

The Office of the Special Prosecutor (“OSP”) respectfully requests that the Court, pursuant to 735 ILCS 5/2-408(a)(2), permit the OSP to intervene in the above-captioned matter as of right so that the OSP’s interests may be adequately represented before this Court, as the OSP will be bound by the Court’s resolution of both Movant’s Emergency Motion for Supervisory Order Pursuant to Rule 383 (“Motion for Supervisory Order”) and his Emergency Motion to Stay Proceedings (“Motion to Stay”), both filed on February 24, 2020. In support of this motion, the OSP states as follows:¹

1. On June 21, 2019, the Honorable Judge Michael B. Toomin issued a written order directing the appointment of a special prosecutor “to conduct an independent investigation of the actions of any person or office involved in all aspects of the case entitled *People of the State of Illinois v. Jussie Smollett*, No 19 CR 0310401, and if reasonable grounds exists to further prosecute Smollett, in the interest of justice the special prosecutor may take such action as may be appropriate to effectuate that result. Additionally, in the event the investigation establishes reasonable grounds to believe that any other criminal offense was committed in the course of the Smollett matter, the special prosecutor may commence the prosecution of any crime as may be suspected.” SR71.²

¹ The OSP understands that because it has stepped into the shoes of the Cook County State’s Attorney’s Office for purposes of its investigation and Case No. 20 CR 03050-01, and is representing the People of the State of Illinois in that matter, it has a right to file its Response in Opposition to Movant’s Emergency Motion for a Supervisory Order and Response in Opposition to Movant’s Emergency Motion to Stay Proceedings absent formal intervention. In fact, the OSP has appeared previously in the above-captioned case in front of Judge Toomin after its formation in August 2019, including as recently as February 14, 2019. However, out of an abundance of caution, the OSP seeks permission to intervene, and also respectfully requests this Court alert the OSP if there is a different mechanism this Court would prefer the OSP follow to ensure the OSP can file its response briefs and protect its interests in the above-captioned matter.

² Citations to “SR” are to the Supporting Record filed with both of Movant’s Emergency Motions.

2. On August 23, 2019, Judge Toomin issued another written order appointing Dan K. Webb as Special Prosecutor in No. 19 MR 00014. SR370. That order contained the same investigatory mandate that Judge Toomin had issued in his June 21, 2019, order. In addition, Judge Toomin ordered that “the Special Prosecutor shall be vested with the same powers and authority of the elected State’s Attorney of Cook County, limited only by the subject matter of this investigation, including the power to discover and gather relevant evidence, to compel the appearance of witnesses before a Special Grand Jury of the Circuit Court of Cook County, to confer immunity as may be deemed necessary, to consider the bar of limitations where applicable, and to institute criminal proceedings by indictment, information, or complaint, where supported by probable cause, upon his taking the proper oath required by law.” SR371.

3. Pursuant to Judge Toomin’s orders, the OSP was promptly formed and, in conjunction with a special grand jury, began conducting its investigation into the actions of any person or office involved in all aspects of the case entitled *People of the State of Illinois v. Jussie Smollett*, No. 19 CR 0310401 (the “Smollett Case”), including whether to further prosecute the alleged false reports made by Mr. Smollett, as well as whether any person or office involved in the Smollett matter engaged in any wrongdoing, including the Cook County State’s Attorney’s Office (“CCSAO”) or individuals in that office.

4. On February 11, 2020, a special grand jury returned an indictment against Mr. Smollett, charging him with six counts of disorderly conduct, namely filing false police reports in violation of 720 ILCS 5/26-1(a)(4). *See* Case No. 20 CR 03050-01. The OSP’s investigation into whether any person or office involved in the Smollett Case engaged in wrongdoing is ongoing.

5. On February 24, 2020, the same day as Mr. Smollett's arraignment, Movant filed two "emergency" motions before this Court: (1) the Motion for Supervisory Order, and (2) the Motion to Stay.

6. Through its Motion for Supervisory Order, the Movant seeks four distinct requests for relief from this Court: (1) vacate Judge Toomin's June 21, 2019, order appointing a special prosecutor; (2) vacate Judge Toomin's August 23, 2019, order appointing Dan K. Webb as special prosecutor; (3) dismiss the February 11, 2020, indictment returned by the special grand jury against Mr. Smollett; and (4) vacate all further proceedings in Case No. 20 CR 03050-01. Movant's Motion to Stay seeks to stay all proceedings in his ongoing criminal case, Case No. 20 CR 03050-01, pending the Court's resolution of the Emergency Motion for a Supervisory Order.

7. Section 2-408(a)(2) of the Illinois Code of Civil Procedure states that "[u]pon timely application anyone shall be permitted as of right to intervene in an action ... when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action." 735 ILCS 5/2-408(a)(2). "Although a party need not have a direct interest in the pending suit, it must have an interest greater than that of the general public, so that the party may stand to gain or lose by the direct legal operation and effect of a judgment in the suit." *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 57-58 (2002).

8. Undoubtedly, by mere reference to the relief the Movant requests from this Court, the OSP has a direct interest in the above-captioned matter and will be bound by this Court's disposition of the Movant's Motion to Stay and Motion for Supervisory Order. For example, in conjunction with a special grand jury it convened, the OSP undertook an investigation into the Smollett Case pursuant to Judge Toomin's orders, which the OSP has been diligently conducting

for more than six months on a *pro bono* basis. Furthermore, facets of that investigation remain ongoing pursuant to Judge Toomin's mandate that the OSP investigate whether any person or office involved in the Smollett Case engaged in any wrongdoing. Moreover, the OSP is currently prosecuting the six-count indictment against Mr. Smollett returned by the special grand jury. In sum, the OSP's ongoing investigation, its prosecution of Mr. Smollett, and its sheer existence hinge on this Court's resolution of Movant's Motion for Supervisory Order and Motion to Stay, such that the OSP has a direct interest to protect.

9. In addition, the OSP will not be adequately represented before this Court without intervention pursuant to 735 ILCS 5/2-408(a)(2). Under Illinois Supreme Court Rule 383, the Respondent "need not respond to the motion unless instructed to do so by the court." Ill. Sup. Ct. R. 383(c). Instead, the "prevailing party or parties below shall file appropriate documents for that respondent but shall not file any document in the name of the respondent." *Id.* The "prevailing party" below is the Petitioner, Sheila O'Brien. The OSP has not spoken to or coordinated with Ms. O'Brien in connection with this filing or the proposed filings before this Court.

10. While Ms. O'Brien, if she opts to file an opposition, would likely be aligned with some of the OSP's interests in this matter, Ms. O'Brien cannot adequately represent the entirety of the OSP's interests in, for example: (1) protecting its existence so it can fulfill its court-ordered mandate; (2) the prosecution of Mr. Smollett (and the attenuate ability of the OSP to timely prepare such a prosecution); and (3) completing its ongoing investigation. Indeed, the OSP is not even sure whether Ms. O'Brien will represent any interest before this Court through the filing of a response.

11. The OSP has been diligently conducting its investigation into the Smollett matter for more than six months, and the adequate representation of the OSP's interests in seeing through

the administration of justice and the completion of its investigation can only be assured through the Court's permission to intervene in this matter.

12. Accompanying this Motion for Leave to Intervene are the OSP's proposed filings, which it has filed simultaneously with this motion: (1) Response in Opposition to Movant's Emergency Motion for a Supervisory Order and (2) Response in Opposition to Movant's Emergency Motion to Stay Proceedings. The OSP does not seek any other relief before this Court other than the denial of Movant's Motion to Stay and Motion for Supervisory Order.

CONCLUSION

For the foregoing reasons, the OSP respectfully requests that this Court grant its Motion for Leave to Intervene pursuant to 735 ILCS 5/2-408(a)(2).

Dated: March 2, 2020

Respectfully Submitted,

/s/ Dan K. Webb

Dan K. Webb
Sean G. Wieber
Samuel Mendenhall
OFFICE OF THE SPECIAL PROSECUTOR
35 West Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5600
DWebb@winston.com
SWieber@winston.com
SMendenhall@winston.com

No. 125790

 IN THE SUPREME COURT OF ILLINOIS

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| JUSSIE SMOLLET, Movant, |) Appeal from the Circuit Court of Cook County,) Illinois, County Department) Criminal Division)) No. 19 MR 00014-01)) The Honorable) Michael P. Toomin, Presiding)) Respondent.)) |
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 NOTICE OF FILING

Please take notice that on March 2, 2020, I, Dan K. Webb, the undersigned attorney, caused The Office of the Special Prosecutor's Motion for Leave to Intervene to be electronically filed with the Clerk of the Supreme Court of Illinois.

Dated: March 2, 2020

Respectfully submitted,

/s/ Dan K. Webb

 Special Prosecutor

Dan K. Webb
 Office of the Special Prosecutor
 35 West Wacker Drive
 Chicago, Illinois 60601
 Tel: (312) 558-5600
 Fax: (312) 558-5700
 DWebb@winston.com
 Firm ID No. 90875

PROOF OF FILING AND SERVICE

Under the penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 2, 2020, the foregoing Office of the Special Prosecutor's Motion for Leave to Intervene, which complies with the proposed-order requirement of Supreme Court Rule 361(b)(2), was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by email:

The Hon. Michael P. Toomin
Leighton Criminal Court
2600 S. California Ave., Room 400
Chicago, Illinois 60608
(service via hand delivery)

Sheila M. O'Brien
360 E. Randolph #1801
Chicago, IL 60601
Sobrien368@aol.com
(service via email)

William J. Quinlan
Lisa H. Quinlan
David Hutchinson
THE QUINLAN LAW FIRM, LLC
Willis Tower
233 South Wacker Drive, Suite 6142
Chicago, IL 60606
wjq@quinlanfirm.com
lquinlan@quinlanfirm.com
dhutchinson@quinlanfirm.com
(service via email)

Cathy McNeil Stein
Assistant State's Attorney Chief
CIVIL ACTIONS BUREAU
500 Richard J. Daley Center
Chicago, IL 60602
Cathymcneil.stein@cookcountyil.gov
(service via email)

Tina Glandian
GERAGOS & GERAGOS, APC
256 5th Avenue
New York, NY 10001
(213) 625-3900
tina@geragos.com
(service via email)

Valerie L. Hletko
BUCKLEY LLP
353 N. Clark St., Suite 3600
Chicago, IL 606054
vhletko@buckleyfirm.com
(service via email)

Risa Lanier
Assistant State's Attorney
COOK COUNTY STATE'S ATTORNEY'S OFFICE
2650 S. California Avenue, 11D40
Chicago, IL 60608
risa.lanier@cookcountyil.gov
(service via email)

/s/ Dan K. Webb
Dan K. Webb

No. 125790

IN THE SUPREME COURT OF ILLINOIS

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|-----------------------------|---|---|
| JUSSIE SMOLLET, |) | Appeal from the Circuit Court of Cook County, |
| |) | Illinois, County Department |
| Movant, |) | Criminal Division |
| |) | |
| |) | No. 19 MR 00014-01 |
| |) | |
| THE HON. MICHAEL P. TOOMIN, |) | The Honorable |
| |) | Michael P. Toomin, Presiding |
| Respondent, |) | |

ORDER

This matter coming to be heard on the motion of the Office of the Special Prosecutor for leave to intervene, the motion is hereby ALLOWED / DENIED.

DATED: _____

ENTER: _____
JUSTICE

Prepared by:
Dan K. Webb
OFFICE OF THE SPECIAL PROSECUTOR
35 West Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5600
DWebb@winston.com