had become acute as a result of two murder trials that were to be conducted in January and February of 2019. The County Board argues that since those murder trials have now passed the assistant state's attorneys that were assigned to the murder trials have now returned to their regular duties; and in as much as the County Board has authorized the hiring of a new prosecutor, the emergency that warranted the approval of the request for a special prosecutor no longer exists. The County Board's interpretation of the findings of this Court's January 25, 2019, Order is

incorrect.

11. This Court did not find that an “emergency” existed that warranted the granting of the Amended Motion for the Appointment of Special Prosecutor. The Court found that the Amended Motion for the Appointment of a Special Prosecutor should have been granted for the reasons set forth in paragraph 15 of the Court’s Order of January 25, 2019, again, that: (a) the Knox County State’s Attorney had established that the reduction of the number of his Assistant State’s Attorneys in 2016 had brought about a chronic condition that prevents him from fulfilling his statutory duties; (b) the ratio of the number of cases handled in counties comparable to Knox to the number of assistant state’s attorneys established that the Knox County State’s Attorney’s Office is understaffed; (c) the number of cases handled by ASA Stuckart and ASA Kerr greatly exceeded the ABA recommended guidelines for the number of felony cases to be handled by an attorney; (d) the State’s Attorney had sought to address the inadequacies of his office, but to date his efforts have been unsuccessful.

12. The Court did find however, that was a matter of immediate and urgent necessity that a special prosecutor be appointed. However, it is also important to consider the context in which the Court’s finding was made. On January 16, 2019, the Amended Petition for the Appointment of Special Prosecutor was filed. On January 18, 2019, a Petition to Intervene and Motion for Stay of Proceedings was filed by Pamela Davidson, in her capacity as chairperson of the Knox County Board and on behalf of the County Board.

13. In her Petition to Intervene and Motion for Stay of Proceedings, Chairperson Davidson requested a stay of these proceedings until February 15, 2019, to allow the County Board and Mr. Pepmeyer time to conclude their negotiations regarding the potential hire of an additional

Assistant State's Attorney. In denying the County's Motion for Stay, this Court found:

*“Unfortunately, the chronic condition that prevents the State’s Attorney from fulfilling his statutory duties has now also become acute. This chronic condition has become acute not only by the great volume of pending cases in Knox County, but is also due to the fact one murder trial has currently been ongoing during the month of January 2019, and a second murder trial is scheduled to be tried in February 2019. In this respect the County Board Chairperson’s request for a stay should be denied as it is a matter of immediate and urgent necessity that a special prosecutor be appointed.”*

Thus, a complete and accurate read of this Court's finding of an “*immediate and urgent necessity*” reveals that it was made in the context of the County Board's request for a stay in light of the County Board and the State's Attorney being involved in negotiations regarding the potential hire. In this respect, the Court found giving the State's Attorney the authority to appoint a special prosecutor should not be delayed because the chronic condition that prevented the State's Attorney from fulfilling his statutory duties had become acute for two separate and distinct reasons: (1) by the great volume of pending cases in Knox County; and (2) the existence of two murder trials in January and February. Accordingly, the County Board's request for a stay was denied as it was a matter of “*immediate and urgent necessity*” that the State's Attorney be given the authority to appoint an additional special prosecutor as needed so that the interests of abused and neglected children of Knox County would be adequately represented in court. The fact that the two trials of January and February have passed does not change the finding of the Court that the chronic condition that prevents the State's Attorney from fulfilling his statutory duties remains acute by the great volume of cases pending in Knox County.

IT IS THEREFORE ORDERED, that the Knox County Board's Motion to Vacate and Supplemental Motion to Vacate is hereby denied.

Date: March 19, 2019

Judge Paul L. Mangieri