IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 25-582

SCA EFiled: Oct 10 2025
07:19AM EDT
Transaction ID 77281113

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,
Petitioner,
v.
THE HONORABLE LORA DYER,
Judge, Circuit Judge of Jackson County, West Virginia,
and JESSE WOOD, Defendant Below,
and Party in Interest,
Respondents.

RESPONDENT'S RESPONSE TO PETITIONER'S WRIT OF PROHBITION

/s/ Meghan Scarberry
Meghan Scarberry, Esq.
W.Va. Bar No. 13597
Public Defender Corporation
Fifth Judicial Circuit
P.O. Box 797
Ripley, WV 25271
(304) 372-2001
Email: meghan.scarberry@wvdefender5.com
Counsel for Respondent Wood

TABLE OF CONTENTS

Table of Contents……1

Table of Authorities……3

Assignments of Error……...6

Statement of the Case……...6

Summary of the Argument……...6

Statement Regarding Oral Argument and Decision……6

Argument……7

I. The Court should not issue a writ of prohibition because, consistent with the majority of jurisdictions to consider the issue, the plain language of Rule 17 of the West Virginia Rules of Criminal Procedure permits the filing and issuance of subpoenas duces tecum *ex parte* and under seal in criminal cases……7

A. An overview of jurisdictions that have addressed the issue of Rule 17(c) *ex parte* subpoenas demonstrates that Respondent's plain language interpretation represents the majority view making a request for extraordinary relief inappropriate……8

i. United States Court of Appeals……8

ii. United States District Courts……...9

iii. State Courts……..13

B. Petitioner's misunderstanding of the State's discovery obligations, as compared to the reciprocal obligations of a defendant, renders its request for extraordinary relief inappropriate and its assertions as to Respondent's discovery violations inaccurate……..15

i. Discovery Obligations in Criminal Cases……..16

ii. The Rules Already Provide Remedies for Discovery Violations……..18

C. Petitioner's so-called alternative- forcing Public Defender Corporation to pay for subpoenas duces tecum- finds no support in the plain language of the rules

and is no real alternative, since defendants with financial means may issue subpoenas directly……..18

II. The Court should not issue a writ of prohibition because the circuit court did not exceed its legitimate authority in appointing a special prosecutor……18

III. Respondent believes that Petitioner's request for extraordinary relief is improper, and the inflammatory language used by Petitioner is deserving of sanctions……...19

A. Petitioner's remarks toward counsel and the court fall short of required standards of civility……..20

B. Petitioner misquotes and omits authority, misleading this Court on the state of the law……..21

Conclusion…….22

TABLE OF AUTHORITIES

State Court Cases

Campbell v. Wyant, 26 W.Va. 702 (1885)……21, 22

Commonwealth v. Cambron, 546 S.W.3d 556 (Ky. Ct. App. 2018)……14

Gum v. Dudley, 202 W.Va. 477; 505 S.E.2d 391 (1997)……22

People v. Spykstra, 234 P.3d 6662 (Colo. 2010)……14

State v. Baltazar, 241 P.3d 941 (Colo. 2010)……14

State v. Boyd, 160 W.Va. 234; 233 S.E.2d 710 (1977)……21

State v. DiPrete, 698 A.2d 223 (R.I. 1997)……14

State v. Hall, 172 W.Va. 138; 304 S.E.2d 43 (1983)……20

State v. Russel, 897 N.W.2d 717 (Iowa 2017)……13

State ex rel. Games-Neely v. Yoder, 237 W.Va. 301; 787 S.E.2d 572 (2016)……19, 20

State ex rel. Hoover v. Berger, 199 W.Va. 12; 483 S.E.2d 12 (1996)……18, 19

State ex rel. Richard S. v. McCarty, 200 W.Va. 346; 489 S.E.2d 503(1997)……21

Federal District Court Cases

U.S. v. Alascio, 2015 WL 13664030 (D. Maryland 2015)……11, 13

U.S. v. Beckford, 964 F.Supp. 1010 (E.D.Va. 1997)……10, 12, 13

U.S. v. Belcher, 2023 WL 8936756 (W.D.Va. 2023)……10, 13

U.S. v. Bennett, 2014 WL 801042 (S.D.W.Va. 2014)……10, 13

U.S. v. Bradley, 2011 WL 1102837 (S.D. Illinois 2011)……11

U.S. v. Cook, 2019 WL 2414887 (E.D. Tenn. 2019)……11

U.S. v. Daniels, 194 F.R.D. 700 (D. Kansas 2000)……10

U.S. v. Ellis, 2020 WL 3893789 (W.D. Penn. 2020)……10, 11

U.S. v. Esposito, 2025 WL 1121430 (E.D. Texas 2025)……11

U.S. v. Eye, 2008 WL 1776400 (W.D. Miss. 2008)……11

U.S. v. Finn, 919 F.Supp.1305 (D. Minn. 1995)……11, 12

U.S. v. Florack, 838 F.Supp. 77 (W.D.N.Y. 1993)……9, 10, 12

U.S. v. Fox, 275 F.Supp.2d 1006 (D. Neb. 2003)……...….12, 13

U.S. v. Fulton, 2013 WL 4609502 (D. New Jersey 2013)…….…..……..11

U.S. v. Garg, 2024 WL 37047 (W.D. Wash. 2024)……...……11

U.S. v. Gogic, 2025 WL 2371008 (E.D.N.Y. 2025)…….…….11

U.S. v. Hare, 308 F.Supp.2d 955 (D. Neb. 2004)……...11, 12,13

U.S. v. Hargrove, 2013 WL 3465791 (D. Colo. 2013)…….….10

U.S. v. Jackson, 22 F.Supp.3d 636 (E.D. Louisiana 2014)……..……..11

U.S. v. Jenkins, 895 F.Supp. 1389 (D. Hawaii 1995)……...…….10

U.S. v. Langford, 2009 WL 10672813 (N.D. Alabama 2009)……..……11

U.S. v. Litos, 2014 WL 806022 (N.D. Indiana 2014)…….……...11

U.S. v. Najarian, 164 F.R.D. 484 (D. Minn. 1995)……...…10

U.S. v. Nshimiye, 761 F.Supp.3d 227 (D.Mass. 2024)…….…….10

U.S. v. Peterson, 196 F.R.D. 361 (D. S.D. 2000)……..…….11, 12

U.S. v. Poimboeuf, 331 F.R.D. 478 (W.D. Louisiana 2019)…….10

U.S. v. Potts, 2017 WL 1314193 (S.D. Texas 2017)……...……..10

U.S. v. Ray, 337 F.R.D. 561 (S.D.N.Y. 2020)……..…….10

U.S. v. Sarinana, 2025 WL 2062710 (D. Arizona 2025)……..….10

U.S. v. Sellers, 275 F.R.D. 620 (D. Nevada 2011)……..…..10

U.S. v. Simpson, 2011 WL 2880885 (N.D. Texas 2011)……...……11

U.S. v. Sjodin, 2023 WL 2958065 (D. Utah 2023)……..…..11

U.S. v. Skelos, 2018 WL 2254538 (S.D.N.Y. 2018)……..11

U.S. v. Sleugh, 318 F.R.D. 370 (N.D. Cali. 2016)…….10

U.S. v. Tomison, 969 F.Supp. 587 (E.D.Cali. 1997)……..…10

U.S. v. Turner, 2025 WL 1062511 (W.D.Va. 2025)……..……13

U.S. v. Tutt, 2013 WL 4803486 (E.D. Mich. 2013)……...……11

U.S. v. Urlacher, 136 F.R.D. 550 (W.D.N.Y. 1991)……...…..12

U.S. v. Venecia, 1997 WL 325328 (D. Oregon 1997)……..….10

U.S. v. Vigil, 2013 WL 3270995 (D. New Mexico 2013)……..10

Federal Circuit Court Cases

U.S. v. Hang, 75 F.3d 1275, 1282 (8th Cir. 2003)…….…….9

U.S. v. Kravetz, 706 F.3d. 47 (1st Cir. 2013)……..9

U.S. v. Sleugh, 896 F.3d 1007 (9th Cir. 2018)……..…..9

Statutes

West's Ann. Cal. Penal Code Section 1326……..15

Rules

Alaska R. Crim. P. 17…….……..15

Colorado Crim. P. Rule 17…….……..14

Iowa Rule Criminal Procedure 2.15…….……13

Joint U.S. Dist. Ct. Rule D. Ky. LCcR 17.2……..11

Ky. R. Crim. P. 7.02…….……14

ME Rule 17(d) of the Rules of Crim. Pro…….15

Rhode Island Super R. Crim. P. Rule 17…….…..14

Rule 3.3 West Virginia Rules of Professional Conduct…….…21

Rule 8.2 West Virginia Rules of Professional Conduct……...…..20

Rule 16 West Virginia Rules of Criminal Procedure…….16, 17

Rule 17 West Virginia Rules of Criminal Procedure…….7, 8

Rule 32.02 West Virginia Trial Court Rules……16

Rule 32.03 West Virginia Trial Court Rules……....16

Rule 32.06 West Virginia Trial Court Rules……..8

Uniform U.S. Dist. Ct. Rules D. Miss. U.L.R.Cr.R.17……..11

U.S. Dist. Ct. Rules N.D. Ohio Standing Order re: Fed. R. Crim. P. 17(c)(1)……..11

VI St. Dist. Ct. RCPR Rule 17.2……11

WVODC Standard I(A)(3)…….20

ASSIGNMENTS OF ERROR

1. **Does a circuit court have discretion and authority to issue *ex parte* subpoenas pursuant to Rule 17(c) of the West Virginia Rules of Criminal Procedure and make those documents returnable to only the party requesting them leaving their further disclosure subject to already existing discovery rules?**
2. **Does a circuit court have discretion and authority to appoint a special prosecutor when the current prosecutor has gained *ex parte* knowledge of defense trial strategy through an error of the Circuit Clerk's office?**

STATEMENT OF THE CASE

Respondent's Statement of the Case was submitted ex parte along with a request that this portion of the reply be provided under seal for the same reasons the information would have been prejudicial to Respondent below- it reveals trial strategy.

SUMMARY OF THE ARGUMENT

Petitioner has improperly requested extraordinary relief for its perceived violation of what appears to be a majority practice soundly within the discretion of the trial court in violation of Respondent's speedy trial right. This request was made prematurely before Petitioner has suffered any actual prejudice based on the misguided assumptions that (1) defense counsel violated her discovery and ethical obligations and (2) a specially appointed prosecutor is somehow inferior when it comes to representing the rights of the West Virginia citizenry. These assumptions are not accurate and do not merit the extraordinary relief requested.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

While this matter is not currently the subject of a circuit split, as all circuits to consider the issue have found it to be permissible, there appears to be no caselaw in West Virginia specifically on the issue making it a matter of first impression for our state. Further, there is a small minority of federal district courts that do not permit the practice (though notably all of the district courts in the Fourth Circuit appear to permit the practice). Counsel requests oral argument pursuant to Rule 20 of the West Virginia Rules of Appellate Procedure if the Court desires to issue guidance on

Rule 17 of the West Virginia Rules of Criminal Procedure. The issue is a matter of fundamental public importance as it concerns all indigent defendants and their right to compulsory process, due process, and a fair trial.

ARGUMENT

I: The Court should not issue a writ of prohibition because, consistent with the majority of jurisdictions to consider the issue, the plain language of Rule 17 of the West Virginia Rules of Criminal Procedure permits the filing and issuance of subpoenas duces tecum *ex parte* and under seal in criminal cases.

Petitioner is trying to make a controversy out of a universally permitted practice in every federal circuit court to decide the issue. This routine practice has been approved by a large majority of federal district courts including the district courts of the Fourth Circuit.

The plain language of Rule 17 of the West Virginia Rules of Criminal Procedure states, in relevant part:

> (a) For attendance of witnesses; form; issuance. - A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a magistrate in a proceeding before that magistrate, but it need not be under the seal of the court.
>
> (b) Defendants unable to pay. - The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued, the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the state.
>
> (c) For production of documentary evidence and of objects. - A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

The plain language of the rule permits the issuance of an *ex parte* subpoena duces tecum. Although subsection (c) does not contain a reference to the phrase "*ex parte,*" it provides that a subpoena "may *also* command the person to whom it is directed to produce the books, papers, documents or other objects designated therein." *Id. (emphasis added).* Further, subsection (c) states that the court "*may* direct that the books, papers, documents or objects designated in the subpoena be produced before the court…" and "*may* upon their inspection permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys." *Id.* (emphasis added).

The plain language interpretation of Rule 17 is further supported by West Virginia Trial Court Rule 32.06(a):

> Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

The plain language of both rules indicates discretion on the part of the court as to how and when and by whom inspection of discovery is appropriate. Instead of providing a comprehensive overview of the current body of law on the issue, the Petitioner has selectively cherry-picked cases from courts that they believe support their argument. However, these cases are frequently decided based on different underlying facts and different statutory language. Counsel for the Respondent has attempted to more thoroughly review how other courts are currently handling this issue.

A. An overview of jurisdictions that have addressed the issue of Rule 17(c) *ex parte* subpoenas demonstrates that Respondent's plain language interpretation represents the majority view making a request for extraordinary relief inappropriate.

i. United States Court of Appeals

Because West Virginia's Rule 17 mirrors the federal rule, and the highest courts to address the issue have upheld *ex parte* subpoenas, there is no identifiable circuit split on the issue.

Respondent located three federal circuit courts (1st, 8th, and 9th) that considered *ex parte* subpoenas pursuant to Rule 17(c).

In *United States v. Hang*, the Court concluded that "an indigent defendant may make an ex parte application for the issuance of a subpoena duces tecum." 75 F.3d 1275,1282 (8th Cir. 2003). They reviewed the wording of Rule 17(c), specifically focusing on the statement that "a subpoena may 'also' require a person to produce documents." *Id*. (citing *U.S. v. Florack*, 838 F.Supp. 77, 78 (W.D.N.Y. 1993)). In *United States v. Kravetz*, the Court looked at *ex parte* subpoenas that were issued and considered whether or not the media should have a right to access the information on First Amendment grounds. 706 F.3d 47, 52 (1st Cir. 2013). The court did not at any point say obtaining the information via the *ex parte* subpoena process was improper, and the court's holding tacitly approved the practice. Finally, in *United States v. Sleugh*, the Court opened their opinion stating

> [c]riminal defendants sometimes seek to obtain evidence by filing applications asking the Court to issue subpoenas for the production of documents or witnesses pursuant to Federal Rule of Criminal Procedure 17(c). These applications, supported by an attorney's affidavit explaining the reasons the evidence is necessary, are often filed ex parte and under seal.

896 F.3d 1007, 1010 (9th Cir. 2018). With this language, and with no indication anywhere in their opinion to the contrary, the court clearly indicates that the process of filing *ex parte* subpoenas for production of both documents and witnesses is permissible.

ii. United States District Courts

Petitioner argues that the issuance of *ex parte* subpoenas duces tecum is a limited federal practice and only a small number of federal jurisdictions permit it. Pet'r's Petition 7, 8. Counsel for the Respondent attempted to survey the current District Court positions on this issue and can only conclude that Petitioner's position is not supported by the current body of law on the issue

as the majority[12] permit this practice with varying levels of restriction while only finding a few jurisdictions[3] that categorically do not permit the practice.

---

[1] *U.S. v. Beckford*, 964 F.Supp. 1010, 1020-1030 (E.D.Va. 1997)(permitting ex parte subpoena duces tecum returnable at trial as well as pre-trial if specific showings are made); *U.S. v. Tomison*, 969 F.Supp. 587, 595 (E.D. Cali. 1997)(permitting ex parte subpoena duces tecum for pre-trial production of documents when defendant's trial strategy may be revealed); *U.S. v. Ray*, 337 F.R.D. 561, 569 (S.D. NY 2020) (Rule 17(c) provides "no right for the Government to oppose or move to quash ex parte subpoenas" which in this case were pre-trial subpoenas duces tecum for medical records); *U.S. v. Nshimiye*, 761 F.Supp.3d 227, 232 (D. Mass. 2024)("decisions in this circuit court permit the use of ex parte applications where necessary to avoid a premature disclosure of trial strategy and witness lists" though the court is not clear as to whether this is for pre-trial or only trial production); *U.S. v Belcher*, 2023 WL 8936756 (W.D. Va. 2023)("Federal Rule of Criminal Procedure 17(c) allows for the issuance of pretrial subpoenas duces tecum."); *U.S. v. Sellers*, 275 F.R.D. 620, 625 (D. Nevada 2011)("This court agrees with those courts which have found that an indigent defendant should be permitted to make an *ex parte* application for pretrial production of documents under limited circumstances…"); *U.S. v. Florack*, 838 F.Supp.77, 79 (W.D. NY 1993)(concluding "…an indigent defendant is also entitled to an ex parte procedure for obtaining a subpoena duces tecum to compel the production of witnesses and documents for a hearing or trial."); *U.S. v. Najarian*, 164 F.R.D. 484, 487 (D. Minn. 1995)(permitting ex parte subpoena duces tecum but requiring the documents to be returned to the court and placing a time limit on how long they remained sealed); *U.S. v. Daniels*, 194 F.R.D. 700, 702 (D. Kansas 2000)(recognizing "that Federal Rule 17(c) provides for an ex parte application for a subpoena duces tecum seeking pretrial production of documents to be issued to a third party" but requested further briefing before deciding if the particular subpoenas at question should issue); *U.S. Venecia*, 1997 WL 325328 (D. Oregon 1997)(permitting the practice generally but finding that the subpoena in this case was not specific enough); *U.S. v. Jenkins*, 895 F.Supp. 1389, 1397 (D. Hawai'I 1995)(finding no error in the process to issue the *ex parte* subpoena duces tecum, but determining the subpoenas sought impermissible impeachment material); *U.S. v. Sarinana*, 2025 WL 2062710 (D. Arizona 2025)(permitting the issuance of *ex parte* subpoena duces tecum and acknowledging that there are "instances where it would be appropriate for subpoenaed materials to be shared only with the requesting party" but in this instance requiring both parties to get access to the returns); *U.S. v. Vigil*, 2013 WL 3270995 (D. New Mexico 2013)("…rule 17(c) permits ex parte procedure for indigent defendants" but directed the witness to produce the items to the Court instead of directly to defense counsel); *U.S. v. Hargrove*, 2013 WL 3465791 (D. Colorado 2013)(finding that ex parte application is appropriate under certain circumstances, but not the circumstances of this particular case); *U.S. v. Poimboeuf*, 331 F.R.D. 478, 480 (W.D. Louisiana 2019)(permitting ex parte Rule 17(c) subpoenas after meeting certain requirements); *U.S. v. Potts*, 2017 WL 1314193 (S.D. Texas 2017)(an amended subpoena was filed with an ex parte declaration which the court determined was appropriate because it allowed for the court's oversight while concealing applicant's trial strategy); *U.S. v. Bennett*, 2014 WL 801042 (S.D. W.Va. 2014)(noting that there is a heavy burden to proceeding ex parte motions for issuance of Rule 17(c) subpoenas, but not completely foreclosing the option); *U.S. v. Sleugh*, 318 F.R.D. 370, 371 (N.D. Cali. 2016)(noting ex parte subpoenas duces tecum are permitted after following proper procedure and showing good cause);

[2] *U.S. v. Ellis*, 2020 WL 3893789 (W.D. Penn. 2020)(citing *Wecht*, 2008 WL 336298, at *5 U.S. Dist. LEXIS 8078 at *14 "[I]f defendant wishes to secure documents in advance of a witness' testimony but, because he fears that filing the motion required by Rule 17(c) will divulge trial strategy to the detriment of his defense or in violation of his constitutional rights, he may file his motion ex parte, but he will be

required to make a showing of good cause for keeping the motion ex parte."); *U.S. v. Alascio*, 2015 WL 13664030 (D. Maryland 2015)(finding that a motion for issuance of a subpoena pursuant to Rule 17(c) "is properly brought ex party only in those rare situations" but determining that the subpoena requested in this case was proper); *U.S. v. Sjodin*, 2023 WL 2958065 (D. Utah 2023)(permits ex parte subpoenas duces tecum generally though not in this case noting that because "the subpoenas are requested ex parte, the Court has the duty to ensure that Rule 17 is not being used as an additional means of discovery"); *U.S. v. Jackson*, 22 F.Supp.3d 636, 638 FN1 (E.D. Louisiana 2014)(permitting an parte motion of issuance of subpoena duces tecum and production prior to trial, but required documents be returned to the court and after an in camera inspection declining to release the requested documents); *U.S. v. Simpson*, 2011 WL 2880885 (N.D. Texas 2011)(upholding government's ex parte motions and applications for production of documents); *U.S. v. Cook*, 2019 WL 2414887 (E.D. Tenn. 2019)("the Court granted Defendant additional time to file a motion for subpoena duces tecum and determined the Defendant could file that motion and the attached subpoenas ex parte); *U.S. v. Hare*, 308 F.Supp.2d 955, 962 (D. Neb. 2004)(not permitting ex parte subpoena duces tecum for pretrial production); *U.S. v. Peterson*, 196 F.R.D. 361, 362 (D. S.D. 2000)(citing to *U.S. v. Finn.*, "we need not hold, and do not hold, that every Subpoena (sic) duces tecum requires a disclosure of its contents to the opposing party, for Rule 17(c) does not evince any such intent[]" only when the evidence is to be disclosed in advance of trial.); *U.S. v. Gogic,* 2025 WL 2371008 (E.D.Ny. 2025)("…Defendant must obtain court approval before serving any third-party subpoena duces tecum with a return date prior to trial."); *U.S. v. Skelos*, 2018 WL 2254538 (S.D. Ny. 2018)("…the Court will not require Defendants to provide notice to the Government of all future subpoena requests, including those they would seek to make ex parte."); *U.S. v. Fulton*, 2013 WL 4609502 (D. New Jersey 2013)(both the Government and Court agreed there are "extraordinary circumstances" where applications for a subpoena duces tecum may issue ex parte, but the Defendant in this case did not demonstrate those exceptional circumstances); Joint U.S. Dist. Ct. Rule D.Ky. LCcR 17.2 (the court may authorize a subpoena duces tecum pursuant to Rule 17(c) ex parte upon a showing of good cause); VI St. Dist. Ct. RCRP Rule 17.2 ("[a]n order permitting issuance of a Rule 17(c) subpoena may be obtained by filing either a motion or, for good cause, an ex parte motion"); U.S. Dist. Ct. Rules N.D. Ohio Standing Order re: Fed. R. Crim. P. 17(c)(1)("[a]n order permitting issuance of Rule 17(c) subpoena may be obtained by requesting leave of Court to file ex parte application to issue an early production subpoena."); and Uniform U.S. Dist. Ct. Rules D. Miss U.L.R.Cr.R.17 ("[f]or good cause, an application for approval may be made ex parte.").

[3] *U.S. v. Garg*, 2024 WL 37047 (W.D. Wash. 2024)(holding that ex parte applications are not permissible); *U.S. Exposito*, 2025 WL 1121430 (E.D. Tx. 2025)(not permitting the practice but noting they are open to further briefing on the ex parte issue specifically); *U.S. v. Tutt*, 2013 WL 4803486 (E.D. Mich. 2013)(Court concluded that "when Rule 17(c) is used to obtain documentary evidence in advance of trial the application should be reviewable by all parties to the proceeding."); *U.S. v. Bradley*, 2011 WL 1102837 (S.D. Illinois 2011)(Court "does not share Defendant's view that Rule 17(c) authorizes ex parte applications for subpoenas duces tecum."); *U.S. v. Langford*, 2009 WL 10672813 (N.D. Alabama 2009)(determining that while the application for the issuance of a Rule 17(c) subpoena duces tecum may be under seal and presented ex parte, the issuance of the subpoena itself and the documents produced cannot be kept secret); *U.S. v. Eye*, 2008 WL 1776400 (W.D. Miss. 2008)("Rule 17(c) does not authorize an ex parte procedure for obtaining records prior to trial"); *U.S. Litos*, 2014 WL 806022 (N.D. Indiana 2014)("Rule 17 does not permit for ex parte inspection").

The Petitioner cites to only one case from the Fourth Circuit and concedes that *ex parte* subpoenas are permitted to prevent the government from prematurely discovering an indigent defendant's trial strategy. Pet'r's Petition 7 (citing *United States v. Beckford*, 964 F.Supp. 1010, 1018-20 (E.D. Va. 1997)). Petitioner attaches a lengthy string cite with the phrase "but see," yet, many of these cases do not contradict the prior position, exposing a calculated pattern of cherry-picking caselaw to create a false appearance of overwhelming support for Petitioner's argument. Pet'r's Petition 7-8.

Petitioner relies on *U.S. v. Urlacher*, claiming Rule 17(c) requires notice for subpoenas. 136 F.R.D. 550 (W.D.N.Y. 1991). But *Urlacher* involved personal records of a government informant and was expressly limited by *U.S. v. Florack*, which held that indigent defendants may seek ex parte subpoenas for witnesses or documents. 838 F.Supp. 77, 79-80 (W.D.N.Y. 1993). Petitioner omits *Florack and* thereby misrepresents the district court's position. Petitioner next cites to *U.S. v. Peterson*, but that case merely held that ex parte applications for pretrial document production are reviewable by other parties, consistent with *U.S. v. Finn*, and did not support a blanket prohibition. *U.S. Peterson*, 196 F.R.D. 361-362 (D. S.D. 2000); *U.S. v. Finn*, 919 F.Supp. 1305, 1330 (D. Minn. 1995). Likewise, *State v. Fox*, did not forbid ex parte subpoenas[4]. 275 F.Supp.2d 1006, 1012 (D. Neb. 2003). Instead, *Fox* limited them to trial use, a point reaffirmed in

[4] Problematically, Petitioner cites to *State v. Fox* for the proposition that "ex parte subpoena duces tecum should not issue because 'there is no entitlement under a plain reading of the Rules to tactical surprise[.]'" Pet'r's Petition 7, 8. However, this interpretation can only be reached by removing the first half of the sentence containing the court's full holding which states *"[i]f the documents are sought for pretrial production and use in support of, or defense to, a pretrial motion* there is no entitlement under a plain reading of the Rules to tactical surprise." *Id.* at 1012 (emphasis added). This limitation is critical because the court did not, as Petitioner claims, reject entitlement to ex parte subpoenas duces tecum generally on the basis of tactical surprise. Rather, the court confined its holding to circumstances where documents are sought in connection with a pretrial motion- a significant distinction. To make matters even more clear, the same court the next year specified that Federal Rule 17(c) "does not ordinarily permit the use of ex parte applications by the government or defense for subpoenas seeking *pretrial* production of documents *unless* the sole purpose of seeking the documents is for use at trial[.]" *U.S. v. Hare*, 308 F. Supp. 2d 955. 962 (2004)(emphasis added). Neither *Fox* nor *Hare* support the Petitioner's overly broad proposition that the District Court of Nebraska disallows all *ex parte* subpoena duces tecum on the grounds of unfair surprise. Instead, the jurisdiction permits the practice, but only for production of documents to be used at trial.

U.S. v. Hare, 308 F.Supp.2d 955, 962 (D.Neb. 2004). Thus, the cases Petitioner cites do not support its claim that Rule 17(c) bars ex parte subpoenas.

Within the Fourth Circuit, *United States v. Beckford*, held that Rule 17(c) authorizes ex parte subpoenas in exceptional circumstances- such as to protect trial strategy, evidence integrity or constitutional interests. 964 F.Supp. 1010, 1030-31 (E.D.Va. 1997). The court concluded that they must first determine whether *ex parte* treatment is warranted and, if not, unseal the motion and provide notice. *Id.* at 1031. *Beckford* thus confirms that ex parte subpoenas are proper under specific conditions, including when a defendant seeks his own records from a public agency such as was the case here. *Id.* 1030.

Other district courts in the Fourth Circuit likewise permit ex parte subpoenas under specific circumstances. The Southern District of West Virginia recognizes the practice but imposes a "heavy burden" to justify it. *U.S. v. Bennett*, 2014 WL 801042 (S.D.W.Va. 2014). The District of Maryland and Western District of Virginia have adopted Beckford's reasoning, allowing ex parte subpoenas in exceptional cases. *U.S. v. Alascio*, 2015 WL 13664030 (D. Maryland 2015); *U.S. v. Belcher*, 2023 WL 8936756 (W.D.Va. 2023); *U.S. v. Turner*, 2025 WL 1062511 (W.D.Va. 2025). None of these courts appear to prohibit the practice outright.

The Petitioner unfairly accuses the Respondent of engaging in unethical legal practices without conducting sufficient research. Petitioner attempts to construe the issue as a rare or extraordinary practice found only within limited federal district courts. However, a more thorough analysis reveals just the opposite- that this practice is permitted in a majority of jurisdictions.

iii. State Courts

Petitioner cites only a handful of state court cases suggesting that *ex parte* subpoenas duces tecum are impermissible, though none with similar language to West Virginia's rule, while citing to no West Virginia authority prohibiting the practice. Pet'r's Petition 6.

Petitioner cites *State v. Russell*, where the Iowa Supreme Court held that ex parte subpoenas duces tecum were improper under its rules. 897 N.W.2d 717, 729 (Iowa 2017); *see also* Pet'r's Petition 6. However, Iowa Rule of Criminal Procedure 2.15 requires notice and lacks any

reference to *ex parte* applications. Because Iowa's rule differs from West Virginia's, Russel is neither analogous nor persuasive authority.

Petitioner also relies on *Commonwealth v. Cambron*, where the Kentucky court rejected *ex parte* subpoenas, calling the practice a minority view. 546 S.W.3d 556, 562-67 (Ky. Ct. App. 2018). But Kentucky's Rule 7.02 is silent on ex parte subpoenas, unlike West Virginia's Rule 17. Because the Kentucky rule lacks comparable language, *Cambron* offers no persuasive authority.[5]

Petitioner also cites *State v. Baltazar*, where Colorado's Rule 17 was held not to permit ex parte subpoenas because, unlike the federal rule, it lacks permissive language. 241 P.3d 941, 943 (Colo. 2010); *see* Pet'r's Petition 7; *see also People v. Spykstra*, 234 P.3d 6662 (Colo. 2010). As Colorado's rule contains no comparable provision, its decisions provide no persuasive guidance for interpreting West Virginia's Rule 17(c).

Unlike the other cases cited by Petitioner, Rhode Island's rule pertaining subpoenas has the same language as West Virginia's Rule 17. Rhode Island Super R. Crim. P. Rule 17. In Rhode Island, while "ex parte applications for a pretrial subpoena duces tecum are generally impermissible under Rule 17(c),' it is possible 'that ex parte process for issuance of such a subpoena may be warranted in certain extraordinary circumstances, such as a case where identification of the source of the evidence might imperil the source or the integrity of the evidence or where a fundamental privacy right or constitutional interest of a defendant might be implicated.'" Pet'r's Petition 13 (*citing State v. DiPrete*, 698 A.2d 223, 228 (R.I. 1997).[6] Other

[5] Further, Petitioner attempts to weaponize the language from *Cambron*, to attack Respondent by using what that court viewed as the "minority position" (though as discussed later Respondent does not believe this to actually be a minority position). Pet'r's Petition 6-7. Once again, this aggressive language, such as calling defense counsel and the trial judge "secret allies" and characterizing the practice as "cloak-and-dagger," is misplaced because the premise underlying the court's decision in *Cambron* was that there was no language in Kentucky's rule authorizing *ex parte* procedure. Pet'r's Petition 6-7, 18.

[6] Petitioner assumes in their briefing that there is no evidence of extraordinary circumstances such as those contemplated by the Rhode Island court and that Respondent is seeking "information which the State is entitled to view." Pet'r's Petition 13. Petitioner was not a party to the *ex parte* proceeding below and therefore, has no basis to assume, much less assert to this Court, that Respondent failed to demonstrate extraordinary circumstances or that the circuit judge erred simply because the Petitioner was absent.

states, including Alaska, California, and Maine likewise permit the practice in particular circumstances. *See generally* Alaska Rules of Criminal Procedure Rule 17; West's Ann. Cal. Penal Code Section 1326; and ME Rules of Unified Criminal Procedure Rule 17(d).

Petitioner incorrectly asserts that "the Jackson County Public Defender's Office has persuaded the Circuit Court of Jackson County to instead follow a controversial practice in *some federal district courts* that permits indigent criminal defendants to obtain ex parte subpoena duces tecum…" Pet'r's Petition 7 (emphasis added by Petitioner). Likewise, Petitioner's assertion that the Jackson County Circuit Court has "broadly adopted a limited *federal* practice in a West Virginia *state* court prosecution" also implies that states do not permit this practice, which is not accurate. Pet'r's Petition 8 (emphasis added by Petitioner). As evidenced by the state court rules above, any assertion that the practice of issuing *ex parte* subpoenas is strictly a federal practice and not done in state courts is false.

As the Petitioner acknowledges, obtaining subpoenas for witnesses and documents is "a critical, basic, and fundamental aspect of criminal litigation[.]" Pet'r's Petitioner 12. There are times when that process must be done in the absence of the knowledge of the State in order to preserve trial strategy of defendants. There is nothing in the record to suggest that the circuit court is not performing its gatekeeping function other than the Petitioner's "information and belief." Pet'r's Petitioner 7. The court has received these requests from the Respondent, considered whether the *ex parte* nature of the applications was appropriate, determined that they would reveal trial strategy, and granted the subpoenas as requested- all as is within their discretion.

B: Petitioner's misunderstanding of the State's discovery obligations, as compared to the reciprocal obligations of a defendant, renders its request for extraordinary relief inappropriate and its assertions as to Respondent's discovery violations inaccurate.

The State's claim that *ex parte* subpoenas are used to "hide evidence" misstates both Rule 17 and the prevailing law and assumes unethical conduct by Respondent's counsel without any justification. Pet'r's Petitioner 11. There is no support for the allegation that defense counsel withheld discoverable material or violated reciprocal discovery rules. Petitioner misrepresents the

distinct discovery obligations of prosecutors and defendants, which are well defined and adequately governed by existing remedies for any alleged violations.

i. Discovery Obligations in Criminal Cases

Defendants have different discovery obligations than prosecutors. Rule 16(b)(1) of the West Virginia Rules of Criminal Procedure and Rule 32.03(b) of the West Virginia Trial Court Rules outline a defendant's reciprocal discovery obligations. Importantly, each subsection of Rule 16(b) includes language limiting such disclosures to information *being used at trial*. Rule 32.02(b) of the West Virginia Trial Court Rules only requires defense counsel to disclose information pertaining to an entrapment defense and West Virginia Rule of Evidence 404(b) disclosures.

Defendants' constitutional rights to remain silent, protection against self-incrimination, and the presumption of innocence limit any expansion of discovery obligations. Unlike the State, defendants bear no burden of proof and have no mandatory discovery disclosures unless they present a case in chief. Even then, reciprocal discovery extends only to evidence that the defense intends to use at trial; the State cannot compel production of materials the defendant will not introduce.

Petitioner asserts many times without basis that Respondent Wood's Counsel failed to participate in reciprocal discovery and failed to follow court orders[7]. Pet'r's Petitioner 10 ("Thereafter, the State did indeed request reciprocal discovery- but Respondent has not provided it."); Pet'r's Petitioner 10 ("…Respondent Wood was required 'to participate in discovery as required by the rules.' Citation omitted. But he did not."); Pet'r's Petitioner 10 ("The items subject to the secret subpoenas would almost certainly fall within the scope of these reciprocal discovery requests, so the State is entitled to know what they say."); Pet'r's Petitioner 11 ("The docket sheet shows that Respondent Wood has yet to provide any discovery to the State despite the State's reciprocal request for discovery and the circuit court's order requiring him to comply with the

[7] Further illustrating the problems with seeking extraordinary relief based on faulty assumptions, the documents Petitioner claims Respondent failed to disclose were not even in counsel's possession when this writ was filed.

discovery rules."); Pet'r's Petitioner 11 ("But [Rule 17] is not a mechanism of obfuscation or an avenue defendants may utilize to hide evidence that the state is entitled to discover prior to trial…"); Pet'r's Petitioner 13 ("All this lends to an appearance that Respondent Wood is attempting to use Rule 17 to avoid his discovery obligations pursuant to the circuit court's arraignment order and Rule 16 of the West Virginia Rules of Criminal Procedure."). These accusations are based on a gross misunderstanding of the rules outlined above and the discovery process generally in West Virginia. Prosecutors regularly gather evidence in cases and then disclose it as required to defense counsel. To not afford defense counsel the same deference under the assumption that they, just like the prosecutors, will follow the rules pertaining to discovery disclosures treats members of the bar differently based on the client they represent and implies that Counsel for the Respondent is unethical. Rather than properly assuming that Respondent complied with discovery rules and withheld documents he does not intend to use at trial- as is his right- Petitioner baselessly imputes a sinister motive, claiming that Respondent is employing "cloak and dagger" methods to "hide evidence that the State is entitled to." *See* Pet'r's Petitioner 13.

Petitioner's unfounded and oft-repeated assertions rest on the false assumption that the documents were subject to reciprocal discovery. Pet'r's Petitioner 8. Reciprocal discovery applies only to materials a defendant intends to use at trial. Petitioner treats the court order for reciprocal discovery pursuant to the rules as creating equal obligations for both parties. *See* Pet'r's Petitioner 9 (once the State complies with a defendant's initial discovery requests the State "is entitled to information in kind"). Petitioner is effectively attempting to rewrite the rules by imposing on Respondent an obligation found nowhere in West Virginia law to disclose any documents obtained by defendants through the judicial process. Petitioner then further claims that Respondent has violated these entirely fictitious rules. It defies logic to expect Respondent to disclose whether they intend to use documents at trial prior to Respondent receiving the documents in question.

West Virginia's discovery rules already protect both parties and prevents trial by surprise. Pet'r's Petitioner 8. Rule 17 aligns with these rules because materials obtained under it remain

subject to standard disclosure obligations. If evidence is discoverable, it must be produced regardless of how it was obtained; Rule 17 neither alters nor avoids that requirement.

ii. The Rules Already Provide Remedies for Discovery Violations

Under *State ex rel. Hoover v. Berger*, a writ of prohibition is improper where other adequate remedies exist. 199 W.Va. 12, 14-15; 483 S.E.2d 12 (1996). Petitioner seeks preemptive relief for a speculative discovery violation, despite having remedies available in the trial court. If any undisclosed evidence were used at trial, Petitioner could have objected and sought exclusion. Instead, without pursuing a remedy available in the trial court below, Petitioner prematurely and without basis sought extraordinary relief from this Court.

C: Petitioner's so-called alternative- forcing the Public Defender Corporation to pay for subpoenas duces tecum- finds no support in the plain language of the rules and is no real alternative, since defendants with financial means may issue subpoenas directly.

Petitioner urges this Court to require the Public Defender Corporation to fund subpoenas, claiming that indigent defendants represented by public defenders lose access to Rule 17(b). This interpretation would illogically treat indigent defendants as affluent, contrary to law and precedent. The proposal is a mere distraction- it neither advances Petitioner's stated concerns nor changes the fact that wealthy defendants issue subpoenas privately without State oversight. In effect, it would penalize indigent defendants for seeking equal access to evidence, casting suspicion on "secret subpoenas" only when sought by the poor.

II: The Court should not issue a writ of prohibition because the circuit court did not exceed its legitimate power in appointing a special prosecutor.

While prosecutors ordinarily handle cases in their jurisdictions, appointing a special prosecutor is proper when conflicts arise- such as personal bias, overlapping cases, threats, or inadvertent exposure to defense strategy. The duty of an elected prosecutor is simply not "immutable" as Petitioner asserts and special appointments require no showing of misconduct. Pet'r's Petitioner 15. Here, Petitioner received materials revealing defense trial strategy in the form of an improperly disclosed order, justifying substitution to preserve fairness. The information concerning the entity Respondent was seeking records from both telegraphed potential witnesses

and perceived weaknesses in Petitioner's case. The circuit court properly avoided placing Respondent in the "Hobson's choice" of revealing his case to the Petitioner by appointing a special prosecutor. There is no prejudice to the State of West Virginia or the public of Jackson County by having a special prosecutor represent the State's interest in this matter, and due process is best served by having a prosecutor untainted by privileged defense information.

III: Respondent believes that Petitioner's request for extraordinary relief is improper, and the inflammatory language used by Petitioner is deserving of sanctions.

Petitioner cites to the *Hoover* factors in support of their request for extraordinary relief. Pet'r's Petition 6.

> In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as a direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression…

State ex rel. Hoover v. Berger, 199 W.Va. 12, 14; 199 W.Va. 12; 483 S.E.2d 12 (1996) (1996). Under *Hoover*, Petitioner does not meet the requirements for a request of extraordinary relief. First, other adequate remedies existed. Second, no prejudice occurred, as a special prosecutor will continue to represent the State. Third, the order was clearly not erroneous- the issue is one of first impression in West Virginia and most jurisdictions uphold the practice under Rule 17. Fourth, any "oft-repeated error" lies with the clerk's process for sealing documents, which the Court has already indicated an intent to address. Finally, while the application of Rule 17(c) has not been considered by this Court previously, that alone does not justify issuing a writ.

Under *State ex rel. Games- Neely v. Yoder*, the State must show that the trial court's actions were so flagrant that it was deprived of its right to prosecute or secure a valid conviction. 237 W.Va. 301; 787 S.E.2d 572 (2016). That is not the case here- the court simply appointed a special prosecutor to protect those rights. Suggesting that a special prosecutor cannot protect the State's

interests is unfounded. Moreover, Petitioner's request for a stay in this matter delayed Respondent's trial into the next term of court- violating his speedy trial right which *Yoder* expressly prohibits.

Petitioner's filing not only fails to meet the standard for a writ of prohibition, but does so with unwarranted hostility. The petition misrepresents the law, omits relevant authority, and falsely accuses Respondent and the circuit judge of unethical conduct. These tactics secured a stay that deprived Respondent of his speedy trial right. In light of Petitioner's conduct, dismissal of the underlying case with prejudice is the appropriate sanction.

A. Petitioner's remarks toward counsel and the court fall short of required standards of civility.

Petitioner's Writ is replete with baseless accusations of misconduct against Respondent and the circuit judge. These accusations can only be offered by ignoring the clear limits of reciprocal discovery. At the time of Petitioner's filing with this Court, Respondent had not received the subpoenaed materials. Even if they had been received, items not intended for trial are not subject to disclosure. Rather than acknowledging this, Petitioner improperly attributed bad motives to Respondent, inconsistent with WVODC Standard of Professional Conduct I(A)(3)[8] which prohibits unfounded claims of impropriety. Such conduct falls far below the standards of civility and professionalism expected in West Virginia courts.

Petitioner also directs unfounded accusations toward the presiding judge, alleging the court was willing to "go along" with defense tactics and acted in a "cloak-and-dagger manner." Pet'r's Brief 13-14, 18. Such claims- suggesting the court was a "secret ally" of defense counsel- lacks any basis and potentially implicates Rule 8.2(a) of the West Virginia Rules of Professional conduct which prohibits false or reckless statements impugning a judge's integrity.

Prosecutors have heightened duties to pursue justice with fairness and impartiality, being ever mindful of their role as quasi-judicial officials. See *State v. Hall*, 172 W.Va. 138; 304 S.E.2d

[8] "A lawyer should not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety."

43 (1983)(citing *State v. Boyd*, 160 W.Va. 234; 233 S.E.2d 710 (1977)). Petitioner's role does not include gaining a tactical advantage by having access to defense trial strategy. Nor should Petitioner's role require substituting personal attacks for legal argument, as doing so undermines both the professionalism and the persuasiveness of any argument.

B. Petitioner misquotes and omits authority, misleading this Court on the state of the law.

Petitioner could have properly framed this as a matter of first impression by acknowledging differing state interpretations, showing the limitations of the district court split, and citing to the federal appellate courts that have taken up the issue which all permit the practice. Instead, Petitioner misquotes and misrepresents the law, portraying a minority view as controlling while accusing Respondent of "dubious practices" and "secret discovery." In truth, Respondent's position is consistent with the majority of jurisdictions, and many of Petitioner's cited cases do not supports its assertions. [9]

Petitioner further misleads this Court by altering quotations from cited cases. In *State ex rel. Chris Richard S. v. McCarty*, Petitioner omits key language limiting the Court's warning about "ex parte proceedings" to domestic cases[10], broadening its meaning beyond the intended context. 200 W.Va. 346, 351; 489 S.E.2d 503 (1997). Likewise, Petitioner misquotes *Campbell v. Wyant*, deleting language that confines its due process discussion to a tax-sale proceeding[11]. 26 W.Va. 702, 202 (1885). These alternations distort both holdings and misrepresent the law to this Court.

---

[9] West Virginia Rules of Professional Conduct *Rule 3.3 Candor Toward the Tribunal*
(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel…

[10] Petitioner's quotation: "[C]ourts should tread carefully in . . . ex parte proceedings." Pet'r's Brief 13.
Quotation from case: "courts should tread carefully in *such* ex parte proceedings*, as there is the potential formisuse of the judicial process by vitriolic domestic litigants.*" *McCarty*, 200 W.Va. 346, 351, 489 S.E.2d 503, 508 (W.Va. 1997).

[11] Petitioner's quotation: "due process of law is only upon a hearing of the parties in a court of competent jurisdiction." Pet'r's Brief 8.
Quotation from case: *"[t]he right to sell land for taxes on an ex parte proceedings is an exception to the general rule; that no man shall be deprived of property without due process of law, and that* due process

This Court has previously elaborated on the duty of candor and held that "[t]he general duty of candor requires attorneys be honest and forthright with courts; that attorneys refrain from deceiving or misleading courts either through direct representations or through silence; and this duty is owed to courts during all aspects of litigation." Syl. Pt. 2, *Gum v. Dudley*, 202 W.Va. 477, 479; 505 S.E.2d 391 (1997). This Court, in *Gum v. Dudley,* promulgated a test for determining when the duty of candor is violated by omission.

> [W]e hold that in determining whether an attorney's silence violated the general duty of candor owed to a court, it must be shown by a preponderance of the evidence that (1) the silence invoked a material misrepresentation, (2) the court believed the misrepresentation to be true, (3) the misrepresentation was meant to be acted upon, (4) the court acted upon the misrepresentation, and (5) that damage was sustained.

Id. at 488.

Petitioner's material misrepresentations of fact and law formed the basis for seeking extraordinary relief, prompting this Court to grant a stay rather than dismissing the petition. As a result, Respondent was forced to forfeit his right to a speedy trial through no fault of his own. The stay- granted on inaccurate claims and assumptions- caused real prejudice. Given the resulting due process violation and the misuse of this Court's process, dismissal of the case is the appropriate and necessary sanction to restore confidence in the integrity of the system.

CONCLUSION

Respondent request that the Court deny the writ of prohibition and lift the previously imposed stay of proceeding in Jackson County Circuit Court. Petitioner has not met its high burden for the granting of extraordinary relief. Respondent requests that the Court further deny Petitioner's request that the *ex parte* documents at issue be unsealed.

---

of law is only upon a hearing of the parties in a court of competent jurisdiction." *Campbell v. Wyant*, 26 W.Va. 702, 707 (1885).

Respectfully submitted,
/s/ Meghan Scarberry

Meghan Marlene Scarberry, Esq.
W.Va. Bar No. 13597
Assistant Public Defender
Public Defender Corporation
5th Judicial Circuit
P.O. Box 797
Ripley, West Virginia 25271
Email: meghan.scarberry@wvdefender5.com
Telephone: (304) 372-2001
Facsimile: (304) 372-2417

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 25-582

STATE OF WEST VIRGINIA ex rel.

STATE OF WEST VIRGINIA,

Petitioner,

v.

THE HONORABLE LORA DYER,

Judge, Circuit Court of Jackson County, West Virginia,

and JESSE WOOD, Defendant Below and

Party in Interest,

Respondents.

CERTIFICATE OF SERVICE

I, Meghan Scarberry, do hereby certify that on the 10th day of October, 2025, I served a true and accurate copy of the foregoing Respondent's Response to Petitioner's Writ of Prohibition of the Record upon the below-listed individual via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

Michele Duncan Bishop
Senior Assistant Attorney General
State Capitol Complex
Building 6, Suite 406
Charleston, WV 25305-0220
Counsel for Petitioner

And via first-class mail, postage prepaid, addressed as follows, to the Respondent Judge:

Honorable Lora Dyer, Judge
Jackson County Courthouse
P.O. Box 800
Ripley, WV 25271

/s/ Meghan Scarberry
Meghan Scarberry, Esq.
W.Va. Bar No. 13597
Public Defender Corporation
Fifth Judicial Circuit
Counsel for Respondent Wood