

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

STATE OF NEW MEXICO,

Plaintiff,

v.

D-101-CR-2024-00013

ALEXANDER RAE BALDWIN,

Defendant.

ORDER DENYING
STATE'S MOTION FOR CLARIFICATION OF COURT'S 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 IN STATE V. GUTIERREZ
D-101-CR-2023-00040

1. The Court has jurisdiction over the Parties and this Matter.
2. The Court has the authority to decide this motion on the pleadings without a hearing. *See* LR1-305 NMRA (“The judge assigned to the case may grant or deny a request for hearing and if the request is denied, the judge assigned to the case shall make a decision based on the pleadings filed.”).
3. On August 7, 2023 this Court entered an Order delineating the authority of the District Attorney’s Office to continue as a co-prosecutor after appointing a special prosecutor for good cause due to lack of resources.
4. 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.”).

5. According to the August 7, 2023 Order, 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.
6. The Court accepted the District Attorney's withdrawal from the case as evidence that she had "good cause" to appoint a special prosecutor.
7. On May 6, 2024 the State requested clarification of the August 7, 2023 Order and expressed Special Prosecutor Ms. Kari Morrissey's intent to appoint an assistant district attorney from the First Judicial District Attorney's Office.
8. The Court agrees, under other circumstances, that the Special Prosecutor has the same authority as the District Attorney to appoint an assistant district attorney. *See State v. Cherryhomes*, 1996-NMSC-072, ¶ 11, 122 N.M. 687 ("Section 36-1-23.1 does not expressly preclude a special prosecutor from delegating responsibilities associated with his or her appointment.").
9. Similarly, the First Judicial District Attorney's Office likely retains its ability to appoint a third special prosecutor for good cause due to lack of resources.
10. However, the Court's August 7, 2023 Order based the finding of good cause on the First Judicial District Attorney's Office's asserted lack of resources to prosecute the matter within their office.
11. This Court understands that the assistant district attorney would be on extended unpaid leave from the District Attorney's Office. This does not change the Court's analysis.
12. Appointment of an assistant district attorney from the First Judicial District Attorney's Office, even if on extended unpaid leave, would undermine the basis on which the Court found good cause.

13. Therefore, to the extent that the State requests approval of the appointment of an assistant district attorney from the First Judicial District Attorney's Office, the State's request is **DENIED.**

It is so Ordered.

A handwritten signature in black ink, appearing to read "Mary Marlowe Sommer", written over a horizontal line.

Judge Mary Marlowe Sommer

Division VIII