

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

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STATE OF MARYLAND :  
v. :  
SHEILA ANN DIXON :  
-----X

Case No. 109009009

**MOTION TO QUASH GRAND JURY SUBPOENAS AND FOR  
OTHER APPROPRIATE RELIEF FOR ABUSE OF GRAND JURY  
PROCESS AND REQUEST FOR HEARING THEREON**

Now comes Sheila A. Dixon, Defendant, by her undersigned counsel, and pursuant to the United States Constitution, Articles 21 and 24 of the Maryland Declaration of Rights, and Rules 4-266 and 4-643 of the Maryland Rules of Criminal Procedure, hereby respectfully submits this Motion to Quash Grand Jury Subpoenas, and for other Appropriate Relief for Abuse of Grand Jury Process.

**I. Introduction and Background**

More than six months ago, on January 9, 2009, the State Prosecutor obtained an indictment against the Defendant charging her in twelve (12) counts with various offenses, including perjury, theft, misappropriation by a fiduciary and misconduct in office. The indictment returned by the extended investigation of the Mayor, which included calling numerous witnesses before the Grand Jury over the course of several years.

The indictment charged two broad categories of alleged violations: (1) Counts One through Four and Twelve charged perjury and misconduct in office relating to the annual financial disclosure forms submitted by the Defendant during the years 2004-2007; while (2) Counts Five through Eleven charged the Defendant with theft, misappropriation by a fiduciary

and misconduct in office relating to her alleged solicitation and use of gift cards donated by two Baltimore City developers and the City Housing Authority.

But the State Prosecutor's case was dealt a significant blow on May 28, 2009, when this Court granted the Defendant's Motion to Dismiss Counts One through Four and Twelve, concluding that the State Prosecutor had violated the Defendant's rights under the Speech and Debate Clause of the Maryland Constitution by offering evidence before the Grand Jury which infringed on her legislative immunity. At the same time that the Defendant attacked the prosecutor's invasion of her legislative privilege, the Defendant also raised significant arguments regarding the propriety of the other counts of the indictment, including the allegations regarding the so-called gift cards. While the Court declined to dismiss those counts at this early stage of the proceedings, it became apparent that there are major gaps in the State's remaining charges. As the case now stands, only Counts Five through Eleven, relating to the gift cards, are extant.<sup>1</sup>

The State Prosecutor has finally recognized the fundamental weaknesses in these remaining charges, and in an effort to shore up his case, he has abused the grand jury process by issuing grand jury subpoenas to at least three (3) witnesses for the dominant, if not the exclusive, purpose of trying to gather additional evidence of the crimes already charged, and for the purpose of preparing for trial.<sup>2</sup> Because both of these purposes are grossly improper and anathema to the proper use of the grand jury, the Defendant is seeking the intervention of the Court to quash those subpoenas and to grant the Defendant other appropriate relief, as set forth more fully below.

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<sup>1</sup>The time for the State Prosecutor to note an appeal from this Court's May 28 dismissal of Counts One through Four and Twelve expired on June 29, 2009.

<sup>2</sup>The Defendant has only learned about three (3) such post-indictment subpoenas, but of course there may be others.

## II. Argument

The Grand Jury's broad powers to investigate crime have long been recognized in Maryland and elsewhere, but this power is not unlimited. Courts have universally held that a prosecutor may not utilize the grand jury for the sole or primary purpose of gathering evidence for use in pending litigation, or to prepare for trial. *United States v. Moss*, 756 F.2d 329, 331 (4<sup>th</sup> Cir. 1985); *In Re Grand Jury Proceedings, April 1978*, 581 F. 2d 1103, 1108 (4<sup>th</sup> Cir. 1978). Thus, "once a defendant has been indicted, the government is precluded from using the grand jury for the sole or dominant purpose of obtaining additional evidence" against her. *Moss, supra* at 332, quoting *United States v. Under Seal*, 714 F.2d 347, 350 (4<sup>th</sup> Cir. 1983). This is the view of all the federal courts to have addressed the issue. See *United States v. Doe*, 455 F.2d 1270 (1<sup>st</sup> Cir. 1972); *United States v. Van Wort*, 887 F.2d 375 (2<sup>nd</sup> Cir. 1989); *In Re Grand Jury Proceedings*, 632 F.2d 1003 (3<sup>rd</sup> Cir. 1980); *United States v. Ruppel*, 666 F.2d 261 (5<sup>th</sup> Cir. 1982); *United States v. Woods*, 544 F.2d 242 (6<sup>th</sup> Cir. 1976); *United States v. Zarattini*, 552 F.2d 753 (7<sup>th</sup> Cir. 1977); *United States v. Sellaro*, 514 F.2d 114 (8<sup>th</sup> Cir. 1973); *United States v. Gibbons*, 607 F.2d 1320 (10<sup>th</sup> Cir. 1979); and *In Re Grand Jury Proceedings*, 896 F.2d 1267 (11<sup>th</sup> Cir. 1990).

The impropriety of using the grand jury to gather evidence relating to pending charges or to prepare for trial has also been recognized in Maryland. In the one State court decision to address the issue, *Erman v. State*, 49 Md. App. 605, 434 A.2d 1030 (Md. App. 1981), the Court observed that "use of the grand jury process to gather evidence as to those charges for which a defendant has been indicted cannot be condoned . . ." *Id.* at 628. In *Erman* the defendant, who had been charged with murder and related offenses, argued that the State had abused the grand jury process by issuing subpoenas to additional witnesses and for additional documents after the

defendant was indicted. The State responded by contending that the additional subpoenas were designed only to gather evidence of other possible crimes, including tax evasion and embezzlement. The trial court concluded that, in the absence of any evidence on the issue, the defendant had not carried his burden to show the misuse of the grand jury by his “bald allegations,” a decision which the appellate court affirmed.

While a prosecutor may continue to use a grand jury after indictment to gather evidence of other possible charges against the defendant, or other possible defendants, one way for a defendant to demonstrate the misuse of the grand jury process is to show that the government used the grand jury principally to prepare pending charges for trial. *United States v. Flemmi*, 245 F.3d 24, 28 (1<sup>st</sup> Cir. 2001). *See also In re Grand Jury Subpoenas Duces Tecum Dated January 2, 1985*, 767 F.2d 26 (2<sup>nd</sup> Cir. 1985); *United States v. Kovaleski*, 406 F.Supp. 267 (E.D. Mich. 1976).

Such is the case here. Attached hereto as Exhibits 1 and 2 are copies of two of the grand jury subpoenas which have come to the defendant’s attention.<sup>3</sup> These subpoenas were issued on July 2, 2009, long after the defendant filed her Motion to Dismiss the pending charges related to the gift counts in the indictment. The subpoenas were issued to Zoe Michal and Anne Lansey, one present and one former Baltimore City employee, respectively, who worked for the Defendant in City Hall. Most telling about these two subpoenas are the documents sought. The subpoenas call upon the witnesses to produce to the grand jury:

1. For the period January 1, 2003, June 30, 2008 (sic): All records made, maintained, retained, or in the possession or under the control of Zoe Michal, relating or pertaining in any way to the solicitation, receipt, distribution or other use of **gift cards** by the Office of the City Council President, Sheila Dixon individually, or any member of the staff of the Council President, including but not limited to appointment books and

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<sup>3</sup>The defendant believes a third subpoena of like kind was issued to Carolyn Blakeney, another City Hall employee.

records, correspondence, memoranda, spreadsheets, thank-you notes, other communications (whether in electronic or hard copy form), copies or lists of recipients, items received, donors, and the identities of participating staff members.

2. For the period January 1, 2007 to the present, all records made, maintained, retained, or in the possession or under the control of Zoe Michal, pertaining to the *conduct of the Mayor's Holly Trolley tour*, including, but not limited to, the itinerary, records of donations in the form of cash, gift certificates or *gift cards* solicited or received, records reflecting persons participating or solicited to participate as a donor or otherwise, and records of what gift cards, gift certificates or cash were distributed where and to whom. (emphasis added).

Of course, the pending indictment, beginning at paragraph 18 and continuing through paragraph 84, all relate to allegations of misuse of gift cards during the period of 2004 through 2007, and include allegations relating to the misuse of gift cards in connection with the Mayor's Holly Trolley event on December 20, 2007. Indictment at ¶ 82. And the only remaining counts of the indictment, counts Five through Eleven, all relate only to the alleged misuse of gift cards during the same time period.

It is therefore plain from the face of the subpoenas and the documents sought by that process that the State Prosecutor's principal, if not sole, purpose in using the grand jury process is to gather evidence related to the charges that have been pending for more than six months and to prepare for trial presently scheduled for September. While he may try to contend that there are other purposes to the subpoena as well, there is no room to dispute that the only documents sought relate to the pending charges, and nothing else.

### **III. Relief Requested**

Having demonstrated that the principal purpose of the prosecutor's use of the grand jury was to gather evidence relating to the pending charges and to prepare for trial, the issue remains of what sanction is appropriate under the circumstances. To begin with, the Court should order

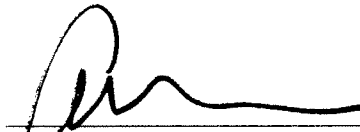
the State Prosecutor to suspend any further use of the grand jury, including the attendance of these witnesses and the production of any responsive documents, until this Motion has been heard and decided. In addition, the Court should direct the State Prosecutor to produce for the Defendant copies of any and all post-indictment grand jury subpoenas, a procedure employed with approval in *Erman v. State*, supra. Such a procedure will provide the Defendant with the opportunity to raise any similar challenges to other subpoenas which have abused the process.

Finally, the Court should impose some sanction on the prosecutor which acts as a deterrent to him, and other prosecutors, from abusing the grand jury process. In this case, the Defendant fortunately happened to learn about the post-indictment subpoenas. There are undoubtedly other cases where prosecutors use the grand jury after indictment, to compel witnesses to testify, to gather documents, or to prepare for trial, which go undetected. The sanction the Court imposes should be a warning to this prosecutor and others that abuse of the grand jury process, a secret proceeding entrusted for all intents and purposes to the good will of the prosecutor, will not be tolerated. In this case, that sanction should be to preclude the State Prosecutor from calling as a witness at trial any person who has been subpoenaed after indictment for the principal purpose of gathering evidence for the pending charges, and the suppression of any documents or other tangible items so obtained, a remedy employed in *United States v. Kovaleski*, supra.

#### **IV. Conclusion**

For the foregoing reasons, the Defendant respectfully urges the Court to quash any and all post-indictment grand jury subpoenas, and grant the other relief requested herein.

Respectfully Submitted,



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Arnold M. Weiner  
Barry L. Gogel  
Norman L. Smith  
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Dale P. Kelberman  
Donald E. English

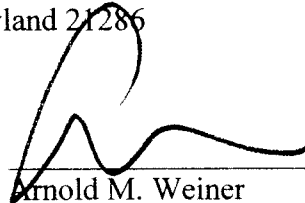
MILES & STOCKBRIDGE, P.C.  
10 Light Street  
Baltimore, Maryland 21202-1487  
(410) 727-6464

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, on this 7<sup>th</sup> day of July, 2009, that copies of the within Motion to Quash Grand Jury Subpoenas And For Other Appropriate Relief For Abuse Of Grand Jury Process And Request For Hearing Thereon was sent by e-mail and first class mail, postage prepaid, to:

Robert A. Rohrbaugh, State Prosecutor  
Thomas M. McDonough, Deputy State Prosecutor  
300 E. Joppa Road, Suite 410  
Towson, Maryland 21286



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Arnold M. Weiner

# **EXHIBIT 1**

*Thurs.  
@9:00am*

IN RE: \* IN THE  
 \*  
 GRAND JURY INVESTIGATION \* CIRCUIT COURT FOR  
 \*  
 MAY TERM, 2009 \* BALTIMORE CITY  
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**SUBPOENA DUCES TECUM**

TO: Zoe Michal                      Serve on:

**YOU ARE HEREBY SUMMONED AND COMMANDED TO APPEAR** before the Grand Jury for Baltimore City, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert, Baltimore, Maryland 21202 on the 9th day of July, 2009 at 100 pm, there to testify and to provide the following:

1. For the period January 1, 2003, June 30, 2008: All records made, maintained, retained, or in the possession or under the control of Zoe Michal, relating or pertaining in any way to the solicitation, receipt, distribution or other use of gift cards by the Office of the City Council President, Sheila Dixon individually, or any member of the staff of the Council President, including but not limited to appointment books and records, correspondence, memoranda, spreadsheets, thank-you notes, other communications, (whether in electronic or hard copy form), copies or lists of recipients, items received, donors, and the identities of participating staff members.
2. For the period January 1, 2007 to the present, all records made, maintained, retained, or in the possession or under the control of Zoe Michal, pertaining to the conduct of the Mayor's Holly Trolley tour, including, but not limited to, the itinerary, records of donations in the form of cash, gift certificates or gift cards solicited or received, records reflecting persons participating or solicited to participate as a donor or otherwise, and records of what gift cards, gift certificates or cash were distributed where and to whom.

Date Issued

CERLISTEEN VICE  
 Foreperson

*[Handwritten signature]*  
 \_\_\_\_\_  
 CLERK

JUL 02 2009



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, an identical copy of the foregoing Subpoena Duces Tecum was served upon Zoe Michal, by delivering an identical copy by \_\_\_\_\_, to \_\_\_\_\_.

I further certify that I am over the age of 18 years.

\_\_\_\_\_  
Signature

# **EXHIBIT 2**

9th  
10:10 a.m.

IN RE:

GRAND JURY INVESTIGATION

MAY TERM, 2009

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\*  
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IN THE

CIRCUIT COURT FOR

BALTIMORE CITY

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**SUBPOENA DUCES TECUM**

TO: Anne Lansey                      Serve on:

**YOU ARE HEREBY SUMMONED AND COMMANDED TO APPEAR** before the Grand Jury for Baltimore City, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert, Baltimore, Maryland 21202 on the 9th day of July, 2009 at 1:00 PM, there to testify and to provide the following:

1. For the period January 1, 2003, June 30, 2008: All records made, maintained, retained, or in the possession or under the control of Anne Lansey, relating or pertaining in any way to the solicitation, receipt, distribution or other use of gift cards by the Office of the City Council President, Sheila Dixon individually, or any member of the staff of the Council President, including but not limited to appointment books and records, correspondence, memoranda, spreadsheets, thank-you notes, other communications, (whether in electronic or hard copy form), copies or lists of recipients, items received, donors, and the identities of participating staff members.
2. For the period January 1, 2007 to the present, all records made, maintained, retained, or in the possession or under the control of Anne Lansey, pertaining to the conduct of the Mayor's Holly Trolley tour, including, but not limited to, the itinerary, records of donations in the form of cash, gift certificates or gift cards solicited or received, records reflecting persons participating or solicited to participate as a donor or otherwise, and records of what gift cards, gift certificates or cash were distributed where and to whom.

CERLISTEEN VICE

\_\_\_\_\_  
Date Issued

\_\_\_\_\_  
Foreperson

*[Handwritten Signature]*  
\_\_\_\_\_  
J. COULMAN, CLERK

JUL 02 2009



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, an identical copy of the foregoing Subpoena Duces Tecum was served upon Anne Lansey, by delivering an identical copy by \_\_\_\_\_, to \_\_\_\_\_.

I further certify that I am over the age of 18 years.

\_\_\_\_\_  
Signature

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

-----X  
STATE OF MARYLAND :  
v. : Case No. 109009009  
SHEILA ANN DIXON :  
-----X

**ORDER**

The Defendant having moved to Quash Grand Jury Subpoenas and For Other Appropriate Relief for Abuse of Grand Jury Process; the State having responded thereto; and the matter having been heard and considered; it is, this \_\_\_\_\_ day of July, 2009, hereby

ORDERED, that the subpoenas to Zoe Michael and Anne Lansey, and all other similar subpoenas which have been issued since the return of the Indictment herein, be, and the same are hereby, QUASHED; and it is further

ORDERED, that the State produce to the Defendant copies of all Grand Jury Subpoenas which have been issued since the return of the Indictment in this case; and it is further

ORDERED, that no person who was subpoenaed to the Grand Jury since the return of the Indictment in this case to give testimony relating to the alleged theft of gift cards, including the allegations relating to gift cards in Counts Five through Eleven, be permitted to testify at the trial of the within case.

\_\_\_\_\_  
JUDGE