

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 99,050

STATE OF KANSAS, ex rel. STEPHEN N. SIX,
ATTORNEY GENERAL OF THE STATE OF KANSAS,
Petitioner,

v.

THE HONORABLE RICHARD ANDERSON,
JUDGE OF THE THIRD JUDICIAL DISTRICT,
SHAWNEE COUNTY, KANSAS,
Respondent.

**ORDER AMENDING PROTECTIVE ORDER, UNSEALING THIS ACTION,
AND DIRECTING PARTIES TO SHOW CAUSE**

Petitioner Attorney General¹ filed this mandamus action under seal to obtain documents in the possession of Respondent, Judge Richard D. Anderson. The documents, which include certain redacted patient records from two Kansas clinics that perform abortions, were submitted to the district court and otherwise accumulated by Judge Anderson during the pendency of a criminal inquisition pursued by Phill Kline under K.S.A. 22-3101 *et seq.*, when he held the office now held by Petitioner.

Since the filing of this mandamus action, Kline, now Johnson County District Attorney,

¹ At the time this action was filed, Paul Morrison was serving as Attorney General. He has been replaced in that position by Stephen N. Six, who has been substituted as a party in this action.

has filed more than 100 felony and misdemeanor criminal charges involving one of the clinics, Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri (CHPP).

Meanwhile, the Attorney General is pursuing misdemeanor charges involving the other clinic, Women's Health Care Services of Wichita (WHCS). Kline's handling of his copies of the patient records among the documents in Judge Anderson's custody also is the subject of at least one other pending action, another mandamus petition before this Court, *Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri v. Kline*, Case No. 98,747 (*Kline*).

During testimony before Judge David King in *Kline* on November 19, 2007, Judge Anderson offered to make the court file in his custody available to Petitioner, presumably for viewing and/or copying while maintaining the integrity and security of the court file as it currently exists. This offer was consistent with Judge Anderson's earlier observation that the current occupant of the Attorney General's office, rather than Kline, was responsible for discharging the prosecutorial function in the inquisition. It was also partially responsive to the prayer for relief advanced by the Attorney General in this action.

On April 4, 2008, this Court entered a Protective Order directing Judge Anderson "to maintain exclusive possession of the inquisition records maintained by him" until further order of this Court. This Protective Order was prompted by an April 3, 2008, Notice of Collateral Proceedings filed by Judge Anderson and an April 3, 2008, Emergency Motion for Protective Order filed by the Attorney General. Judge Anderson had received a subpoena duces tecum ordering him to produce inquisition records at an April 7, 2008, public hearing in Kline's

prosecution of CHPP in Johnson County.

On April 23, 2008, the Attorney General filed a Motion to Amend Protective Order, asserting that this Court's April 4 Protective Order had been invoked by Judge Anderson "to prevent the Attorney General from accessing testimony given to the district court during the course of the Attorney General's own inquisition. Such access . . . is necessary for the Attorney General to comply with ongoing discovery obligations in prosecution of the current charges against Dr. [George] Tiller [of WHCS]."

Given all of the foregoing, this Court hereby orders the following:

1. For purposes of interpretation and application of 3(a), 3(b), and 3(c) below, "document" shall include any type of item filed in this action, including but not limited to pleadings, briefs, motions, transcripts, and any attachments or exhibits.
2. This Court's April 4, 2008, Protective Order is amended only insofar as necessary to permit Judge Anderson to immediately provide to the Attorney General or to his designate(s) an opportunity to view and copy the inquisition court file, including but not limited to any transcripts, in Judge Anderson's possession while maintaining the integrity and security of the court file as it currently exists. This Court's April 4, 2008, Protective Order otherwise remains in effect. Today's Order does not cover any discovery issues in the Attorney General's criminal

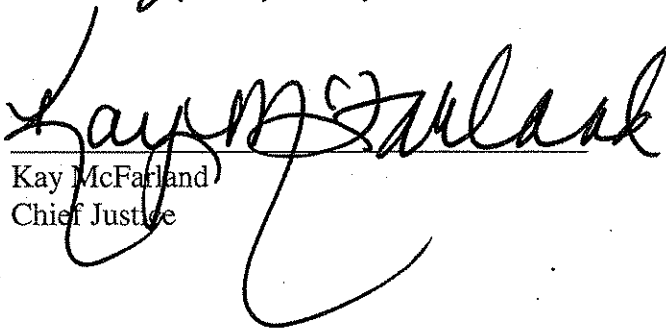
prosecution involving WHCS.

3. The seal on this action shall be lifted as of the date of this Order, with the following limitations and definition:
 - (a) Those documents filed in this action up to the date of this Order have been redacted by this Court to protect pending prosecutions and the privacy of the patients of the clinics. The public file of this case available for viewing in the office of the Clerk of the Appellate Courts shall contain only these redacted documents and any documents filed after the date of this Order, as described in 3(c) below.
 - (b) On the date of this Order, the Clerk of the Appellate Courts shall make available to each party one redacted copy of the documents filed in this action up to the date of this Order. The parties are, under no circumstances other than prior specific written permission granted by this Court, to disclose to anyone not named as a party to this action any of the material redacted from these documents.
 - (c) Any documents filed in this action after the date of this Order by either party shall be redacted by the filing party as necessary to protect pending prosecutions and patient privacy; or, if appropriate redaction to serve that

purpose is not possible, the entire document shall be filed under seal. The redactions made by this Court in the documents described in 3(a) and 3(b) above shall guide the parties in their decisions on redaction or sealing of documents yet to be filed in this action; information that must be redacted includes not only names of patients but also any other information about patients that could reasonably lead to their identities. The parties are, under no circumstances other than prior specific written permission granted by this Court, to disclose to anyone not named as a party to this action any redacted or sealed material from any documents filed after the date of this Order.

- 4 The parties are ordered to show cause through written arguments filed with the Clerk of the Appellate Courts no later than 5 p.m. on May 22, 2008, why this action should not be dismissed.

IT IS BY THIS COURT SO ORDERED this ^{2nd} day of May 2008.



Kay McFarland
Chief Justice