

IN THE COMMON PLEAS COURT
OF CUYAHOGA COUNTY, OHIO

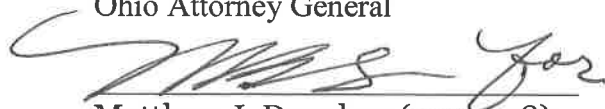
IN RE, : CASE NO. 613636
: JUDGE: JOHN J. RUSSO
: ADMINISTRATIVE JUDGE
INVESTIGATION INTO THE :
DEATH OF TANISHA ANDERSON : Judge: JOHN J RUSSO
: SD 16 077570

MOTION FOR APPOINTMENT OF A SPECIAL MASTER

The State, via the undersigned Special Prosecutor, moves this Court to appoint a Special Master in the above captioned matter. The reason for this request is described in the attached Memorandum in Support.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



Matthew J. Donahue (0079278)
Special Cuyahoga County Prosecutor
Office of Ohio the Attorney General
Section Chief, Special Prosecutions
150 E. Gay St., 16th Floor
Columbus, OH 43215
(614) 644-7233

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CUYAHOGA COUNTY

MEMORANDUM IN SUPPORT

On Wednesday, February 17, 2016, the office of the Ohio Attorney General was appointed as Special Prosecutor for this matter. The reason that this appointment became necessary is that “Garrity”¹ material has been forwarded to the Cuyahoga County Prosecutor’s Office.

The undersigned is the Chief of the Special Prosecutions Section for the Ohio Attorney General’s Office. The undersigned has requested that until such time as the “Garrity” material can be purged from the file, that no material in this matter be forwarded to the Special Prosecutor.

In order for this matter to move forward, the “Garrity” material and material derivative of it must be purged from the file. Thus, the undersigned moves this Court to appoint a Special Master to review the material in this matter for “Garrity” protected content. The appointment of a Special Master is an inherent power of the Court. McCann v Maxwell, 174 Ohio St. 282, 283 (1963).

The Office of the Lorain County Prosecutor has indicated that, should this Court appoint them, they are willing to act as a Special Master. Such an appointment of the Lorain County Prosecutor’s Office would be without compensation by Cuyahoga County, but would afford the Lorain County Prosecutor’s Office all the immunities and protections of a judicial officer.

In this case, the State requests the following procedure be set. The Special Master will receive from the Cuyahoga County Prosecutor’s Office, the Cuyahoga County Sheriff’s Office,

¹ Garrity v. New Jersey, 385 U.S. 493 (1967), See also State v. Jackson, 125 Ohio St.3d 218, Syl. (2010) (“In a criminal proceeding against a public employee, the state may not make direct or derivative use of the employee’s statement that was compelled under threat of the employee’s removal from office (‘Garrity statement’)... When the state fails to prove that it did not make any use of a Garrity statement in obtaining an indictment, the indictment must be dismissed.”)

and any other relevant agency, if any, their criminal investigative file. The Court will arrange the transfer of the files. The Special Master will conduct a “Garrity” review of the criminal investigatory file in this matter and remove any “Garrity” material; if possible, identify any investigator or witness who has been exposed to “Garrity” material; and identify, if possible, the point in time that “Garrity” material was introduced to the investigation. The Special Master will provide the “Garrity” protected materials and a copy of the files that are not implicated by “Garrity” to the Court for an *in camera* inspection. The Court will review the submitted files and, if the Court so chooses, the Court may inquire of the Special Master. The Court will then cause a copy of the file, devoid of any “Garrity” material, to be forwarded to the undersigned and his staff. The Court, if it is so able and so chooses, will also inform the undersigned and his staff of any investigator or witness who has been exposed to “Garrity” material and the point in time that “Garrity” material was introduced to the investigation. The Special Master will have no contact with the Ohio Attorney General’s Office about this matter.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



Matthew J. Donahue (6079278)
Special Cuyahoga County Prosecutor
Office of Ohio the Attorney General
Section Chief, Special Prosecutions
150 E. Gay St., 16th Floor
Columbus, OH 43215
(614) 644-7233