

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

v.

Case No.: 23-02935-CF-D
522023CF002935000APC

TOMASZ ROMAN KOSOWSKI,

Defendant.

_____ /

MOTION IN LIMINE / MOTION FOR PROTECTIVE ORDER

PLEASE TAKE NOTICE that the undersigned counsel has filed a special and limited appearance on behalf of **JUDGE PATRICIA MUSCARELLA**, a Pinellas County and Sixth Judicial Circuit Judge. **JUDGE MUSCARELLA** has been requested to appear for trial in the above-captioned matter.

Currently, non-party **JUDGE MUSCARELLA** requests for this Court to address this Motion in Limine / Motion for Protective Order.

In support hereof, the movant states as follows:

I. BACKGROUND.

1. Judge Muscarella was issued a Subpoena to appear for trial to testify as to the above-captioned case.

2. Judge Muscarella was the presiding judge over a civil case filed in Pinellas County Circuit Court Case No. 19-003057-CI. The Defendant in this case was the Plaintiff in the civil case over which Judge Muscarella presided.

3. This Motion in Limine / Motion for Protective Order is required to preclude inquiry into Judge Muscarella's reasoning or other matters relating to judicial duties which are protected by judicial immunity.

II. MEMORANDUM OF LAW.

It is well-settled under Florida law that Judges are entitled to absolute immunity for acts performed in the course of their judicial capacity. *Kalmanson v. Lockett*, 848 So.2d 374 (Fla. 5th DCA 2003).

A party may not depose or otherwise compel the testimony of a judge unless "...the testimony is absolutely necessary to establish factual circumstances not in the record, provided...the judge's thought process is not violated." *State v. Lewis*, 656 So.2d 1248, 1250 (Fla. 1994). See also Charles W. Earnhardt, *Florida Evidence*, §607.1, at 366 & n.1 (1994)("Generally judges cannot be compelled to testify as to matters concerning their judicial duties").

It is well-settled under Florida law that Judges are entitled to absolute immunity for acts performed in the course of their judicial capacity. *Kalmanson v. Lockett*, 848 So.2d 374 (Fla. 5th DCA 2003); *Berry v. State of Florida*, 400 So.2d 80 (Fla. 1981); *Johnson v. Harris*, 645 So. 2d 96, 98 (Fla. 5th DCA 1994) (citation omitted). This doctrine preserves an independent judiciary. *Limehouse v. Whittemore*, 773 So. 2d 86, 87 (Fla. 2d DCA 2000). "[I]ssuing an order is one of the 'paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court.'" *Forrester v. White*, 484 U.S. 219, 227 (1988).

In this case, Judge Muscarella cannot be compelled to testify regarding judicial duties. The judicial decision to issue and sign orders is not subject to inquest. *United States v. Morgan*, 313 U.S. 409, 422 (1941) ("[s]uch an examination of a judge would be destructive of judicial responsibility.") The Court speaks through its record and absent a showing of absolute necessity and any testimony sought cannot seek additional information on Judge Muscarella's thought process.

The law does distinguish rare instances where a judge may be subpoenaed to provide testimony. “We recognize that under the case law there are certain discrete occasions where a trial judge may be subpoenaed to testify as to certain relevant facts in a case, such as (1) a criminal defendant’s demeanor during trial when a subsequent issue arises in post-conviction proceedings as to the defendant’s mental competence to stand trial; or (2) the terms of an oral settlement agreement made before the judge when that agreement was never memorialized on the record because the proceedings were not transcribed by a court reporter. *Stein v. Prof’l Ctr., S.A.*, 666 So. 2d 264, 266 (Fla. 3d DCA 1996). If this is the information sought by Judge Muscarella’s testimony, it would fall under the limited exception. However, a protective order would still be requested to ensure the line of questioning does not extend to questions relating to reasoning for rulings in a civil case regarding the defendant.

WHEREFORE, the undersigned respectfully moves this Honorable Court for an Order protecting Judge Muscarella from being compelled to provide any testimony in this matter that is protected by judicial immunity.

Respectfully Submitted,

JAMES UTHMEIER
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2026, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts eFiling Portal which will serve those parties capable of receiving such e-service, including the Office of the State Attorney at eservice@flsa6.gov. Furthermore, a copy of this filing was mailed to Defendant, *pro se*, Tomasz Kosowski # 631813, Pinellas County Jail, 14400 49th Street North, Clearwater, FL 33762.

/s/ Veronica Burianek

Veronica Burianek

Senior Assistant Attorney General