IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex. rel.	)	
	)	
DAVID M. NOTHUM	)	
AND GLENETTE NOTHUM,	)	
	)	
Relators,	)	No: SC92268
	)	
vs.	)	
	)	
HONORABLE JOSEPH L. WALSH,	)	
	)	
Respondent.	)	

BRIEF OF RESPONDENT, THE HONORABLE JOSEPH L. WALSH

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ATTORNEYS FOR RESPONDENT AND
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STATEMENT OF FACTS

Relators David M. Nothum and Glenette Nothum are debtors under a judgment entered against them (and others) in the amount of $3,117,160.52 (plus attorney fees, costs, and post-judgment interest) in Maricopa County, Arizona, in favor of Arizona Bank and Trust.[1] Respondent's Appendix at A15-A16. The Bank registered the judgment in several Missouri counties, including St. Louis County. Respondent's Appendix at A1-A16. The debtors have failed to pay any of the amounts owed under the judgment.

On October 30, 2009, the Bank served the debtors with post-judgment written discovery. Respondent's Appendix at A17-A73. In response to each interrogatory and document request, the debtors refused to answer, asserting a right against self-incrimination. Respondent's Appendix at A74-A75. The Bank also sought to satisfy the judgment by issuing several garnishments, which were returned unsatisfied. Respondent's Appendix at A76-A79. On June 15, 2010, the Bank obtained an order directing the debtors to appear for judgment debtor examinations before the Honorable John F. Kintz.

On July 28, 2010, Relator David Nothum appeared for an examination before Judge Kintz and answered one question (concerning the address of his current residence). Respondent's Appendix at A80-A85. When asked whether he owned that property, Mr. Nothum refused to answer, claiming a right against self-incrimination. *Id*. The debtors'

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[1] A copy of the judgment is included in the separate appendix to this brief at A15-A16.

counsel represented that both debtors intended to assert their privilege in response to all subsequent questions. *Id*.

The Bank then produced a grant of immunity from the St. Louis County Prosecuting Attorney's office, granting the debtors immunity for any offense related to their testimony. Relators' Appendix at A2. In light of the grant of immunity, Judge Kintz ordered the debtors to respond to the Bank's inquiries regarding their ability to satisfy the judgment or be held in contempt. When the debtors continued to invoke their privilege and refused to testify, Judge Kintz found them in contempt of court and ordered them remanded to the Department of Justice Services. Respondent's Appendix at A86-A87.

In response, the debtors filed a first petition for a writ of prohibition in the Missouri Court of Appeals, Eastern District. *State ex. rel. Nothum v. Kintz*, 333 S.W.3d 512 (Mo. App. 2011) ("*Nothum I*"). The debtors challenged the contempt orders and the sufficiency of the grant of immunity. In *Nothum I,* the Court of Appeals held that Judge Kintz exceeded his authority because: (1) he failed to make a finding as a matter of law that the debtors could not possibility tend to incriminate themselves in response to the Bank's questions; and (2) he failed to place Glenette Nothum under oath to determine if she, like her husband, would assert the privilege, rather than rely on the clear representation of her counsel. Relators' Appendix at A3-A6.

After the writ in *Nothum I* was made absolute, the Bank scheduled a second judgment debtor examination before Judge Walsh (who was assigned the underlying action upon the retirement of Judge Kintz). The judgment debtor examinations began on

May 3, 2011, and were continued on October 4, 2011.[2] On May 3, 2011, Judge Walsh swore in both debtors, and the Bank asked several questions directly related to the Nothum's assets. 5/3/11 Tr. at 2-5, 11-13. The debtors both stated their names and their current residence, but then both invoked their privilege against self-incrimination in response to all other questions. After both debtors stated their intention to invoke their privilege in response to any question regardless of its content, the Bank's counsel presented the same grant of immunity that had been presented in the earlier judgment debtor examinations before Judge Kintz. *Id*. at 5-9, 14; Relators' Appendix at A2.

The Bank requested Judge Walsh to order the debtors to testify and to make a finding, as a matter of law, that the grant of immunity supplanted the privilege and removed any possibility that the debtors could incriminate themselves by responding to the questions that had been posed by the Bank. 5/3/11 Tr. at 5-6, 9, 14. Judge Walsh advised the parties that he needed additional time to consider that request and would take the matter under advisement, but warned the debtors that "they may be held in contempt for refusing to answer questions." *Id*. at 14-15. On August 30, 2011, the parties' attorneys appeared for further argument. 8/30/11 Tr.; 10/4/11 Tr. at 1-29. At the end of that hearing, Judge Walsh found that, because the statute and grant of immunity shielded the debtors from "any offense related to the contents of the statement made," the debtors

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[2] Two transcripts have been previously filed with this Court and are available in the Court's electronic record. The first transcript is of the judgment debtor examinations on May 3, 2011. The second transcript is of a hearing held on August 30, 2011 combined with the continuation of the judgment debtor examination on October 4, 2011.

"would be relieved from any and all prosecutorial action related to anything having to do with the subject matter of the testimony." *Id*. at 27-28. On October 4, 2011, Judge Walsh entered orders finding that the grant of immunity removed any possibility that statements made by the debtors in response the Bank's questions could be used to incriminate them. Relators' Appendix at A7-A11.

Judge Walsh again swore in both debtors to determine whether they would refuse to testify in light of his ruling. 8/30/11 Tr.; 10/4/11 Tr. at 32, 37. He again advised the debtors that there was no possibility they could incriminate themselves due to the grant of immunity. *Id*. at 31-32. The Bank then asked identical questions as the questions posed on May 3, 2011, and the debtors – despite Judge Walsh's finding – continued to claim a privilege. *Id*. at 32-40. At that time, the Court found the debtors in direct contempt of court and entered an order finding that the grant of immunity provided the broadest immunity possible protecting the debtors from the possibility that they could incriminate themselves in response to the questions posed by the Bank. *Id*. at 44-46; Relators' Appendix at A12-A15. Those orders were stayed pending the resolution of this writ proceeding. Relators' Appendix at A12-A15.

The Court of Appeals entered a writ of prohibition, but transferred the case to this Court because it dealt with important legal issues. The Court of Appeals held that Judge Walsh exceeding his authority in ordering the debtors to testify and that section 513.380, RSMo, permits a prosecutor to grant only "use immunity," and not "transactional immunity." Opinion at 4.

ARGUMENT

Judge Walsh had specific statutory authority and wide discretion to hold the debtors in contempt for refusing to testify despite a grant of immunity that insulated them from any risk of prosecution. A writ of prohibition is a discretionary writ that may be issued only where necessary to prevent a usurpation of judicial power, to remedy an excess of jurisdiction, or to prevent an absolute irreparable harm to a party. *See State ex rel. Union Elec. Co. v. Dolan,* 256 S.W.3d 77, 81 (Mo. banc 2008); *State ex rel. York v. Daugherty,* 969 S.W.2d 223, 224 (Mo. banc 1998). Prohibition is inappropriate because Judge Walsh did not abuse his discretion when he held the debtors in contempt for refusing to testify at the judgment debtor examination.

Since the judgment was entered against them, the debtors have refused to repay the Bank any of the multi-million dollar debt they owe. Instead, they have attempted to hide assets and frustrate the efforts of the Bank to collect any portion of the judgment. As part of this effort to avoid paying their lawful debt, the debtors have refused to testify at a debtor examination before Judge Walsh despite the grant of immunity shielding them from prosecution for any offense related to their testimony. This immunity goes beyond what is required by the state and federal constitutions to compel their testimony. With no risk of prosecution, the Court should not allow the debtors to avoid identifying their assets and income by hiding behind a privilege that is no longer applicable.

If section 513.380, RSMo, does not permit a judgment debtor examination in the circumstances of this case, then the statute has no meaning. In full conformity with the

statute, the St. Louis County Prosecuting Attorney's Office granted these debtors immunity in exactly the same form that it uses to grant immunity in all such cases. This grant of immunity tracked the language of the statute. The Court should not declare this statutory procedure to be void at the request of these debtors who are using the privilege against self incrimination to improperly hide assets.

I. The grant of immunity was sufficient to compel the debtor's testimony.

Missouri law authorizes a judgment creditor to require a judgment debtor to "undergo an examination under oath touching on his ability and means to satisfy said judgment." § 513.380.1, RSMo. If a judgment debtor attempts to invoke the constitutional privilege against self-incrimination, the statute allows the judgment creditor to seek a grant of immunity from the local prosecutor, who can grant immunity from prosecution to a judgment debtor for any statement made at a debtor's examination:

> Any prosecuting attorney or circuit attorney may grant use immunity from prosecution to a judgment debtor for any statement made at a judgment debtor's examination conducted pursuant to subsection 1 of this section. Such use immunity from prosecution shall protect such person from prosecution for any offense related to the content of the statements made.

§ 513.380.2.

When a grant of immunity under this section is coextensive with the scope of the privilege against self-incrimination, it is sufficient to compel testimony over a claim of privilege. *State ex. rel. Heidelberg v. Holden,* 98 S.W.3d 116, 122 (Mo. App. 2003).

The reasons that immunity must be equivalent to that afforded under the Fifth Amendment were explained by the United States Supreme Court in *Murphy v. Waterfront Comm'n,* 378 U.S. 52, 84 S. Ct. 1594 (1964) (overruled in part on other grounds in *United States v. Balsys,* 524 U.S. 666, 118 S. Ct. 2218 (1998)). The petitioners in *Murphy* were subpoenaed to testify before the Waterfront Commission of New York Harbor but refused to testify on the ground that the immunity granted them under state law did not prevent the use of their testimony to convict them of a federal crime. Overturning the rule that one jurisdiction within our federal system could compel a witness to give testimony that could be used to convict the witness of a crime in another jurisdiction, the Supreme Court held that the privilege protects state witnesses against incrimination under federal as well as state law, and federal witnesses against incrimination under state as well as federal law. 84 S. Ct. at 1594. The Court emphasized that this left the state witness and the federal government "in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity." *Id*.

In *Kastigar v. United States,* 406 U.S. 441, 92 S. Ct. 1653 (1972), the Supreme Court observed that "both the reasoning of the Court in *Murphy* and the result reached compel the conclusion that use and derivative-use immunity is constitutionally sufficient to compel testimony over a claim of the [Fifth Amendment] privilege. Since the

privilege is fully applicable and its scope is the same whether invoked in a state or in a federal jurisdiction, the *Murphy* conclusion that a prohibition on use and derivative use secures a witness' Fifth Amendment privilege against infringement by the Federal Government demonstrates that immunity from use and derivative use is coextensive with the scope of the privilege." 92 S. Ct. at 1664.

If immunity is provided, the debtor is required to give testimony, because it is said that the immunity "substitutes for the privilege." *Holden,* 98 S.W.3d at 122. If a judgment debtor refuses to testify even after being compelled to do so over a claim of privilege, a court is authorized by statute to issue a writ of attachment against the debtor and to order punishment for contempt. § 513.380.1. The matter of determining and dealing with contempt orders is within the circuit court's sound discretion, and its determination is final unless there is plain abuse of discretion. *Fulton v. Fulton,* 528 S.W.2d 146, 157 (Mo. App. 1975). Thus, if a debtor continues to refuse to answer after a grant of immunity has removed the dangers against which the privilege protects, a court has discretion to issue a contempt order until the debtor purges himself or herself of contempt. § 513.380.1; *see Kastigar*, 92 S. Ct at 1659.

In this case, the grant of immunity removed any doubt that the debtors could be prosecuted, yet the debtors still refuse to answer. Pursuant to section 513.380.1 and *Kastigar*, Judge Walsh had discretion to issue contempt orders until the debtors agreed to testify concerning their assets and sources of income.

A. The grant of immunity was coextensive with the privilege.

A grant of immunity must be "coextensive" with the scope of the privilege to compel testimony over a claim of the privilege. *See Holden,* 98 S.W.3d at 122. Immunity is coextensive if it leaves the witness and the prosecutorial authorities in substantially the same position as if the witness had claimed the privilege. *Id.*

The Supreme Court in *Kastigar* found two types of immunity that left a witness in the same or better position than if the witness had asserted the privilege – "use and derivative use immunity" and "transactional immunity." *See* 92 S. Ct. at 1661; *see also United States v. Harvey,* 869 F.2d 1439, 1446 (11th Cir. 1989) (transactional immunity and use and derivative use immunity are coterminous with the Fifth Amendment privilege in all respects); *State ex. rel. North v. Kirtley,* 327 S.W.2d 166, 169 (Mo. banc 1959) (statutory immunity provisions held constitutionally valid when they provide transactional immunity).

Use and derivative use immunity merely prohibits the use of testimony or any evidence derived from that testimony against the witness in a criminal prosecution. *Kastigar,* 92 S. Ct. at 1661; *Harvey,* 889 F.2d at 1439. The witness may still be prosecuted for crimes related to the testimony if the government is able to prove the witness' guilt with evidence derived solely from sources independent of the witness' testimony. *Pillsbury Co. v. Conboy,* 459 U.S. 248, 255, 103 S. Ct. 608, 613 (1983); *United States v. Jarvis,* 7 F.3d 404, 414 (4th Cir. 1993).

The more comprehensive transactional immunity prevents the government from prosecuting the witness at any time for any offense to which the testimony relates.

Kastigar, 92 S. Ct. at 1661; *Harvey,* 889 F.2d at 1439. The grant of immunity in this case provided the debtors with full transactional immunity:

> Comes now the Prosecuting Attorney of the Twenty-First Judicial Circuit Court, of St. Louis County, Missouri, and hereby grants use immunity to David M. Nothum and Glenette Nothum from prosecution for any statement made at any judgment debtors examination conducted pursuant to Section 513.380 of the Revised Statutes of Missouri, when such statement is reasonably related to any question directed to the existence and location of any assets, liabilities, or sources of income of David M. Nothum and Glenette Nothum. ***Said use immunity will protect David M. Nothum and Glenette Nothum from prosecution for any offense related to the contents of David M. Nothum and Glenette Nothum's statement*** so made at a judgment debtors examination in the civil case pending in this circuit court, known as ARIZONA BANK AND TRUST V. SUNTIDE WEST, LLC, ET AL.

Relators' Appendix at A2 (emphasis added).

By its plain terms, the grant of immunity provides that the debtors cannot be prosecuted for "any offense" that is "related to their testimony." This grant of immunity

tracks the language of section 513.380, authorizing transactional immunity: "Such use immunity from prosecution shall protect a person from prosecution for any offense ***related to the content of the statements made***." § 513.380.2 (emphasis added); *see Holden,* 98 S.W.3d at 122.

In its opinion transferring this matter to this Court, the Court of Appeals rejected the contention that the immunity granted the debtors in this case could properly be as broad as the Fifth Amendment requires: "Under Respondent's theory, an assistant prosecuting attorney could grant immunity in a debtor exam broad enough to foreclose prosecution for embezzlement, other illegal methods of 'earning' income, and bar both state and federal tax evasion actions." Opinion at 4 n.3. This is indeed the respondent's theory, and it is the plain meaning of section 513.380 and the immunity that was granted to the debtors.

B. Section 513.380.2 provides the broadest possible immunity.

Although the phrase "use immunity" was included in section 513.380, the statute specifically defines the scope of immunity provided to judgment debtors. That definition tracks the language used by both the Supreme Court in *Kastigar* and the Supreme Court of Missouri in *Kirtley* to describe the broadest immunity available – freedom from prosecution for any offense whatsoever related to the judgment debtor's testimony.

To focus on one word – "use" – while ignoring the plain and ordinary language explaining the scope of the protection provided by section 513.380 is contrary to the first rule of statutory construction that meaning must be given to all of the language in the

statute, not just a single word. *United Pharmacal Co. of Missouri, Inc. v. Missouri Board of Pharmacy*, 208 S.W.3d 907, 909 (Mo. banc 2006).

Further, other tenets of statutory construction lend additional support for Judge Walsh's interpretation that section 513.380 grants the broadest immunity available. Statutory interpretation must not be hyper technical, but rather should be reasonable, logical, and give meaning to the statute. *Id*. at 912. Where the plain language of the statute does not itself reveal the legislature's intent, a court may "examine the whole act to discern its evident purpose, or consider the problem that the statute was enacted to remedy." *Id*. at 911-12.

Subsection 2 of section 513.380 was enacted in 1993, long after *Kastigar* and *Kirtley* held that a grant of mere "use immunity" was insufficient to compel testimony over a claim of privilege. Prior to that amendment, the county prosecutor did not have the authority to grant immunity in judgment debtor examinations. *Holden,* 98 S.W.3d at 122.

If the statute conveyed only "use immunity" as the debtors argue, the amendment would have been ineffective from its inception. The debtors' interpretation thus would render the amendment meaningless, contrary to the presumption that the legislature is aware of common law rulings and statutory interpretation, and any statutory amendments are presumed to be consistent with the courts' rulings and statutory interpretations. *See S.S. v. Mitchell,* 289 S.W.3d 797, 801 (Mo. App. 2009).

Several statutes are cited by the Court of Appeals and the debtors to show that the legislature understands how to grant "transactional immunity," but reliance on these

statutes is misplaced. *See* §§ 136.100, 144.340, 386.470, 491.205, 622.390. Not one of these statutes uses the term "transactional immunity." These statutes are like section 513.380.2 in that they shield the witness from prosecution for "any criminal offense" or "any penalty" or "any criminal penalty" related to the subject matter of the witness' testimony. Thus, while the statutes provide the broadest immunity available, it is because they convey such immunity using the language specified in *Kastigar* and *Kirtley*, not because the word "transaction" appears in a completely different context.

These statutes clearly use the term "transaction" in the context of describing the subject matter as to which the witness is immune, not as a description of the nature or extent of the immunity. *See* §§ 136.100.2 ("no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which he may be compelled to testify"), 144.340 (same), 386.470 ("no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall under oath have testified"), 622.390 (same), 491.205.1 ("no such person shall be criminally prosecuted or subjected to any criminal penalty for or on account of any act, transaction, matter or thing which is the subject matter of the inquiry in which the person testifies").

Moreover, practical considerations dictate that Judge Walsh's finding was correct. Without the ability to obtain an effective grant of immunity, there is nothing to stop a debtor from improperly invoking the privilege even where he has no fear of incrimination, knowing that there is a presumption that a witness has invoked the privilege for its proper purpose. *See Holden,* 98 S.W.3d at 119-20 (noting presumption

that any potential answer would incriminate the debtor). A grant of immunity is the only way for a judgment creditor to overcome that presumption and render the judgment debtor examination a useful method of discovering assets.

II. Respondent made the required findings to hold the debtors in contempt.

Judge Walsh followed the requirements set out in *State ex. rel. Nothum v. Kintz*, 333 S.W.3d 512, 516 (Mo. App. 2011) ("*Nothum I*"), when he found, as a matter of law, that the debtors' responses to the questions posed to them by the Bank could not possibly tend to incriminate them. The debtors' arguments to the contrary ignore the record.

At the May 3, 2011 hearing, the Bank's counsel posed several questions to each debtor directly related to their assets. 5/3/11 Tr. at 2-5, 11-13. After the debtors invoked their privilege, refused to answer all but one of the Bank's questions, and represented that they intended to assert the privilege in response to all other questions, the Bank's counsel presented the grant of immunity, and asked the Court to: (a) make a finding as a matter of law that, due to the grant of immunity, the debtors could not possibly incriminate themselves responding the questions that had been posed; and (b) order them to testify:

> Bank's Counsel: [P]ursuant to Section 513.380 of the Missouri statutes, this Grant of Immunity is as comprehensive as the State and constitutional privileges, in that it grants absolute immunity from prosecution for any offense, because the Grant of Immunity is co-extensive, in that it leaves Mrs. Nothum in the exact same positions she would be, had she asserted the fifth amendment or the Missouri privilege.

> At this time, according to Heidelberg versus Holden, the Grant of Immunity substitutes for the privilege and compels her testimony over her claim. I ask this Court *make a finding, as a matter of law*, *that due to the Grant of Immunity, there is no possibility that she could tend to incriminate herself with her answers to these questions posed*. And I would ask, at this time, that you order Mrs. Nothum to testify.

5/3/11 Tr. at 14 (emphasis added); *see id.* at 5-6, 9 (twice requesting the Court to make the same finding with respect to Mr. Nothum). Judge Walsh took that issue – whether as a matter of law the debtors could possibly incriminate themselves responding to the questions posed – under submission and advised the debtors that "they may be held in contempt for refusing to answer questions." *Id.* at 15.

Judge Walsh reconvened the attorneys on August 30, 2010, to address the issue left open at the hearing of May 3, 2011. Judge Walsh ruled that, due to the prosecutor's grant of immunity, the debtors "would be relieved from any and all prosecutorial action related to anything having to do with the subject matter or the testimony" if they chose to testify. 8/30/11 Tr.; 10/4/11 Tr. at 27-28. On October 4, 2011, Judge Walsh entered orders that included the required finding and ordered the debtors to appear to complete their judgment debtor examinations:

> Accordingly, the court determines that the grant of immunity extended to Glenette Nothum by the Office of the St. Louis

> County Prosecuting Attorney pursuant to §513.380 R.S.Mo. is coextensive with the Missouri and Federal constitutional privileges against self-incrimination and *removes any possibility that statements made by Glenette Nothum in response to any questions posed by Arizona Bank during [her] judgment debtor examination can be used to prosecute [her]*.

Relators' Appendix at A7-A11, at ¶6 (including an identical order with respect to Mr. Nothum).

That same day, the court again placed both the debtors under oath and provided them an opportunity to testify in light of the court's ruling. Judge Walsh first emphasized that there was no possibility the debtors could incriminate themselves:

> [B]ased upon my considered conclusion of reviewing the Statute 513.380 and coming to the conclusion that it does provide the broadest possible immunity grant that the Nothums do not have concern for jeopardy of criminal charges in connection with any testimony they provide in this case as judgment creditors [sic] . . . in light of that, I'm going to permit the plaintiffs to call the Nothums to testify, to make a record, and see whether they're going to refuse to testify in light of that. . . .

8/30/11 Tr.; 10/4/11 Tr. at 31-32. The Bank posed the same questions concerning the debtors' assets that were asked on May 3, 2011, and the debtors once again refused to testify. Judge Walsh again made sure that the debtors understood the court's order and reiterated that the court had ruled that the debtors had been provided the broadest immunity possible. *Id*. at 43-47. Thus, after being informed both in writing and orally multiple times that, as a matter of law, there was no possibility that their answers could be used against them, Judge Walsh entered orders finding the debtors in contempt of court:

> After finding that the immunity granted by the St. Louis County Prosecuting Attorney under the provisions of Section 513.380 of the Revised States of Missouri provides the broadest immunity possible and *protects Glenette Nothum from the possibility that she could incriminate herself in response to the questions posed* by Arizona Bank seeking information regarding her assets, and after being advised by counsel for Glenette Nothum and Glenette Nothum that she nevertheless *still refuses to answer those questions*, the Court finds Glenette Nothum in contempt of court and issues a writ of attachment against Glenette Nothum.

Relators' Appendix at A12-A15 (including an identical order with respect to Mr. Nothum). Judge Walsh not only complied with the contempt procedure specified in *Nothum I*, he took extra precaution to do so.

The opinion of the Court of Appeals suggests that *Nothum I* did not permit Judge Walsh to make this finding with respect to the group of questions posed by the Bank and that Judge Walsh was instead required to make the same finding individually with respect to each question. Opinion at 2. This was not the directive of *Nothum I*, which held only that the Court was required to make the finding with respect to the questions posed. *Nothum*, 333 S.W.3d at 516.

III. The signature of an assistant prosecuting attorney is sufficient.

Assistant prosecuting attorneys are authorized to grant immunity under section 513.380.2. This Court's Rule 19.05 explicitly defines "prosecuting attorney" to include assistant prosecuting attorneys. The debtors' argument that this definition is contained in the Rules of Criminal Procedure and not the Rules of Civil Procedure is a meaningless point. A prosecutor's or assistant prosecutor's purpose is to facilitate the criminal system in his or her county. This is whether he or she is prosecuting crimes or granting immunity from those same crimes. There is no logical reason to limit the definition of prosecuting attorney in this context.

Moreover, section 56.180, RSMo, expressly grants assistant prosecuting attorneys the authority to "discharge such duties as may be required of them in criminal and civil causes . . . on behalf of the state or county." This Court has noted that an assistant prosecuting attorney "is generally clothed with all of the powers and privileges of the

prosecuting attorney; and all acts done by him in that capacity must be regarded as if done by the prosecuting attorney." *State v. Falbo,* 333 S.W.2d 279, 284 (Mo. 1960); *see also State v. Tierney,* 584 S.W.2d 618, 620 (Mo. App. 1979).

The debtors point to no cases where a court has interpreted a statute containing the term "any prosecuting attorney" to mean that only elected prosecutors can perform whatever function or duty is specified. Indeed, Missouri courts have consistently held that the signature of an assistant prosecuting attorney was sufficient. *See Tierney,* 584 S.W.2d at 620 (finding the signature of an assistant prosecuting attorney "was as if done by the prosecutor"); *State v. Elgin,* 391 S.W.2d 341, 343 (Mo. 1965); *State v. Lindsey,* 182 S.W.2d 530, 530 (Mo. 1944); *State v. Easley,* 338 S.W. 2d 884, 885-86 (Mo. 1969).

The legislature has granted prosecutors the explicit statutory authority to grant immunity for offenses related to testimony elicited at a judgment debtor examination. § 513.380.2; *see Holden,* 98 S.W.3d at 122 (noting that prior to the amendment to section 513.380 in 1993, prosecutors did not have the authority to grant immunity). The applicable statutes, rules, and cases show that assistant prosecuting attorneys possess the same powers of the elected official with respect to signing documents of the prosecutor's office, and the debtors have been unable to point to any authority to the contrary.

IV. The preliminary writ should be quashed, and the petition should be denied.

Judge Walsh was explicitly authorized to hold the relators in contempt under section 513.380.1 after they refused to testify despite being compelled to do so, and did not abuse his broad discretion to issue contempt orders. The preliminary writ should be quashed, and the relators' petition denied.

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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I hereby certify that on March 8, 2012, the foregoing was mailed by United States Postal Service to the following non-participants in Electronic Case Filing:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 5,301, except the cover, certificate of service, certificate required by Rule 84.06(c), signature block, and appendix.

/s/ Christopher R. Larose