

STATE OF NEW HAMPSHIRE

Superior Court

Merrimack, ss.

August Term, 2025

State of New Hampshire

No. 217-2024-CR-1167

v.

Anna Barbara Hantz Marconi

OBJECTION TO STATE'S MOTION TO QUASH

The defense respectfully objects to the prosecution's Motion to Quash the subpoena served on Attorney General Formella. The defense incorporates, by reference, its arguments in the Motion to Disqualify and Dismiss filed in October 2024, the Renewed Motion, and the Reply to the State's Objection to the Renewed Motion. *See D. Mot. Disqualify N.H. AG's Office & Dismiss All Indictments* [hereafter *First Mot. Disqualify*], *Renewed Mot.* and *Reply St. Obj. Renewed Mot* [hereafter *Reply*].

THE STATE'S INVOCATION OF ATTORNEY-CLIENT PRIVILEGE IN ITS MOTION
CONCEDES THE DEFENSE CLAIM THAT FORMELLA HAS CONFLICTING DUTIES

1. The State's Motion to Quash is directly related to the Renewed Motion to Disqualify because the question of whether Formella will be a trial witness arises in both motions. However, whether Formella will be a witness at trial is not the only basis on which the defense seeks disqualification. The defense motion is a renewed motion to disqualify. The defense specifically incorporated and reaffirmed the objections made in the original Motion to Disqualify. *See Renewed Mot.* at ¶ 6. The fact that the defense reasserts the basis for its original Motion to Disqualify and Dismiss is relevant because the prosecution's Motion to Quash effectively concedes a point made in the original defense motion.

2. The prosecution motion “begin[s] by noting that any communication between AG Formella and Sununu or Ogden *not* related to the matters in this case would be barred by N.H. R. Prof. Conduct 1.6 (Confidentiality of Information).” *St. Mot. Quash* at ¶ 5 (italics and underline in original)

3. By its invocation of the privilege regarding attorney-client communications between Formella and Sununu, the prosecution concedes that the June 14, 2024, conversation between them was a conversation between a lawyer and his client. That is, Formella as the lawyer was speaking with Sununu as his client. This concession and the significance of Formella being the first law enforcement agent to interview Sununu about the June 6th Hantz Marconi meeting illustrate the conflict of interests which the defense previously raised.

4. Although the State refers to N.H. R. Prof. Conduct 1.6 in its invocation of the privilege, Rule of Evidence 502 is actually the source of the privilege. *See, e.g., State v. Stickney*, 148 N.H. 232, 234-35 (2002). That rule states that a client may refuse to disclose, or refuse to permit the lawyer to disclose, information about communications between the lawyer and the client related to the representation.¹ *See* N.H. R. Evid. 502.

5. The invocation of the privilege by the prosecutors underscores the argument made in the October 2024 defense motion that Formella is attempting to “serve two masters,” *see First Mot. Disqualify* at ¶¶ 33-37, and the Court’s concern in its December 18, 2024 Order that, “[i]t is possible that AG Formella could receive privileged or confidential information related to the Governor that is also potentially exculpatory and, therefore, must be turned over to the defense.

¹ Rule 1.6 of the Rules of Professional Conduct imposes a duty of confidentiality on the lawyer which is broader than attorney-client communications under Rule 502. Rule 1.6 generally bars disclosure of information relating to representation of the client. It is not limited to lawyer-client communications.

Such an occasion could give rise to a conflict.” *Order D’s Mot. Disqualify AG’s Office & Dismiss All Indictments* (Dec. 17, 2024) at 8.

6. The prosecutors’ assertion of attorney-client privilege and their efforts to deal with Formella’s conflicting duties demonstrate the kind of conflict the Court and the defense foresaw.

7. First, Formella, through his prosecutors, apparently attempts to partially waive the attorney-client privilege regarding the conversation between Sununu and Formella by invoking the privilege as to communications not related to this case, but to also waive the privilege as to matters that are related to this case. *St. Mot. Quash* at ¶ 5. Yet, the prosecutors have no authority to waive the attorney-client privilege. The privilege does not belong to Formella or his prosecutors. The privilege does not belong to the lawyer. The privilege belongs to the client, and only the client may waive the privilege. N.H. R. Evid. 502(c). A lawyer may invoke the privilege on behalf of the client but may not waive it. *Id. See also Hampton Police Assoc. v. Town of Hampton*, 162 N.H. 7, 15 (2011). (Regarding New Hampshire common law prior to adoption of our rules, *see Stevens v. Thurston*, 112 N.H. 118, 118 (1972) (“We recognize and enforce the common-law rule that confidential communications between a client and attorney are privileged and protected from inquiry in the absence of a waiver by the client.”)).

8. So how did Formella make the decision to partially waive the privilege regarding his June 14, 2024, attorney-client conversation with Sununu, in which various matters, including the matter of the Hantz Marconi meeting, were discussed? Did Formella make that decision on his own without authority from his client, Sununu? Or did he obtain a waiver from Sununu after giving advice to Sununu?² Did Sununu waive the privilege by giving interviews to investigators for the State and, if so, did Formella advise Sununu about that decision?

² The defense does not have any discovery indicating that there was a waiver.

9. More importantly, what duties did Formella consider in attempting to make such a waiver or in advising Sununu to waive? He had, and has, duties of loyalty and confidentiality to his client, Sununu. See N.H. Rs. Prof. Conduct 1.2, 1.6, 1.7. But he also has affirmative duties to provide exculpatory material to the defense, *Brady v. Maryland*, 373 U.S. 83 (1963), and “an independent duty to administer justice impartially.” *Order D’s Mot. Disqualify Attorney General’s Office & Dismiss All Indictments* (Dec. 17, 2024) at 4 (citing *Rogowicz v. O’Connell*, 147 N.H. 270, 274 (2001)).

10. The fact that Formella has those two affirmative and conflicting sets of duties is the problem. He cannot serve two masters. See *Rogowicz*, 147 N.H. at 274-75; *Atherton v. Concord*, 109 N.H. 164, 165 (1968) (“A man cannot serve two masters at the same time”). See also *State v. Gonzalez*, 170 N.H. 398, 411 (2017) (discussing the problem of “divided loyalties”).

11. As the analysis moves forward, the problem persists. How is Formella drawing the line between communications related to matters in this case and communications “not related to the matters in this case.” *St. Mot. Quash* at ¶ 5. It is very likely that the defense and the prosecution will differ over what areas of inquiry “relate to this case.” How will Formella and his prosecutors determine their position on such issues? Here again, will Formella be considering his duties to his current and former client, Sununu, or his duties as a public prosecutor, or attempting to serve both?

12. The fact that the Attorney General’s Office does not perceive the problem of invoking attorney-client privilege regarding the conversation in which Sununu told Formella about the June 6th meeting with Hantz Marconi is further evidence that there is, in fact, a conflict of interest. “Prosecution by someone with conflicting loyalties calls into question the objectivity of those charged with bringing a defendant to judgment.” *Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787, 810 (1987) (quotation and citation omitted). “Justice must satisfy the

appearance of justice, and a prosecutor with conflicting loyalties presents the appearance of precisely the opposite.” *Id.* at 811-12 (quotation and citation omitted). *See also Mot. Disqualify* at ¶¶ 29-37.

FORMELLA IS A NECESSARY WITNESS

13. The State’s various arguments about how Formella would not be a necessary witness are not persuasive. Formella is, in fact, a necessary witness, and this Court should deny the State’s Motion to Quash.

14. The defense offered three rationales for why Formella is a necessary witness: (1) because he will testify about the origins and reliability of the State’s investigation, *see Renewed Mot.* at ¶¶ 17-30; *Reply* at ¶¶ 12-13; (2) because Formella can testify about Sununu’s and Ogden’s states of mind in the immediate wake of the meeting, *see Renewed Mot.* at ¶¶ 35-38; *Reply* at ¶ 14; and (3) because of inconsistent statements about the meeting, *see Renewed Mot.* at ¶¶ 31-34; *Reply* at ¶ 15. A review of each these rationales shows that the State does not raise valid grounds to quash the subpoena.

The State Wrongly Asserts that the Attorney General Is Not a Witness Regarding How the Investigation Started and Whether His Office Violated the Policies He Established.

15. As to the relevance of the origins of the State’s investigation, the State is wrong. Contrary to the State’s allegation, the defense did not “misrepresent[]” the PIU policy. *St. Mot. Quash* at ¶ 7. The defense quoted it accurately. *See Renewed Mot.* at ¶¶ 23-30; *Reply* at ¶ 12.

16. The State seems to base its argument on the word “generally” in the policy and to extract from that word the idea that it can simply ignore its own policy without explanation. *See St. Obj. Renewed Mot.* at ¶ 16. But it offers no explanation for why it ignored the policy here. Since the defense has a constitutional right to challenge the reliability of the investigation, the State is simply wrong to assert that this issue is “quite peripheral.” *St. Mot. Quash* at ¶ 7. *See*

Renewed Mot. at ¶ 19; *Reply* at 12. The defense is entitled to question Formella, as the first law enforcement agent who heard from Ogden and Sununu, about his office’s failure to follow the policy that he adopted at Sununu’s direction. These circumstances bear on the reliability and credibility of the State’s investigation and make Formella a necessary witness for trial.

17. The defense would add that in prior instances where the Department of Justice announced investigations into judges in New Hampshire, it publicly revealed the origins of the investigation. *See* Press Release, N.H. Dep’t of Justice, Investigation into Conduct of Judge Paul Moore (March 12, 2018) (“The investigation was initiated based on information received today from the New Hampshire Supreme Court...”); Press Release, N.H. Dep’t of Justice, Investigation Into Conduct of Judge Julie A. Introcaso (Oct. 22, 2020) (“The investigation was initiated based on information received today from the New Hampshire Supreme Court...”).³

18. Next, the State’s claims that “Formella would only be allowed to state that he spoke with Sununu and Ogden before they were interviewed by investigators for the State, which is available through the testimony of Sununu and Ogden.” *St. Mot. Quash* at ¶ 7. This conclusory statement enjoys no legal support and merely refers back to the State’s prior attempt to distinguish *State v. Roman*, 176 N.H. 373 (2023). *St. Mot. Quash* at ¶ 7. Not only is *Roman* not distinguishable, *see Reply* at ¶ 13, but the defense has cited plenty of additional case law about the relevance and admissibility of evidence about the origins of an investigation. *See Renewed Mot.* at ¶ 18; *Reply* at ¶ 13. Nor is there any legal authority for the State’s claim that Formella would only be allowed to state that he spoke with Sununu and Ogden. Formella’s testimony about Sununu’s and Ogden’s statements would not be offered for the truth of the matter but rather to establish the basis, or lack thereof, Formella had when he made the decision to move

³ Available at: <https://www.doj.nh.gov/news-and-media/investigation-conduct-judge-paul-moore>; <https://www.doj.nh.gov/news-and-media/investigation-conduct-judge-julie-introcaso>.

forward with a criminal investigation. After all, both witnesses, but particularly Sununu, say they saw nothing improper in Hantz Marconi's comments or behavior at the June 6th meeting, so a very legitimate question for Formella would be why he decided to commence a criminal investigation, despite what he heard from Sununu and Ogden. In this regard, as the federal Seventh and Fourth Circuits explain, an "out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." *United States v. Lazcano*, 881 F.2d 402, 407 (7th Cir. 1989) (quoting *United States v. Love*, 767 F.2d 1052, 1063 (4th Cir. 1985)).

The State Wrongly Claims that Formella is Not a Witness to Statements Made by Sununu Which Show Sununu's Relevant State of Mind.

19. Next, as to the State's arguments, which track its first Motion in Limine, *compare St. Mot. Quash* at ¶¶ 9-12 with *St. Mot. Lim. #1* at ¶¶ 1-4, the State is simply incorrect in its theory of admissibility.⁴ Of course, a lay witness cannot offer opinions as to the law. It is the judge's responsibility to instruct the jury on the law. *See, e.g., State v. Bird*, 122 N.H. 10, 15 (1982). But lay witnesses can testify to the witnesses' perceptions of what a speaker was trying to say and to the effects of the speaker's statements on the listeners' states of mind. *See* N.H. Rs. Evid. 701(a), 803(3). Lay witness opinion testimony is admissible "as long as the witness's opinion is 'rationally based on the witness's perception.'" *State v. Racette*, 175 N.H. 132, 135 (quoting N.H. R. Evid. 701). Such testimony can even embrace an ultimate issue. N.H. R. Evid. 704. *See also State v. Mann*, 2005 N.H. Super. LEXIS 2; 2005 WL 2714531 (admitting statement that "My Dad killed my Mom" because it was an opinion or inference rationally based on witness's

⁴ The defense would also note that these motions, and the applicable law, concern different potential trial testimony. The State's first Motion in Limine concerns testimony from potential witnesses Sununu, Ogden, Duprey, and MacDonald. *See St. Mot. Limine #1* at ¶ 5. The instant motion concerns testimony from Formella. *See St. Mot. Quash*.

perception and helpful to the determination of a fact in issue); *State v. Argie*, 2021 N.H. Super. LEXIS 18 at *12 (denying State’s motion in limine regarding third party perceptions of threats because “testimony from the individuals to whom the threats were made about his mental or emotional state deduced from observation, is admissible”) (cleaned up, quotation and citation omitted). Formella’s testimony as to Sununu’s and Ogden’s statements is admissible evidence of Sununu’s and Ogden’s reactions to the meeting with Justice Hantz Marconi and the statements she made. *Renewed Mot.* at ¶ 38 (cleaned up). *See also Reply* at ¶ 14.

20. Other courts agree that a witness can testify to their opinion about the effect of a defendant’s statements on the witness’s perceptions. The North Carolina Supreme Court explains, the “testimony went not to the defendant’s intent, but simply related the witness’ perception as to the defendant’s state of mind and the effect it had on the witness.” *State v. Shook*, 327 N.C. 74, 83-84 (1990). *See also State v. McElroy*, 326 N.C. 752, 758 (1990) (where defendant spoke directly to witness, witness was “explaining what the statement meant to him and thus what effect it had on him”); *United States v. Rea*, 958 F.2d 1206, 1215 (2d Cir. 1992) (noting that “there is no theoretical prohibition against allowing lay witnesses to give their opinions as to the mental states of others”); *United States v. Bogan*, 267 F.3d 614, 619-20 (finding no abuse of discretion in trial court’s admission of witness statements that defendants were “trying to kill” a corrections officer); *People v. Jones*, 907 P.2d 667, 669 (Colo. App. 1995) (“A lay witness may state an opinion about another person's motivation or intent only if the witness had sufficient opportunity to observe the person and to draw a rational conclusion about the person’s state of mind.”); *State v. Steward*, 681 So. 2d 1007, 1011-12 (La. Ct. App. 1996) (finding no error by trial court “to allow the victim to testify, based on her perception, as to the intent of her attack, including the basis for belief that he intended to rape her”); *State v. Warsop*, 124 N.M. 683, 687 (1997) (police officer allowed to testify that the defendant “appeared to be

serious when he made the threatening statement” because “a defendant’s intent is seldom, if ever, susceptible to direct proof, and may be proved by circumstantial evidence”) (quotation and citation omitted).

21. The State, by contrast, relies on faulty civil case law. As a threshold matter, its first line, a “witness’s opinion regarding a matter of law is not admissible,” is an inaccurate summary of *Cyr v. J.I. Case Co.*, 139 N.H. 193 (1994).⁵ *St. Mot. Quash* at ¶ 2. Moreover, what *Cyr* actually says is “A witness, however, may not ordinarily give an opinion regarding a matter of law.” *Cyr*, 139 N.H. at 199-200 (underline added). What the *Cyr* Court found objectionable was questioning that required the witness “to speculate about *Cyr*’s probable response to a hypothetical situation,” that is, whether a backup camera would have prevented the accident. *Id.* at 201. She was still allowed to testify with “a detailed description of the events leading up to the accident and her observations of *Cyr*’s behavior.” *Id.* Thus, contrary to the State’s erroneous reading of the case, it supports the defense’s theory of admissibility. The defense would not be inquiring about hypothetical situations, nor would it be asking the witness to instruct the jury on the law; it would be asking about the percipient witnesses’ states of mind and perceptions of the meeting.

22. The other civil cases the State cites are equally unavailing. *Breagy v. Stark*, 138 N.H. 479 (1994) and *Saltzman v. Saltzman*, 124 N.H. 515 (1984) were both personal injury cases arising from motor vehicle accidents. *Breagy*, 138 N.H. at 481; *Saltzman*, 124 N.H. at 519. On appeal, the Supreme Court addressed whether the trial courts erred in admitting law enforcement opinion testimony about allocation of fault, the legal duties of the parties, and causation of the

⁵ As far as the defense can determine, the single time *Cyr* has been cited in a criminal case, it was in the entirely different context of N.H. R. Evid. 602 (personal knowledge). See *State v. Enderson*, 148 N.H. 252, 257 (2002).

accident. *Breagy*, 138 N.H. at 483; *Saltzman*, 124 N.H. at 524. It was in this context that our Court explained that “a police officer’s opinion testimony concerning the fault and cause of a collision must be excluded when it involves mixed questions of law and fact.” *Breagy*, 138 N.H. at 484 (citing *Saltzman*, 124 N.H. at 524-25). Sununu’s and Ogden’s states of mind regarding the meeting with Justice Hantz Marconi and their sharing of those feelings and opinions with Formella are not mixed questions of law and fact, they are simply the “statement[s] of the declarant’s then-existing state of mind.” N.H. R. Evid. 803(3).

Formella Is a Necessary Witness Regarding Inconsistent Accounts of the Hantz Marconi Meeting.

23. Finally, the State fails to rebut the important defense point that Formella is a necessary witness because the State’s other witnesses—Sununu, Ogden, and MacDonald—have offered differing accounts of the June 6th meeting. The witnesses to the meeting, and the people they spoke to immediately afterwards, have inconsistent recollections. The inconsistencies are directly relevant regarding the reliability of the witnesses and the investigation, and Formella is a key witness to those inconsistencies.

24. Chief Justice MacDonald told investigators (on August 2, 2024) that he spoke to Sununu before and after the meeting. D82. The first call was a heads-up about the meeting, the second was a recap. D82, D88. In the second call, MacDonald alleges that Sununu told him that Justice Hantz Marconi made three points, the first of which was to complain about Attorney General Formella and describe him as “weak” and “very political”. D90-91. Yet, Sununu’s version is markedly different. Most significantly, according to Sununu, there was no discussion of whether Formella was “weak,” “political,” or anything of the sort. D173-74; D176.

25. In addition, in his first interview with investigators (from July 31, 2024), Sununu only spoke of calling MacDonald after meeting with Justice Hantz Marconi. D134-35. Sununu reports

that he said to MacDonald, “I’m not sure if you know, I just had a meeting with Justice Bobbie Hantz Marconi.” D135-36. According to Sununu, “[h]e did not, he was not aware of that if I remember correctly” and Sununu did not “think he was aware of that at all.” D136. Sununu says MacDonald “was surprised that she had come in to see me[.]” D138. If MacDonald had received a heads-up about the meeting just a few hours before it happened, there would be no reason for Sununu to tell him “I’m not sure if you know” and there would be no reason for MacDonald to be “surprised that [Justice Hantz Marconi] had come in to see [Sununu].” D135; D138.

26. Ogden’s first interview with investigators (from July 9, 2024) would appear to confirm Sununu’s recollection. Ogden told them that “after she left, the Governor said, I’m gonna let Gordon know.” D213. “He called Chief Justice MacDonald and he said, hey, he said, I believe he called her Bobbie, he said, just came in.” *Id.* They then discussed the workload on the Court and the effect of Justice Hantz Marconi’s recusal. D214. Ogden made no mention of anything about the Attorney General being “weak” or “political.” D213-18. Ogden did not know why Sununu decided to call MacDonald after Justice Hantz Marconi left, Sununu “just kind of announced, he’s like, I’m gonna, I’m gonna give Gordon a call.” D218. But again, Sununu would not need to “let Gordon know” if Gordon already knew. D213.

27. Immediately after interviewing MacDonald, investigators re-interviewed Ogden (August 2, 2024) and Sununu (August 8, 2024). D249; D170. Their first substantive question to Ogden was whether he recalled more than one phone call between Sununu and MacDonald (answer: no). D250. Ogden was not aware of any phone call prior to the meeting. D252. He expressly denied hearing at the meeting any opinions about the Attorney General. D254-56; D258. He did not remember “the Chief Justice being told that Justice Hantz Marconi had complained about John Formella in particular[.]” D260. He did not remember John Formella being referenced or complaints that he was “weak” or “political.” D260-63.

28. Likewise, in Sununu's second interview, the first substantive question from investigators was "if there were any calls to Chief Justice prior to the meeting with Justice Hantz Marconi." D172. Sununu didn't "remember having a conversation" and while "it could have happened if Gordon thinks that there was a call," Sununu "personally [didn't] remember that call specifically, but it could have happened[,] I suppose." *Id.* Sununu also did not remember anything coming up in the call about Formella or any specific person or agency. D173-75. Asked specifically if Justice Hantz Marconi ever described the AG's Office or Formella in particular as "weak" or "politically motivated," Sununu said "no." D176. Thus, Sununu's recollection contradicts MacDonald's in important respects.

29. These inconsistencies show why Formella's interviews are important. As the first law enforcement agent to speak to either Sununu or Ogden, he took notes of his conversations with both. *See* D707-12 (Ogden notes); D713-15 (Sununu notes). Formella's notes of his June 14, 2024 conversation with Sununu do not mention anything or anyone being petty, personal, political, weak, etc. D715. There are no mention of any calls to MacDonald. *Id.* The only mention of MacDonald is that the Chief Justice "asked if Gov is hearing anything." *Id.* Insofar as the State suggests that Sununu's telephone records adequately establish that there were two phone calls, the State misses the point. *See St. Mot. Quash* at ¶¶ 17-18. It is not simply the witnesses' varying recollections about the number of calls, but what was said during those calls, particularly the contradictions about whether Justice Hantz Marconi directed any negative comments at Formella or the DOJ and whether Sununu mentioned the planned visit in advance.⁶

⁶ The defense would also note that the cell phone records described were not provided in discovery until after the Renewed Motion was filed. Furthermore, insofar as the State suggests "that Chief Justice MacDonald and Sununu's telephone records are adequate impeachment evidence," the defense is unaware of any cell phone records of Chief Justice MacDonald as none has been provided in discovery.

30. When Formella spoke to Ogden on June 21, 2024, his notes indicate that “Goc [sic] mentioned it to Gordon beforehand and he didn’t know.” It is unclear if “beforehand” refers to before the call with Formella or before the meeting with Justice Hantz Marconi. If the latter, then those notes would contradict Ogden’s subsequent claims in both interviews with investigators that he was not aware of any phone call to MacDonald prior to the meeting. If the former, it would confirm his and Sununu’s recollections of only one call in which the Hantz Marconi meeting was discussed. Finally, at the top of Formella’s notes, separate from his bullet points, are the words “petty, personal, political.” D710 (handwritten). *See also* D712 (“[Note on top of page: petty, personal, political]”). If these notes are about the disputes at Rye Harbor and the Pease Development Authority, those comments would confirm Ogden’s recollections of no particular statements about Formella and contradict MacDonald. However, if they are about Formella or the DOJ specifically, they contradict both Ogden’s and Sununu’s subsequent statements to investigators.

31. Impeachment by contradiction “is a well-recognized tool” for challenging the reliability of witnesses. *See e.g. State v. Letarte*, 169 N.H. 455, 463 (2016) (quotations and citations omitted). The State has indicated that it intends to call Sununu, Ogden, and MacDonald at trial. The defense is thus entitled to challenge those witnesses’ reliability and credibility “through the testimony of another witness,” here, Formella. *Id.* Part I, Article 15 of the New Hampshire Constitution and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution guarantee the criminally accused the rights to compulsory process, due process, and a fair trial. *See, e.g., State v. Edic*, 169 N.H. 580, 586 (2017); *Washington v. Texas*, 388 U.S. 14 (1967). The defense is entitled to have Formella available to testify at trial and to call him as needed regarding what Sununu and Ogden said to him about the Hantz Marconi meeting.

LASTLY, AS IN PAST MOTIONS AND OBJECTIONS,
THE STATE INCORRECTLY DESCRIBES THE PRIOR ORDERS OF THIS CASE

32. The State is wrong to say that this “Court has already considered and rejected this argument [to disqualify Formella because he is a witness] in its Order on the First Motion.” *St. Mot. Quash* at ¶ 4. Nowhere in this Court’s December 18, 2024, Order did the Court consider whether Formella’s testimony is relevant, material, and unobtainable elsewhere. *See generally State v. Van Dyck*, 149 N.H. 604, 606 (2003). As described in the Renewed Motion, this Court invited the defense to renew its motion to seek relief should additional information be produced. *See Renewed Mot.* at ¶ 3. The State’s lengthy block quote from the Court’s Order, *see St. Mot. Quash* at ¶ 4, says nothing about Formella as a necessary witness. It is certainly not the “normal course” for the Attorney General himself to interview percipient witnesses at the start of a DOJ investigation. *See Reply* at ¶ 4, n.4.

CONCLUSION.

33. For all of these reasons, the Court should deny the State’s Motion to Quash.

WHEREFORE, the defense respectfully requests that this Court deny the State’s Motion to Quash the subpoena for Attorney General Formella because he is a necessary witness at trial.

Dated this 4th day of August, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Guerriero, do hereby certify that Senior Assistant Attorney General Dan Jimenez and Assistant Attorney General Joseph Fincham are registered e-filers in the Court's electronic filing system and that when filing this motion, I am electing for them to receive a copy of the document through the electronic filing system's system for electronic service.

/s/ Richard Guerriero