



communications maintained by the office in all forms and on all subjects to and from the Auditor since taking office.<sup>1</sup>

4. After learning that private attorneys had been or were being hired by the Governor's office to perform services apparently related to his impeachment, and pursuant to an investigation under §29.221, on May 14, 2018, the SAO requested that the Governor's office provide clarification on the attorneys hired, the capacity in they would be serving, and whether state, taxpayer funds would be used to pay those attorneys, among other things.

5. On May 18, 2018, Counsel to the Governor, Lucinda Luetkemeyer, responded to the SAO's request for information (Exhibit A), and explicitly confirmed that:

(a) The attorneys (Greim and Garber) had been hired to represent Governor Greitens in his official capacity, and

(b) The attorneys (Greim and Garber) had been hired to represent the "Office of the Governor."

6. On May 18, 2018, Attorney General Josh Hawley sent a letter to the SAO reporting that the Attorney General's Office (AGO) had not been consulted on the hiring of these attorneys, and also expressed the understanding that these attorneys (Greim and Garber) has been retained to represent the Office of the Governor, and not Governor Greitens in his individual capacity. Exhibit B.

7. On Wednesday, May 16, 2018, the Special Investigative Committee on Oversight held a hearing related to proceedings on the possible impeachment of Governor Greitens.

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<sup>1</sup> By recent Court order, the vast majority of Plaintiff's requests were dismissed, and Plaintiff further abandoned many of their demands such that the remaining claim is addressed to a much smaller subset of potential records.

During this hearing, Greim explained that he was representing the "office of the Governor" and also the Governor "in his official capacity" in the legislative proceedings. Greim and his co-counsel, Ross Garber, admitted that public funds would be used to pay their fees.

8. The MAF lawsuit names as a party the Missouri State Auditor and does not appear to assert any claim against Auditor Galloway in any personal capacity. See First Amended Petition, ¶17.

9. A suit against an individual in their official capacity is considered a suit against the state. *Betts-Lucas v. Hartmann*, 87 S.W.3d 310, 327 (2002) (discussion is in the context of sovereign immunity). Accordingly, the action against the SAO is, for legal purposes, an action against the State of Missouri.

10. The SAO is a part of an integrated executive branch of state government that includes the office of the governor. Mo. Const. Art. IV, §12. Accordingly, counsel representing a state official in their official capacity (here, Governor Greitens) is representing the state itself.

11. On May 18, 2018, a spokesperson for Governor Greitens himself, Parker Briden, confirmed that the attorneys had been hired to represent the Governor in his official capacity, and also underscored that the impeachment proceedings have implications for "the institution of the office of the Governor[.]" Exhibit C. Briden described the proceedings as potentially affecting "the core of the executive branch." Exhibit C.

12. Under Rule 4-1.10(a), no lawyer associated with a firm "shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 4-1.7 or 4-1.9[.]" Accordingly, if neither Greim nor Hurst can permissibly represent MAF, no other attorney in the same firm can do so.

13. Counsel Greim, Hurst, and the law firm of Graves Garrett LLC have undertaken to represent the state itself in an action directed at the core of the executive branch, which includes the Missouri State Auditor. Concurrently, those same attorneys and that same law firm are representing a purely private entity, MAF, in a proceeding against the state seeking money damages. This circumstance gives rise to an impermissible conflict of interest.

14. There has been no waiver of conflict or even a discussion requesting such a waiver.

15. Plaintiff is presently able to proceed with court discovery against the State of Missouri through a state-wide elected official of the executive branch of government at the same time counsel for Plaintiff is reportedly engaged to protect the core of that branch of government. Absent intervention and review, counsel for Plaintiff may be proceeding unethically.

16. Because this matter has just come to the attention of defense counsel, and because a proper review should be conducted, Defendant asks this Court:

(a) To issue an order suspending all proceedings, including discovery, in the present case pending a ruling on the motion to disqualify;

(b) To enter a scheduling order as follows:

1. Defendant may submit one set of discovery requests to include, as needed, interrogatories, request for documents, request for admissions, and deposition(s) directed solely to facts surrounding the issue of conflict of interest. Interrogatories and document requests must be served within five business days of entry of the scheduling order. A request for admissions must be served no

later than ten business days of service of responses to any interrogatories and requests for documents (whichever is later).

2. Any depositions must be completed no later than 30 days after service of responses to requests for admissions, or 30 days after responses to interrogatories/request for documents is due if no request for admissions is requested.

(c) To grant an evidentiary hearing on the record.

17. This motion is not made for the purposes of delay, but to ensure that proper rules of attorney ethics are respected and followed in the pending litigation. Defendant states that Defendant will ensure preparedness to timely respond to Plaintiff's discovery such that Defendant will not seek an extension of time to respond if this motion is denied, and responses will be ready for service at the conclusion of the proposed inquiry. Defendant is ready to propound its own discovery, but is holding it and any other litigation-oriented action that is not required by the rules of civil procedure until this matter is decided.

WHEREFORE, Defendant prays this Court will grant Defendant's motion to disqualify counsel after discovery and an opportunity to be heard.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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