

MAY 20 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

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In the Matter of State Grand Jury)	ORDER
Investigation # M 2014-237)	
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This matter came before me on motion of Robert W. Harrell, Jr. to disqualify Attorney General Wilson from participation in the above Grand Jury investigation and prosecution, if any. The parties submitted affidavits to the court and testimony was taken before me on March 21, 2014, with all parties being represented by counsel. Based upon the following and after full consideration of the matter I find the following as pertinent facts for consideration in this matter,¹ and reach the following conclusions of laws.

FACTUAL FINDINGS

I find that on February 14, 2013, Attorney General Wilson referred a complaint regarding alleged ethics violations by Speaker Robert Harrell, Jr. to the South Carolina Law Enforcement Division.

I find that during the first half of 2013 Attorney General Wilson, as one of his priorities, was supporting an Ethics Reform Bill which would include a Public Integrity Unit. Attorney General Wilson was of the opinion that Speaker Harrell had concerns about including the Public Integrity Unit in Ethics Reform Legislation. Attorney General Wilson was also worried that the Ethics Reform Legislation would not include the Public Integrity Unit in any final bill.

¹Other facts were presented to me, however, the facts stated herein are the pertinent facts necessary for my decision and it is unnecessary for me to make findings as to all matters that were presented to me. In any event, the above findings of facts are found by me to be the true facts governing this matter and such facts have been found by a preponderance of the evidence.

I find that on April 11, 2013 Attorney General Wilson was aware that a comprehensive ethics bill was introduced. Attorney General Wilson was also aware that a subcommittee of the full Judiciary Committee met on April 16, 2013 and he was advised that the Public Integrity Unit was not in the bill and was not included in the discussions at that Subcommittee meeting. Attorney General Wilson was advised that the bill would be considered by the full Judiciary Committee the next day on April 17, 2013.

I find that because Attorney General Wilson believed it would create an appearance of impropriety if he were to meet with Speaker Harrell given the pending SLED review of the citizen's complaint made into possible ethics violations by Speaker Harrell, Attorney General Wilson decided to contact Brad Wright, Speaker Harrell's chief of staff and chief legal counsel to arrange a meeting to get Speaker Harrell's support for a Public Integrity Unit.

I find that on April 16, 2013 Attorney General Wilson had his staff contact Mr. Wright for a meeting at his office. This meeting took place as a one on one closed door meeting between the Attorney General and Mr. Wright. I find that from Mr. Wright's standpoint the meeting was unusual and unexpected because while he had dealt with the Attorney General's office with legislation in the past, he had always dealt with the legislative affairs director and had never meet with a Constitutional Officer one on one before.

I find that Attorney General Wilson told Mr. Wright at the meeting that he could not meet with Speaker Harrell now because of the SLED investigation. Moreover while Attorney General Wilson told Mr. Wright that he was not going to talk about the SLED investigation, he immediately did discuss the SLED investigation with Mr. Wright. At the very least Attorney General Wilson conveyed to Mr. Wright his hope that the fact that his office referred the matter to SLED would not cause Speaker Harrell to withhold support for the Public Integrity Unit.

Attorney General Wilson also told Brad Wright that he had met with Chief Keel, chief of SLED who was conducting the investigation of Speaker Harrell under the office of the Attorney General, and got him to agree to support having a Public Integrity Unit in the Ethics Reform Legislation.

I find that Brad Wright, based upon the discussion of the SLED investigation, the Attorney General's directive to convey to Speaker Harrell everything that was said, and other statements and the demeanor of the Attorney General felt that the Attorney General's conduct constituted a threat and that he was being asked to deliver a threat to Speaker Harrell by the Attorney General.

I find that the Attorney General knew that if he met directly with Speaker Harrell there would have been an appearance that they were meeting about the SLED investigation.

I find that the Attorney General's affidavit states that his purpose in arranging this meeting was to get Speaker Harrell's support for a Public Integrity Unit and, his affidavit states that he did bring up the matter of the SLED investigation during the meeting with Mr. Wright. Moreover, I find that neither in his affidavit nor in his testimony does Attorney General Wilson state that he directly and specifically told Mr. Wright that there was no connection between the SLED investigation and his request for Speaker Harrell's support for the Public Integrity Unit. Rather, I find that the Attorney General felt he had to mention the referral to SLED because it was his belief that there was a connection because of his belief that Speaker Harrell's concerns about supporting the Public Integrity Unit were tied to the Attorney General's referral of the complaint concerning Speaker Harrell to SLED for investigation.

I find that Attorney General Wilson acknowledged in his testimony before me that he had a role in the ethics complaint regarding Speaker Harrell. Attorney General Wilson testified that

while such complaint would normally be sent to the House Ethics Committee, Attorney General Wilson with his staff considered the complaint as an awkward situation and determined the complaint should be forwarded to SLED, rather than the House Ethics Committee, for a law enforcement investigation.² Thereafter Attorney General Wilson has continued in his role by initiating State Grand Jury proceedings.

I also find that during the time of the investigation of Speaker Harrell, in which Attorney General Wilson had a role, Attorney General Wilson was seeking to accomplish the political goal to obtain Speaker Harrell's support for the Public Integrity Unit advocated by Attorney General Wilson.

I therefore find that Attorney General Wilson did have a role in the criminal investigation at the same time he was seeking political support of Speaker Harrell for the Public Integrity Unit. Furthermore, I disagree with the Attorney General's testimony that there was nothing wrong with Attorney General Wilson meeting with Speaker Harrell. This is so because his office was still involved in the case even when it was referred to SLED.³

I find that Attorney General Wilson's testimony that if someone had seen him walking into Speaker Harrell's office this would have created an appearance that they were meeting about the SLED case and people would be yelling that the Attorney General was meeting with the target of an investigation shows Attorney General Wilson knew that there would be an appearance of impropriety merely from such a meeting and that on some level he viewed

²According to Attorney General Wilson's testimony every decision (presumably including the decision to refer the matter to SLED) was made with the agreement of his staff as well as his partner agency, SLED. In this circumstance I find that Attorney General Wilson did have a role with his partner, SLED.

³In his affidavit filed herein Attorney General Wilson acknowledged the impropriety of having a meeting with Speaker Harrell given the pending SLED review.

Speaker Harrell as a target when he met with Mr. Wright.

CONCLUSIONS OF LAW

1. I conclude that S.C. Code Ann. §14-7-1650 provides that when a conflict of interest disqualifies the Attorney General from participation in a state grand jury investigation the matter shall be referred to a solicitor for investigation.

2. I conclude Rule 8.4 of Rule 407, SCACR, Professional Conduct, states it is misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. The notes to Rule 8.4 state that lawyers holding public office assume a legal responsibility going beyond those of other citizens.

3. I conclude that Rule 7 of Rule 413, SCACR, Lawyer Discipline, provides that it would be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal system in disrepute.

4. I conclude that the standard set forth by the Criminal Justice Section of the American Bar Association state that a prosecutor should be aware of and comply with ethical rules and other legal standards. Attorney General Wilson acknowledged he was bound by the ethical requirement of practicing law.

5. I conclude the National District Attorneys Association National Prosecutor's Standards provide that a prosecutor should not engage in activities likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office. A prosecutor should excuse himself from an investigation where personal interest of the prosecutor would cause a fair minded, objective observer to conclude the prosecutor's neutrality, judgment or ability to administer the law in an objective manner may be compromised. These standards are appropriate for my consideration here.

6. I conclude that the fact that at the same time as Attorney General Wilson had a role in the investigation of Speaker Harrell, Attorney General Wilson sought Speaker Harrell's support for political legislation which Attorney General Wilson promoted, created a conflict with Attorney General Wilson's duties of office, as well as an acknowledged appearance of impropriety. While seeking political support through a meeting with Mr. Wright Attorney General Wilson explicitly brought up the fact that an investigation of Speaker Harrell was pending and that he and the chief of SLED, also involved in the investigation of Speaker Harrell, supported the legislation of which Attorney General Wilson sought Speaker Harrell's support.

I further conclude that the conduct of Attorney General Wilson conflicts with the rules of professional conduct. As Attorney General Wilson acknowledged, it would at least cause an appearance of impropriety for the Attorney General to meet with the target of an investigation (which according to Attorney General Wilson Speaker Harrell was) and ask him to support legislation (favored by the Attorney General) and in the same meeting remind Speaker Harrell of the pending investigation.

To sanction such conduct is to sanction activity that could well be considered to be the appearance of improper conduct. I also conclude that the conduct of Attorney General is beyond the limitation of the National Standards referred to herein.

Based upon the foregoing and after full consideration of the entire matter I am of the opinion that a conflict of interest disqualifies the Attorney General from participation herein. Accordingly, IT IS HEREBY ORDERED that the motion of Robert Harrell, Jr. to disqualify Attorney General Wilson from participation in the Grand Jury investigation and prosecution be and the same is hereby granted. Further, I will appoint a solicitor to conduct and oversee the investigation by separate order.

AND IT IS SO ORDERED.

L. Casey Manning
Presiding Judge

_____, 2014