

**IN THE CRIMINAL COURT FOR SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT, AT MEMPHIS
DIVISION III**

JASON WHITE)		
Petitioner)	Docket No.	17 01568
)	Post Conviction	
vs.)		
)		
STATE OF TENNESSEE)		

MOTION TO QUASH SUBPOENA

Comes now, the State of Tennessee and moves this Honorable Court to quash the subpoenas issued by the Defendant for District Attorney General, Amy Weirich and would show the Court as follows:

1. Attorney Shae Atkinson, elbow counsel for petitioner Jason White served General Weirich and Assistant District Attorney Scruggs, with a subpoena to appear in the scheduled August 27, 2021, hearing on petitioner’s Motion to Disqualify and Petition for Post-Conviction Relief;
2. If ordered by this Court to appear both witnesses will make themselves available to testify in this proceeding;

The State asks that the subpoena be quashed and the witnesses not be required to appear for the hearing for the following reasons:

1. The State is unaware of General Weirich having any direct knowledge of facts or circumstances that would be material to petitioner’s post-conviction claims. With regard to the Motion to Disqualify the District Attorney General’s Office the state submits, beyond her statements in the documents already before the court, General Weirich has no additional information to add to the proceeding. Moreover, the State submits there is no grounds for dismissal; thus, her testimony should not be needed in

that proceeding. The State requests the Court require petitioner to articulate the relevance of testimony to be offered by General Weirich. Absent some assertion that she has direct knowledge of the facts or circumstances at issue, and that her testimony is necessary for purposes of this hearing, the State asks this Court to quash the subpoena. See State v. Womack, 591 S.W.2d 437, 443 (Tenn. App. 1979) (“[A] court has the power and the duty to prevent abuse of its process by abating subpoenas for witnesses whose testimony would be immaterial.”).

2. A post-conviction petitioner is entitled to subpoena witnesses to testify in support of his or her claims. Tenn. Sup.Ct. R. 28, § 8(C)(3) (“Each party [in a post-conviction action] shall have the right to subpoena witnesses for appearance at the evidentiary hearing.”). However, a court has the authority “to prevent abuse of its process by abating subpoenas for witnesses whose testimony would be immaterial.” State v. Womack, 591 S.W.2d 437, 443 (Tenn. Ct. App. 1979); see also State v. Ostein, 293 S.W.3d 519, 536 (Tenn. 2009) (holding that a defendant's right to subpoena witnesses “applies only when the proposed witness is material”). Moreover, a court properly quashes a subpoena where the proposed witness is not competent or where the expected testimony will not be admissible. Bacon v. State, 215 Tenn. 268, 385 S.W.2d 107, 109 (1964); State v. Smith, 639 S.W.2d 677, 680 (Tenn. Crim. App. 1982); Taylor v. State, 443 S.W.3d 80, 84 (Tenn. 2014);
3. The State submits General Weirich does not have material testimony to provide in this matter. Specifically, as it relates to petitioner’s post-conviction claims, she has no information to provide to the court as she was not the prosecutor who tried the case. Regarding the issue of disqualification, as noted in the State’s Response, the State did not initiate petitioner’s transfer to another facility. That process was conducted by TDOC under the Interstate Corrections Compact. The only involvement of General Weirich was to provide requested background information. The State stipulates that she did so as outlined in the document attached to petitioner’s Motion. Her testimony would add nothing more to the discussion of whether or not disqualification is appropriate in this case. The State submits such decision may be reached by reviewing the pleadings in this matter. Moreover, any testimony provided by General Weirich

would be dependent on her statements in the document presently before the court as she has little if any independent recollection of the events at issue.

For the forgoing reasons the State of Tennessee moves this Honorable court to quash the Subpoena for retired Judge James C. Beasley, Jr.



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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing has been delivered to the post-conviction counsel, this the 27 day of August 2021:

Filed 8-27-21
Heidi Kuhn, Clerk
BY BK D.C.