

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2023-00040

HANNAH GUTIERREZ-REED,

Defendant.

**ORDER AMENDING APRIL 21, 2023 ORDER ON DEFENDANT'S BRIEF  
ADDRESSING DISTRICT ATTORNEY'S POWER TO CONTINUE AS  
CO-PROSECUTOR AFTER APPOINTMENT OF SPECIAL PROSECUTOR**

1. This Order amends the April 21, 2023 Order which followed a hearing held on March 27, 2023, during which the Court ruled from the bench.
2. The April 21, 2023 Order was prepared by defense counsel Jason Bowles, approved as to form by former prosecutor Carmack-Altwies, and signed by the Court. [4-21-23 Ord. 3]
3. The Order read as follows: "Based on these authorities, I find that once the Santa Fe District Attorney invoked the special counsel statute, for "good cause," the authority for prosecution was transferred to the appointed special prosecutor and the district attorney lacked authority to continue as co-counsel in the prosecution." [4-21-23 Ord. 2, ¶ 5]
4. The April 21, 2023 Order, specifically paragraphs three through five, misstated the Court's oral ruling at the March 27, 2023 hearing.
5. The Court's oral ruling was as follows: "What I'm ruling Ms. Carmack-Altwies is that you either use 36-1-23.1 in the way that I've interpreted it, which means that you may not co-counsel, or you stay the course and not use the special prosecutor and prosecute it on your own." [3-27-23 FTR 10:37:35]

6. The Court intended to hold that the District Attorney could not demonstrate that there was “good cause” to appoint a special prosecutor while having the ability to continue to co-counsel on the case.
7. Rather than rule on former prosecutor Carmack-Altwies’ authority prior to the March 27, 2023 hearing, the Court intended to provide the former prosecutor with a choice, and intended that the Court would find “good cause” for a special prosecutor to be appointed if Carmack-Altwies chose to withdraw as co-counsel, or, Carmack-Altwies could have chosen to prosecute the case on her own.
8. During a hearing held on August 1, 2023 the Court announced its intention to amend the order, and Defendant’s counsel declined the Court’s offer to hold a hearing on the amendment. [08-01-23 FTR 11:41:35 – 11:42:15]

Therefore IT IS ORDERED, ADJUDGED AND DECREED that:

- A. New Mexico’s special prosecutor statute requires the State to demonstrate that it “cannot” prosecute the case for “ethical reasons or other good cause” before it may appoint a Special Prosecutor. *See* NMSA 1978, § 36-1-23.1 (“Each district attorney may, when he cannot prosecute a case for ethical reasons or other good cause, appoint a practicing member of the bar of this state to act as special assistant district attorney.”).
- B. The plain language states that the District Attorney may appoint a special prosecutor only “when he cannot prosecute a case for ethical reasons or other good cause.” *Id.*
- C. The District Attorney could have chosen to either continue to prosecute the case, or to withdraw from the case and appoint a special prosecutor due to understaffing at the District Attorney’s office.

D. The Court accepted the District Attorney's withdrawal from the case as evidence that she had "good cause" to appoint a special prosecutor.

  
MARY MARLOWE SOMMER  
District Court Judge

Certificate of Service

I certify that this Order was e-filed to counsel of record this 7<sup>th</sup> day of August, 2023.

Faith Griego