STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Russell L. Bauknight, et al,	)	No. 2010-CP-40-4900
	)	
Plaintiffs,	)	
	)	
v.	)	**MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AS TO DEPOSITION OF ATTORNEY GENERAL**
	)	
Adele Pope,	)	
	)	
Defendant,	)	
	)	

This Memorandum supports the Motion for Protective Order of Attorney General Alan Wilson to bar the taking of his deposition in this case. The taking of his deposition would pose an undue burden under Rule 26(c), SCRCP, for the following reasons

1. Alan Wilson, who took Office in January, 2011, was not the Attorney General when this suit was initiated and, therefore, lacks personal knowledge of all or most of the matters at issue in the suit. Defendant has deposed former Attorney General Henry McMaster who was in Office when this suit was brought.

2. All or most of any questions Attorney General Wilson might be asked would be subject to attorney client and work product privileges

3. Questioning of the Attorney General with objections thereto would likely take a day or more of his time. Depositions of two lawyers on his staff in a related proceeding took nearly five days. The deposition of Henry McMaster took approximately four hours or more. Such a time consuming deposition would interfere with the Attorney General's handling of the important duties of his Constitutional Office.

The above concerns fit squarely within the often called *Morgan* rule that is well recognized by the Federal Courts and other states that have considered it. Under that rule or related authority, depositions should not be taken of high ranking government officials unless the party noticing the deposition shows that the information sought is essential, that it is not obtainable elsewhere, and that the deposition of the official would not interfere with his government responsibilities. *See* discussion below. Defendant cannot make such a showing for a deposition of the Attorney General. The Attorney General did not witness the events that are the subject of the Complaint nor did he make the decision to institute suit. Questions related to the continuation of the suit since he took Office would be barred by attorney client and work product privileges.[1] Therefore, a deposition of the Attorney General would be an unproductive, time consuming exercise that would be an undue burden on him in his execution of his responsibilities as a State Constitutional Officer.

I

THIS COURT SHOULD APPLY THE AMPLE AUTHORITY THAT DEPOSITIONS SHOULD NOT BE TAKEN OF HIGH RANKING OFFICIALS ABSENT LIMITED EXCEPTIONS THAT DO NOT APPLY HERE

The above referenced *Morgan* rule is based on a United States Supreme Court decision (*United States v. Morgan*, 313 U.S. 409, 422 (1941)), that is widely accepted throughout the Federal Courts, including the Fourth Circuit Court of Appeals, and has been adopted by a

[1] Another ground for this motion is that the deposition should not be taken before this Court rules on the Attorney General's Motion to be removed as a party to this case. Now, that motion is scheduled to be heard on the same date as this Motion for Protective Order. Regardless of the outcome of the motion of the Attorney General to be dropped as a party, his deposition would be an undue burden for the other reasons given.

number of states. *See below.* As stated 27 years ago by the Supreme Court of Vermont, "[t]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. The few states that have had occasion to reach this question have adopted this standard as well." *Monti v. State*, 563 A.2d 629, 631, 151 Vt. 609, 611-12 (Vt.,1989) (emphasis added).

The Circuit Court should apply this rule to our pending motion because of this authority. Although apparently not all of the Federal cases have based the *Morgan* rule on Rule 26(c), FRCP, our State court rule is similar and would empower the Circuit Court to apply the rule based upon the undue burden that the deposition would impose on the Attorney General. The *Morgan* doctrine is certainly consistent with our Supreme Court's decision applying a similar rule to testimony of judges.

> The modern trend of courts [is of] not allowing a judge to testify regarding a case in which he previously presided unless the testimony is: 1) critical; and 2) can be obtained by no other means. *See United States v. Dowdy*, 440 F.Supp. 894 (W.D.Va.1977); *Commonwealth v. Ellis*, 10 Mass. L. Rptr. 333 (Mass.1999) available at 1999 WL 855196; State ex rel. Carroll v. Junker, 79 Wash.2d 12, 482 P.2d 775 (Wash.1971); Helmbrecht v. St. Paul Ins. Co., 117 Wis.2d 74, 343 N.W.2d 132 (Wis.Ct.App.1983. . . which he previously presided). . . ."

In re Whetstone, 580 S.E.2d 447, 448, 354 S.C. 213, 216 (2003).

II

THE *MORGAN* RULE ITS PROGENY AND RELATED AUTHORITY SHOULD BE APPLIED TO BAR THE DEPOSITION OF THE ATTORNEY GENERAL

The *Morgan* rule and its progeny and related cases discussed below apply similar requirements for the showing of "extraordinary circumstances,"(*Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211–12 (C.A.4,1991), *infra*) to depose a high ranking official such as the Attorney General. It makes clear that the burden is on the party seeking the deposition to make such a showing. At a minimum, the Defendant must show that the testimony is "critical" (*Whetstone, supra*), "can be obtained by no other means" (*Id.*), and will not interfere with his other responsibilities (*McNamee v. Massachusetts,* 2013 WL 1285483, at *3 (D.Mass.,2013), *infra*). As stated in *McNamee,* a deposition will not be allowed unless the party seeking the testimony shows that " (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official's government responsibilities. . . . "

The Defendant cannot show extraordinary circumstances to justify the taking of Attorney General Wilson's deposition. The information sought is not "essential" or "critical," under the first criteria, *supra,* because Attorney General Wilson did not take Office until the year after this suit was brought and lacks personal knowledge of the circumstances when this action was initiated. Defendant cannot show that "the information sought is not obtainable elsewhere" under the second criteria. She has taken the deposition of former Attorney General McMaster who was holding Office when this suit was brought, and she has also taken the depositions of Senior Assistant Deputy Attorney General Sonny Jones and Assistant Deputy Mary Frances Jowers in a related case. This summer, she has served on the Attorney General requests to admit the authenticity of documents, interrogatories and production requests in this case. For these

reasons, Defendant cannot show that the information sought "can be obtained by no other means"(*Whetstone*). She also cannot show that the "provision of the testimony will not interfere with the [the Attorney General's] government responsibilities . . ." (*McNamee*). The Jones and Jowers depositions took nearly five days and the questioning of former Attorney General McMaster took nearly four hours. Given that all or most questions would be subject to objection as going to privileged matter, the deposition would be very unproductive and an undue burden.

Excerpts from *Morgan*, its progeny and related cases set forth below barred depositions of the public officials including Attorneys General and other heads of government agencies including plaintiffs and defendants.

III

THE MORGAN RULE AND A SAMPLING OF CASES FOLLOWING IT

> The need for limited access to high government officials through the discovery process is well established. In *United States v. Morgan*, 313 U.S. 409, 422 (1941), the Supreme Court indicated that the practice of calling high ranking government officials as witnesses should be discouraged. Relying on *Morgan*, other courts have concluded that top executive department officials should not, absent extraordinary circumstances, be called to testify or deposed regarding their reasons for taking official action. *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); see also In re United States (Holder), 197 F.3d 310, 313 (8th Cir.1999); *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir.1995); *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir.1993). This rule is based on the notion that "[h]igh ranking government officials have greater duties and time constraints than other witnesses" and that, without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation. *Kessler*, 985 F.2d at 512.4 But this limitation is not absolute. Depositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated. *See Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 335 (M.D.Ala.1991); *Church of Scientology of Boston v. IRS*, 138 F.R.D. 9, 12 (D.Mass.1990); *Cmty. Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C.1983). However, even in such cases, discovery is permitted only where it is shown that other persons cannot provide the necessary information. *Holder*, 197 F.3d at 314.
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> The parties agree that [Defendant] Mayor Menino is a high ranking government official and therefore is not subject to being deposed absent a demonstrated need.. . . [T]he district judge did not abuse his discretion in issuing a protective order for Mayor

> Menino because the Bogans had not exhausted other available avenues of discovery.(emphasis added)

Bogan v. City of Boston, 489 F.3d 417, 423-24 (C.A.1 (Mass.),2007)(deposition of Defendant mayor).

> Since *Morgan*, federal courts have consistently held that, absent "extraordinary circumstances," a government decision-maker will not be compelled to testify about his mental processes in reaching a decision, "including the manner and extent of his study of the record and his consultations with subordinates." *Id. See Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); *Sweeney v. Bond*, 669 F.2d 542, 546 (8th Cir.), cert. denied, 459 U.S. 878 (1982); *Kyle Engineering Co. v. Kleppe*, 600 F.2d 226, 231–32 (9th Cir.1979); *Warren Bank v. Camp*, 396 F.2d 52, 56 (6th Cir.1968); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 325–26 (D.D.C.1966), aff'd, 384 F.2d 979 (D.C.Cir.), cert. denied, 389 U.S. 952 (1967). Typical of these decisions is *Carl Zeiss*, in which the court said:
>
> > The judiciary, the courts declare, is not authorized "to probe the mental processes of an executive or administrative officer. This salutary rule forecloses investigation into the methods by which a decision is reached, the matters considered, the contributing influences, or the role played by the work of others—results demanded by the exigencies of the most imperative character. No judge could tolerate an inquisition into the elements comprising his decision—indeed, "[s]uch an examination of a judge would be destructive of judicial responsibility"—and by the same token "the integrity of the administrative process must be equally respected."
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> *Id.* at 325–26 (emphasis added; footnotes omitted).

Franklin Sav. Ass'n v. Ryan, 922 F.2d 209, 211–12 (C.A.4,1991)(deposition of Director of Defendant Office of Thrift Savings).

> It is well established that high-ranking government officials may not be deposed or called to testify about their reasons for taking official actions absent "extraordinary circumstances." *See, e.g., Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211 (4th Cir.1991); *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); In re FDIC, 58 F.3d 1055, 1060 (5th Cir.1995). When such circumstances are not present, mandamus is appropriate to prevent a district court from compelling an official's

appearance. *See, e.g., U.S. Bd. of Parole v. Merhige*, 487 F.2d 25, 29 (4th Cir.1973), cert. denied, 417 U.S. 918 (1974); *In re United States (Jackson),* 624 F.3d 1368, 1372–73 (11th Cir.2010); *In re Cheney*, 544 F.3d 311, 314 (D.C.Cir.2008).

In re McCarthy, 636 Fed.Appx. 142, 143 (C.A.4,2015)(Deposition of EPA Admistrator in suit against EPA).

> The need for controlling the use of subpoenas against high government officials was recognized by the Supreme Court in *United States v. Morgan*,. . . In that case involving a subpoena directed to the Secretary of Agriculture, the Court stated that regular examination of high officials concerning the reasons for their official actions would undermine the integrity of the administrative process. Id. at 422, 61 S.Ct. 999. Other courts have reasoned similarly. Because "[h]igh ranking government officials have greater duties and time constraints than other witnesses ... [they] 'should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions.' " *In re United States (Kessler),* 985 F.2d 510, 512 (11th Cir.1993) (per curiam) (quoting *Simplex Time Recorder Co. v.. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985)). If other persons can provide the information sought, discovery will not be permitted against such an official. Id. at 513; *see also In re FDIC*, 58 F.3d 1055, 1062 (5th Cir.1995) ("We think it will be the rarest of cases ... in which exceptional circumstances can be shown where the testimony is available from an alternate witness."). . . . It is not disputed here that the Attorney General and the Deputy Attorney General are high government officials. Lee must therefore establish at a minimum that the Attorney General and the Deputy Attorney General possess information essential to his case which is not obtainable from another source. Kessler, 985 F.2d at 512-13; see also *In re FDIC*, 58 F.3d at 1062. This means both that the discovery sought is relevant and necessary and that it cannot otherwise be obtained. *Kessler,* 985 F.2d at 512-13. Without establishing this foundation, "exceptional circumstances" cannot be shown sufficient to justify a subpoena. See id. . . .
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> Testimony by [U.S. Attorney General Janet] Reno and [Deputy Attorney General] Holder is not necessary to establish a factual basis for Lee's attempt to overturn the jury's sentencing recommendation on the basis of noncompliance with the protocol.

In re U.S., 197 F.3d 310, 313-14 (C.A.8,1999) (deposition of Attorney General Reno in a Federal prosecution).

It is a settled rule in this circuit that "exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted." *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991) (per curiam) (citing *EEOC v. K–Mart*, 694 F.2d 1055, 1067–68 (6th Cir.1982)). . . "High ranking government officials have greater duties and time constraints than other witnesses." *In re United States*, 985 F.2d 510, 512 (11th Cir.) (per curiam), cert. denied, 510 U.S. 989, 114 S.Ct. 545, 126 L.Ed.2d 447 (1993). "[T]he Supreme Court has indicated that the practice of calling high officials as witnesses should be discouraged." *Id. (citing United States v. Morgan*, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941)). . . .

We disagree that Pacific Union has made the strong showing necessary for a finding of exceptional circumstances. Pacific Union disclaims any intention to "suggest that senior government officials may be deposed in every case in which the government is a party." (Footnote omitted). Yet the reasoning Pacific Union advances would risk eviscerating well-settled principles of administrative law. If countenanced, this rationale would justify deposing high-level government officers in a plethora of cases in order to probe their decision-making processes and the reasons for their decisions. Agency leaders often send and receive correspondence relative to their actions. Their official conduct frequently affects—sometimes adversely—the property rights of private parties. This does not of itself subject them to the burdens of litigation discovery.

Nor is the present case distinguished by the fact that the FDIC initiated the Houston declaratory judgment action. As the FDIC correctly points out, the order before us for review was entered in the Brownsville Action, which the FDIC did not commence and to which it is not a party. It is not sufficient for Pacific Union to rely upon the joint nature of the discovery undertaken in the two cases, because in the Houston Action—to which the FDIC is a party—the magistrate judge quashed the depositions.. . . .

In re F.D.I.C., 58 F.3d 1055, 1060- 1062 (C.A.5 (Tex.),1995)(Depositions of three FDIC directors in action in which the FDIC was not a party but deposition had already been quashed of them in an action in which the FDIC was a party).

This Court has already ruled that Augustus qualifies as a "high ranking government official" for the purposes of this dispute. In light of this fact and the case law presented above, Plaintiff's subpoena of Augustus will be quashed unless (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official's

> government responsibilities. *In re F.D.I.C.,* 58 F.3d 1055, 1061 (5th Cir.1995); *Hankins*, 1996 WL 524334, at *1 (E.D.Pa. Sept.12, 1996) (internal citations omitted).

McNamee v. Massachusetts, 2013 WL 1285483, at *3 (D.Mass.,2013)(deposition of former chief of staff of legislator).

> Defendants state that the information sought by the depositions is needed. They argue that the factual basis for the allegations must be made known before defendants can defend themselves. This is the only proof of need which is made. Absent a clear showing of need to prevent injustice to the party seeking the deposition, such deposition may not be taken from a cabinet official or head of an executive department. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D., N.Y.1963). The Court feels that discovery by interrogatory and requests for admissions (which have been pursued already) are presently adequate means of discovery for the defendants. Thus, plaintiff's motion for a Protective Order as to the taking of the deposition of the Attorney General and the Secretary of Housing and Urban Development is GRANTED.

U.S. v. Northside Realty Associates, Inc., 324 F.Supp. 287, 295 (D.C.Ga. 1971) (deposition of Attorney General in suit initiated by him on behalf of United States).

> [I]t is our view the Attorney General and Director of the Division of Criminal Justice, as well as other high-level government officials, should not be deposed, absent a showing of first-hand knowledge or direct involvement in the events giving rise to an action, or absent a showing that such deposition is essential to prevent injustice. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963); *Cf. Virgo Corporation v. Paiewonsky,* 39 F.R.D. 9 (D.C.Virgin Islands, 1966).
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> . . . Clearly, information concerning previous cases brought under the Removal Act which defendant contends is relevant to his defense of selective enforcement, may be obtained from other representatives of the Attorney General's Office. The rationale of the trial judge that since Hyland is the plaintiff he is subject to being deposed ignores the fact that the Attorney General is suing solely in a representative capacity under N.J.S.A. 2A:81—17.2a4.

Hyland v. Smollok, 349 A.2d 541, 543, 137 N.J.Super. 456, 460 (N.J.Super.A.D. 1975)(deposition of Plaintiff New Jersey Attorney General).

> In *Morgan*, 313 U.S. 409, 61 S.Ct. 999, *supra* n. 1, the Supreme Court created an exception to the general discovery principles as it applies to high-ranking officials holding public office. Id. at 422, 61 S.Ct. 999. Under the doctrine, as developed in later case law, high-ranking government officials are not subject to being deposed with respect to their mental processes in performing discretionary acts. *In Re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991); *Singer Sewing Machine Co. v. NLRB*, 329 F.2d 200, 206–08 (4th Cir.1964). The privilege applies to former as well as current officials. *Arnold Agency v. West Virginia Lottery Commission*, 206 W.Va. 583, 526 S.E.2d 814, 830 (1999).[footnote omitted] The *Morgan* doctrine is not absolute, for instance, in situations where a high-ranking official's involvement becomes less supervisory and directory and more hands-on and personal, that it is considered so intertwined with the issues in controversy, fundamental fairness may require the deposition of an official. In general, a deposition of a high-ranking official in litigation not specifically directed at his alleged misconduct will only be permitted if (1) extraordinary circumstances are shown, *United States v. Merhige*, 487 F.2d 25, 29 (4th Cir.1973); or (2) the official is personally involved in a material way. *Singer Sewing Machine Co.*, 329 F.2d at 206–08. The burden is on the party seeking the deposition of the high-ranking official to demonstrate the existence of the foregoing.

Johnson v. Clark, 21 A.3d 199, 210, 199 Md.App. 305, 323 (Md.App.,2011)(deposition of county executive of county defendant).

> We agree with the observation of the United States District Court for the Eastern District of Pennsylvania that "[d]epartment heads and similarly high-ranking officials should not ordinarily be compelled to testify unless it has been established that the testimony to be elicited is necessary and relevant and unavailable from a lesser ranking officer." *Halderman v. Pennhurst State School and Hospital*, 559 F.Supp. 153 (E.D.Pa.1982).

State, Dept. of Health and Rehabilitative Services v. Brooke, 573 So.2d 363, 371 (Fla.App. 1 Dist.,1991)(Deposition sought of Secretary of Defendant Department of Health and Rehabilitative Services); *see also, Department of Agriculture and Consumer Services v. Broward County*, 810 So.2d 1056, 1058 (Fla.App. 1 Dist.,2002)(Deposition of agency head in challenge to agency rule);

As previously noted . . in the instant case we are asked to determine whether a discovery deposition request may be found to be an annoyance, embarrassment, oppression, or undue burden based upon the deponent's position as a government official. Because the language contained in Rule 26(c) of the West Virginia Rules of Civil Procedure is nearly identical to Rule 26(c) as contained in the Federal Rules of Civil Procedure, we look to federal case law for guidance.

In *United States v. Northside Realty Associates*, 324 F.Supp. 287 (N.D.Ga.1971), the United States District Court for the Northern District of Georgia, reviewed plaintiff's motion for a protective order under Rule 26(c) of the Federal Rules of Civil Procedure and commented:

> It has been recognized that a member of the Cabinet or the head of a large executive department should not be called upon to give his deposition if such deposition is taken in order to probe the mind of the official to determine why he exercised his discretion as he did in regard to a particular matter. *De Cambra v. Rogers*, 189 U.S. 119, 122 . . (1903) and *United States v. Morgan*, 313 U.S. 409, 422 . . . The case of *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963) extends this doctrine to allow the taking of personal testimony of a cabinet official only on a clear showing that the testimony of the official is necessary to prevent injustice to the party [requesting it].

Id. at 293 (emphasis added).

* * *

We, therefore, hold that highly placed public officials are not subject to a deposition absent a showing that the testimony of the official is necessary to prevent injustice to the party requesting it. When determining whether to allow the deposition of a highly placed public official, the "trial courts should weigh the necessity to depose or examine an executive official against, among other factors, [1] the substantiality of the case in which the deposition is requested; [2] the degree to which the witness has first-hand knowledge or direct involvement; [3] the probable length of the deposition and the effect on government business if the official must attend the deposition; and [4] whether less onerous discovery procedures provide the information sought." *Id.* at 613-14, 563 A.2d at 632. Moreover, we find that the burden is upon the proponent of the deposition to show the necessity of taking an oral deposition of a highly-placed government official.

(emphasis added) *State ex rel. Paige v. Canady*, 475 S.E.2d 154, 160, 197 W.Va. 154, 160-162 (W.Va.,1996)(deposition of Secretary / Tax Commissioner in FOIA action apparently against him).

It is patently in the public interest that the Attorney General be not unnecessarily hampered or distracted in the important duties cast upon him by law. And that public interest obviously transcends the convenience that would otherwise be afforded private litigants by the availability of that official as an expert witness on their attorneys' reasonable fees in successful litigation against the state or its agencies.

This view has several times been confirmed, and insofar as we can determine never rejected, by the courts of this nation. A highly placed public officer should not be required to give a deposition in his official capacity in the absence of "compelling reasons." (*645 *Weir v. United States* (8th Cir. 1962) 310 F.2d 149, 154-155.) Such a requirement should be discouraged as "contrary to the public interest, ..." (*Union Savings Bank of Patchogue, New York v. Saxon* (D.D.C. 1962) 209 F.Supp. 319, 319-320.)

"... There must be some showing, if the right to take a deposition is challenged by the prospective witness, why the prospective witness should be examined. This applies particularly to heads of government agencies. If the head of a government agency were subject to having his deposition taken concerning any litigation affecting his agency or any litigation between private parties which may indirectly involve some activity of the agency, we would find that the heads of government departments and members of the President's Cabinet would be spending their time giving depositions and would have no opportunity to perform their functions. [¶] ... It would be oppressive and vexatious to require [the head of a government agency] to submit to an interrogation that might last for several hours and that would, of course, disturb government business." (*Capitol Vending Co. v. Baker* (D.D.C. 1964) 36 F.R.D. 45, 46.)

Further such authority is found in *Wirtz v. Local 30, International U. of Operating Engineers* (S.D.N.Y. 1963) 34 F.R.D. 13, 14, where the court stated: ". . . common sense suggests that a member of the Cabinet and the administrative head of a large executive department should not be called upon personally to give testimony by deposition, either in New York or elsewhere, unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party who would require it. No such showing has been made here and in the nature of things it could not be made."

We find the foregoing authority to be applicable to the proceedings at hand. No clear showing was made that the Attorney General's deposition was required in order "to prevent prejudice or injustice to the party who would require it." It is concluded that the superior court's ruling on the motion to quash was without sanction of law, and an abuse of judicial discretion.

State Board of Pharmacy v. Superior Court, 78 Cal.App.3d 641, 644-45 (Cal.App.1.Dist)(deposition of California Attorney General regarding appropriate attorney's fees to be awarded against a state agency and the impact of the case).

CONCLUSION

The *Morgan* rule and its progeny and related cases protect against depositions of high-ranking public officials except under extraordinary circumstances not present here. This deposition would be an undue burden for this reason and those others noted above. Therefore, this Court should issue a protective order barring the taking of the deposition of Attorney General Wilson in this case.

Respectfully submitted,

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