

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

ROCKINGHAM, SS.

OCTOBER TERM, 2025

STATE OF NEW HAMPSHIRE

v.

GENO JOSEPH MARCONI

Case No. 218-2024-CR-01426

**STATE’S MOTION TO QUASH SUBPOENA (AG FORMELLA)**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and moves this Honorable Court to quash the subpoena served on Attorney General John Formella (“AG Formella”) seeking his testimony in the trial on this matter. In support thereof, the State represents as follows:

1. On Tuesday, October 14, 2025, Defendant filed his Witness List, in which he named AG Formella as a potential witness for the Defense in this case. Later that same day, the State received a request from counsel for Defendant to accept service of a subpoena seeking AG Formella’s testimony at trial in this matter. The State accepted service on behalf of AG Formella.

2. The State is unaware of what valid basis Defendant would have for seeking AG Formella’s testimony, even after speaking with counsel for Defendant. AG Formella occupies a unique role in the New Hampshire legal system, and he is not a “necessary” witness in this case. Accordingly, the subpoena should be quashed.

Testimony of AG Formella; Uniqueness of Office of Attorney General

3. “The attorney general is a member of the executive branch, and is a constitutional officer, appointed by the Governor and Council pursuant to Part II, Article 46 of the New Hampshire Constitution.” *Opinion of the Justices (Requiring Att’y Gen. To Join Lawsuit)*, 162 N.H. 160, 171 (2011) “The New Hampshire Attorney General occupies a pivotal and unique role in the state’s criminal justice system. He is the chief law enforcement officer in the state. The Attorney General is specifically charged with enforcement of the criminal laws of the state and has been given **ultimate responsibility** for criminal law enforcement by the legislature. The Attorney General also has broad common-law powers . . . .” McNamara at § 2.01 (citations omitted) (emphasis added).

4. “The attorney general shall have and exercise general supervision of the criminal cases pending before the supreme and superior courts of the state and, with the aid of the county attorneys, the attorney general shall enforce the criminal laws of the state.” RSA 7:6. The DOJ, “through its officials, shall have all the powers and duties enumerated by statute and implied from the common law,” including the “general functions” of “[a]dvising and representing the state and its executive branch agencies in all civil legal matters” and “[s]upervising and conducting criminal investigations and prosecutions.” RSA 21-M:2.

The powers of the Attorney General are broad and numerous. Some grow out of the common law, and many are specified by statute. He is specifically charged with enforcement of the criminal laws of the state, and with supervision of criminal causes pending before the Supreme and Superior Courts. His authority to enter a *nolle prosequi* in pending actions is not doubtful. He is charged with representing the State in all causes in this court in which the state is interested. These specific statutory duties in no way detract from his powers and duties at common law.

*State v. Swift*, 101 N.H. 340, 342-43 (1958).

5. Broadly, the DOJ has two functions: criminal law enforcement and civil representation of state actors and interests.<sup>1</sup>

The office of the Attorney General was restructured in 1985 as the department of justice, under the executive direction of the Attorney General. The department consists of two divisions. The division of legal counsel is comprised of a bureau of civil law and a bureau of transportation and construction. The division of public protection consists of the environmental protection bureau, consumer protection and antitrust bureau, and criminal justice bureau.

McNamara at § 2.01 (citing RSA 21-M:6, 7; RSA 7:8-a, 8-b).

6. The Attorney General is thus unique in his overlapping criminal and civil duties. Under the New Hampshire Rules of Professional Conduct, no attorney other than the Attorney General (or the Deputy Attorney General, in the case of the invocation of RSA 7:3) may occupy such a unique position in the New Hampshire legal system. *See, e.g., N.H. R. Prof. Cond.* 1.7, 1.10, 1.13. For these reasons, seeking to call AG Formella as a witness in a criminal case would be improper and would undermine the unique and necessary institution of the Office of the Attorney General.<sup>2</sup> Allowing such a subpoena would subject the Office of the Attorney General to being subpoenaed in every criminal and civil trial prosecuted (and every civil trial defended) in the name of the State of New Hampshire. Accordingly, the subpoena should be quashed.

#### AG Formella Is Not a Necessary Witness

7. “A lawyer is a ‘necessary’ witness if ‘his or her testimony is relevant, material and unobtainable elsewhere.” *State v. Van Dyck*, 149 N.H. 604, 606 (2003). “If the evidence sought to be elicited from the attorney-witness can be produced in some other effective way, it may be that the attorney is not necessary as a witness. If the lawyer’s testimony is merely

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<sup>1</sup> The DOJ also consists of the Office of the Solicitor General. *See* RSA 21-M:12-a. Similarly, the Solicitor General’s duties consist of “[r]epresenting the state in all criminal appeals to the New Hampshire supreme court or federal court” and “[r]epresenting executive branch officials and executive branch agencies, boards, and commissions in all appeals to the New Hampshire supreme court. RSA 21-M:12-a (II) (a)-(b).

cumulative, or quite peripheral . . . ordinarily the lawyer is not a necessary witness.” *Id.* (quotations omitted). “Simply to assert that the attorney will be called as a witness, a too-frequent trial tactic, is not enough.” *Id.* at 607 (quotation omitted).

8. The State is aware of no facts to which AG Formella would be a “necessary” witness. Accordingly, the subpoena should be quashed.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- (A) Quash the subpoena served on AG Formella; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: October 15, 2025

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<sup>2</sup> The State is aware of no grounds for which AG Formella’s criminal prosecution duties would cause him to be a witness in this matter.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's e-filing system to counsel of record.

/s/ Joe M. Fincham II  
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