IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
v.	)	**INDICTMENT NO.**
	)	**23SC188947**
MICHAEL A. ROMAN,	)	
	)	
Defendant.	)	
	)	

DEFENDANT MICHAEL ROMAN'S MOTION TO DISMISS GRAND JURY INDICTMENT AS FATALLY DEFECTIVE AND MOTION TO DISQUALIFY THE DISTRICT ATTORNEY, HER OFFICE AND THE SPECIAL PROSECUTOR FROM FURTHER PROSECUTING THIS MATTER

COMES NOW, Defendant Michael Roman ("Mr. Roman"), by and through his undersigned counsel, and, pursuant to O.C.G.A. § 15-18-20, the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section I, Paragraph I and Article VI, Section VIII, Paragraph I of the Georgia Constitution, the inherent supervisory powers of this Court, the Georgia Rules of Professional Responsibility, and other law set forth herein, moves this Honorable Court for an order striking the special purpose grand jury report and dismissing the criminal indictment in its entirety against Mr. Roman on the grounds that the entire prosecution is invalid and unconstitutional because the Fulton County district attorney never had legal authority to appoint the special prosecutor, who assisted in obtaining both grand jury indictments. As a result, both indictments contain structural errors and irreparable defects and should be dismissed in their entirety as to Mr. Roman.[1] Mr. Roman also moves the Court for an order disqualifying the district attorney,

[1] Notably, the special purpose grand jury did not recommend an indictment or any charges against Mr. Roman. The district attorney and special prosecutor made that charging decision on their own.

her office, and the special prosecutor from further prosecuting the instant matter on the grounds that the district attorney and the special prosecutor have been engaged in an improper, clandestine personal relationship during the pendency of this case, which has resulted in the special prosecutor, and, in turn, the district attorney, profiting significantly from this prosecution at the expense of the taxpayers.

Accordingly, the district attorney and the special prosecutor have violated laws regulating the use of public monies, suffer from irreparable conflicts of interest, and have violated their oaths of office under the Georgia Rules of Professional Conduct and should be disqualified from prosecuting this matter. In further support of the instant motions, Mr. Roman respectfully shows the Court as follows:

INTRODUCTION

The instant Motion is not filed lightly. Nor is it being filed without considerable forethought, research or investigation. Nonetheless, this Motion must be heard, as the issues raised herein strike at the heart of fairness in our justice system and, if left unaddressed and unchecked, threaten to taint the entire prosecution, invite error, and completely undermine public confidence in the eventual outcome of this proceeding.

There are fewer positions of authority in Georgia's justice system more powerful than an elected district attorney. The district attorney has incredible control and influence over the entire criminal judicial process, including the power to decide who and when to charge and how to charge them, which cases will get tried and which cases will be resolved, and, importantly the power to allocate public monies provided for the operation of the district attorney's office. Historically, there have been few checks on this power in

Georgia, and district attorneys have largely been able to act with broad discretion in deciding how to utilize public monies and making prosecutorial decisions.

This case presents a unique opportunity for this Court to review this authority and determine if the district attorney here overstepped her legal discretion and authority and whether she and the special prosecutor violated the law and their obligations under the Georgia Rules of Professional Conduct when they engaged in a personal, romantic relationship that has ultimately yielded substantial income to the special prosecutor. The important issues raised in the instant Motion suggest that the elected district attorney for the largest district attorney's office in the State of Georgia has used the instant prosecution to pay her partner a large sum of money that was originally allotted to clear the backlog of cases in Fulton County following the Covid pandemic.

Normally, the district attorney's use of funds allotted pursuant to a county's prior approval would not be newsworthy or legally actionable. But this case is different. The district attorney sought additional funds from Fulton County to clear the Covid backlog, including making a detailed presentation to the Board of Commissioners in 2021, and she ultimately received that funding from Fulton County. But she has not used those funds for that purpose. She apparently has used them to prosecute this case. Even assuming that were proper and could be forgiven, even within the contours of this prosecution, there is a separate and very important concern about her use of the money. As the layers unfold, it becomes clear that the district attorney and the special prosecutor have been profiting personally from this prosecution at Fulton County's expense. Instead of handling this case within her office, as she could have done given the influx of Covid money, she chose to hire a private special prosecutor to preside over the case. Once again, on its face, this is

not earth-shattering, and generally well within her discretion—but there are several important facts that distinguish this case from the typical one, and which render the indictment invalid as a matter of law.

Under Georgia law, the district attorney was required to obtain Fulton County's approval prior to appointing the special prosecutor to work on the case. The reason for this requirement is simple; it ensures that the district attorney cannot act unilaterally with regard to public monies and is subject to the control and supervision of the governing body, i.e., Fulton County so that public has confidence in how the money is used. Undersigned counsel has found no evidence that the district attorney sought or received such approval to appoint the special prosecutor from Fulton County. This is not a mere technicality. It is a requirement the Georgia Supreme Court has held must be followed when a special prosecutor is appointed, and, therefore, a prerequisite for any special prosecutor's work on a case including the instant case.

Since the district attorney was fully capable of asking for authority for additional funding following the pandemic, then it is clear she knows how to do that. So that begs the question of why she did not do so with regard to the approval for the special prosecutor in this case. One could assume it was an oversight, but digging deeper the potential reason becomes obvious. As has been pointed out in prior filings, the special prosecutor's oath of office was never filed. While this may have been an oversight, it may have been purposeful—a specific attempt to shield from public knowledge the fact that the special prosecutor had, in fact, been appointed without legal authority. Perhaps more important and enlightening, however, is the identity and qualifications of the specific person the district attorney chose to put in charge of this prosecution.

The district attorney chose to appoint her romantic partner, who at all times relevant to this prosecution has been a married man. Admittedly, this is a bold allegation considering it is directed to one of the most powerful people in the State of Georgia, the Fulton County District Attorney. Nevertheless, the district attorney's fame and power do not change the fact that she decided to appoint as the special prosecutor a person with whom she had a personal relationship and who is now leading the day-to-day prosecution of this case. Even assuming this type of nepotism might be forgiven in the abstract, a review of the amount of money that the special prosecutor has been paid by the district attorney and the personal activities of the district attorney and the special prosecutor during the pendency of this prosecution shed light on just how self-serving this arrangement has been.

The Court may well be wondering, and for good reason, "How do you know this?" and "Why does it matter?"

How Do We Know This?

- Open records requests to Fulton County reveal that the district attorney did not obtain county approval to appoint the special prosecutor. Why would the district attorney not obtain this approval prior to appointing the special prosecutor?

- The special prosecutor has admitted his oath was not filed prior to his work on this case. Why would the special prosecutor not just file the oath, a simple administrative task for a lawyer?

- The special prosecutor is seeking a divorce in Cobb County and sought successfully to seal those records, hiding them from public view. Why would a private citizen such as the special prosecutor shield filings related to his income and spending from public view?

- While the filings in the divorce case are sealed by Court order (the legality of which is open to question), information obtained outside of court filings indicates that the district attorney and special prosecutor have traveled personally together to such places as Napa Valley, Florida and the

Caribbean and the special prosecutor has purchased tickets for both of them to travel on both the Norweigan and Royal Carribean cruise lines. Traveling together to such places as Washington, D.C. or New York City might make sense for work purposes in light of other pending litigation, but what work purpose could only be served by travel to this traditional vacation destinations?

- The district attorney and the special prosecutor have been seen in private together in and about the Atlanta area and believed to have co-habited in some form or fashion at a location owned by neither of them.

- Sources close to both the special prosecutor and the district attorney have confirmed they had an ongoing, personal relationship during the pendency of the special prosecutor's divorce proceedings.

- According to these sources, the personal relationship between the district attorney and the special prosecutor began before this prosecution was initiated and before the district attorney appointed the special prosecutor.

- Undersigned counsel knows the special prosecutor and has researched his litigation experience. That research reveals that the special prosecutor has never tried a felony RICO case. The State of Georgia and the City of Atlanta has several lawyers who specialize in the prosecuting and defending RICO cases. Despite having access to these resources, why would the district attorney, instead, appoint someone who has never tried a felony RICO case, particularly in a case with such national significance as this one?

- The special prosecutor, based on his lack of experience in this type of felony, would not be qualified under Fulton County's standards to be appointed to represent any defendant in this case given the complexity of the charges. If the special prosecutor is not qualified to defend this case under Fulton County's standards, then how is he qualified to prosecute the case? Is that why the district attorney did not seek approval for his appointment? If so, why did she seek to appoint an unqualified lawyer without approval to preside over this prosecution?

- Since being appointed as special prosecutor, the special prosecutor has been paid an estimated almost $1,000,000.00 in legal fees. Of course, additional fees would be expected when private counsel is hired, but that would assume they are not in a relationship with the district attorney and they were qualified to do the work they were hired to do.

- The special prosecutor's fees have been lucrative in comparison by any reasonable measure. The district attorney's yearly salary, including state and county supplements, is $ 198,266.66 and the total annual budget for the Fulton County District Attorney's Office for fiscal year 2022 was $

31,541,968.00. The district attorney lobbied for additional money from Fulton County to hire lawyers and staff to clear the backlog after Covid. Why didn't she use that money to hire qualified in-house staff to try this case? Why did she, instead, use that money to retain the special prosecutor?

Why Is This Important?

- The district attorney's failure to obtain the required approval to appoint the special prosecutor prior to him obtaining indictments against Mr. Roman renders the special prosecutor's service in that role a nullity and without effect under Georgia law, so the indictments he assisted in securing suffer from a structural and irreparable defect and must be dismissed.

- In light of the district attorney's personal relationship to the special prosecutor prior to his appointment as the special prosecutor, his appointment created an impermissible and irreparable conflict of interest under Georgia's Rules of Professional Conduct, which requires the disqualification of both lawyers and their respective offices and firms.

- The district attorney's apparent intentional failure to disclose her conflict of interest to Fulton County and the Court, combined with her decision to employ the special prosecutor based on her own personal interests may well be an act to defraud the public of honest services since the district attorney "personally benefitted from an undisclosed conflict of interest" which is a crime under 18 U.S.C. § 1346 as well as a predicate act which could result in a RICO charge against both the district attorney and the special prosecutor.

- Putting aside both the legal and ethical implications of their conduct, their conduct also undermines the sanctity of the criminal justice system, erodes public trust in our judicial system, and would place them above the law. To allow this conduct to go unchecked by a powerful, public, elected official threatens to undermine the very principles of democracy that the district attorney herself claims to defend in this prosecution. It seems hard to believe that such a powerful person could escape scrutiny and accountability for such egregious conduct simply because she believes she maintains a moral high ground and holds one of the powerful positions in the State of Georgia. This is particularly true since she has used that platform and the megaphone it provides to tour the country giving interviews in her pursuit of a conviction.

It is for these reasons and the other important reasons set forth below that the instant motion is being filed. The actions of the district attorney and the special prosecutor are indefensible under the law and our Rules of Professional Conduct and have ultimately

created a fatal and irreparable defect in the indictment against Mr. Roman and a conflict of interest that has tainted the entire prosecution. To allow either of them to stand above the law would be to invite and encourage the same behavior in the future, so Mr. Roman respectfully requests that the Court grant the instant and dismiss the indictment in its entirety as to Mr. Roman. Mr. Roman also respectfully requests that the Court disqualify Willis, Wade and their respective offices and firms from any further involvement in the prosecution of this matter.

FACTUAL BACKGROUND

I. WILLIS AND WADE HAVE ENGAGED IN A PERSONAL RELATIONSHIP BOTH BEFORE AND AFTER WILLIS APPOINTED WADE AS THE SPECIAL PROSECUTOR IN THE INSTANT CASE.

Upon information and belief, and based on discussions with individuals with knowledge, Willis and Wade were romantically involved prior to Willis awarding a contract for legal services with Wade. It is not entirely clear when the relationship began, but it began while Wade was married. On November 2, 2021, a day after his first contract with Willis commenced, Wade filed for divorce in Cobb County Superior Court. (*See* Cobb County Civil Case Docket Number 21108166). Wade then had the divorce proceedings sealed by consent order on February 10, 2022.[2]

While the filings in the divorce case are sealed by Court order, undersigned counsel has learned that Willis and Wade have traveled personally together to such places as Napa Valley, California, Florida and the Caribbean and Wade has purchased tickets for both of them to travel on both the Norweigan and Royal Carribean cruise lines. Wade has also purchased hotel rooms for personal trips with funds from the same account used to receive payments under his contract with Willis.

[2] This order appears to have been signed as a "consent" order sealing the record and the required hearing was not held prior to this order being entered. Therefore, the order is void and, if requested by any third party, should be unsealed by the Court. However, without knowing the record had been sealed and prior to the Court Clerk actually sealing the record, undersigned counsel was able to view this record and obtain copies of certain documents that had been filed upon review of the file at the Clerk's office. Now that the record is sealed, undersigned counsel is seeking to have these records unsealed and will not discuss the contents of the sealed records in this public pleading until either the records are unsealed by the Court in Cobb County or this Court conducts a proceeding under seal where counsel can share said pleadings and information under seal.

In addition, the district attorney and the special prosecutor have been seen in private together (in a personal relationship capacity) in and about the Atlanta area and believed to have co-habited in some form or fashion at a location that neither of them owned. Sources close to both the special prosecutor and the district attorney have confirmed Willis and Wade had an ongoing, personal and romantic relationship during the pendency of Wade's divorce proceedings.

II. WILLIS CONTRACTED WITH WADE WITHOUT THE REQUIRED APPROVAL OF FULTON COUNTY AND FAILED TO DISCLOSE HER PERSONAL RELATIONSHIP WITH WADE BEFORE CONTRACTING WITH HIM.

There is no evidence Willis was authorized by Fulton County to use county funds to retain Wade to assist in prosecuting this case.[3] In July 2021, Willis presented to the Fulton County Board of Commissioners ("BOC") requesting funding for the criminal case back log caused by the COVID-19 pandemic. Willis told the BOC that she needed these funds for "historical backlog", "COVID backlog" and "crime on the rise". (Exhibit A-B). The historical mismanagement backlog was for cases from 2016 to 2019. (Exhibit A-B. The COVID backlog was for unindicted cases from March 2020 to June 2021. (Exhibit A-B). The "crime on the rise" focused on the number of rapes and murders in Fulton County from July 2020 to July 2021. (Exhibit A-B). Willis told the BOC that it was a crisis and that without additional funding "approximately 1,433 violent defendants" would potentially be released into the community. (Exhibit A-B).

On September 15, 2021, the BOC approved Willis' request for additional funding. (Exhibit C). The BOC approval is noted in a "resolution", item #21-0691, dated September

[3] Fulton County responded to open records requests for any such written authorization by stating no records exist.

15, 2021, which authorized additional county funding for Willis' personnel needs to respond to the "historic backlog of cases" and the "current high crime rate" in Fulton County. (Exhibit C). Willis was awarded these additional county funds to "investigate and prosecute these backlogged criminal cases and respond adequately to the increased crime rate and increased number of cases received". *Id*. Undersigned counsel has confirmed, through open records requests and direct inquiry with representatives for Fulton County, that Willis did not seek or receive authorization to contract or pay Wade as outside counsel to serve in the capacity of a special prosecutor. Co-defendant's counsel spoke directly with a Fulton County Commissioner who verified that Willis never got approval for Wade to be appointed or paid.

In addition, undersigned counsel has been unable to find any evidence that Willis has ever disclosed the personal nature of her relationship to Wade to the BOC prior to contracting with Wade as a special prosecutor.

III. WADE DID NOT FILE ANY OATH OF OFFICE AS REQUIRED BY LAW.

Wade swore both an Oath of Special Assistant District Attorney, and a Loyalty Oath. The Oath of Special Assistant District Attorney was sworn on November 1, 2021, before the Honorable Judge Belinda Edwards. The Loyalty Oath was sworn on November 25, 2021, and was notarized. The Loyalty Oath was not filed, as required by statute, until September 27, 2023, which was after Wade had appeared and participated in both the SPGJ and the GJ in this case.

Thus, at the time Wade appeared before and assisted the SPGJ, he had not filed an oath of office as a special prosecutor in any Georgia court and was not under a valid

employment contract with Willis.[4] Despite this, Wade signed numerous subpoenas for the SPGJ as a "special prosecutor" with the power of the State to command appearance. Wade obtained court orders to compel the attendance of out-of-state witnesses and to compel witnesses who were asserting privilege or immunity from testifying. Wade negotiated legal immunity deals on behalf of the State for certain witnesses appearing before the SPGJ. Wade then presented this indictment to a criminal grand jury on behalf of the State of Georgia. Wade has represented to the public, defense counsel, and this Court that he is a duly authorized special prosecutor and has filed pleadings into the court record.

IV. WADE'S LACK OF RELEVANT EXPERIENCE, HIS CONTRACTS WITH WILLIS AND WADE'S SUBSTANTIAL INCOME IN CONNECTION WITH THE INSTANT CASE.

The Fulton County District Attorney's Office ("FDCA") is the largest district attorney's office in the State of Georgia. As a result, FCDA has numerous experienced lawyers fully capable of preparing this case for the grand jury and trial. Willis, however, contracted with Wade and his law firm to be a special prosecutor to be paid as a private

[4] Wade has represented to attorneys in this matter that he is the "only individual in the DA's office who had authority to enter into agreements pertaining to the investigation". *See* Motion to Quash Subpoena Issued To Governor Brian P. Kemp and Memorandum in Support, Filed in Case 2022-EX-00024The communications between counsel for Governor Kemp and Wade indicate that Wade was serving as lead counsel for the SPGJ. Additionally, the FCDA's response filed as "Opposition to Motion To Disqualify Prosecutor" filed July 19, 2022 in 2022-EX-00024,also indicate that Wade served alongside Willis as a "special prosecutor" and that he was in charge of the SPGJ investigation.

law firm hourly for the work. Based on her longstanding personal knowledge of Wade and additional research, undersigned counsel is unaware of, and is ***unable to find any history of, Wade ever having prosecuted a single felony trial,*** much less at the rate Willis is paying him. Based on his current experience, and based on the current appointment guidelines, Mr. Wade would not be qualified to serve as defense counsel in this RICO case because he has not tried "at least two criminal trials of similar offenses." (Exhibit D). In addition, assuming he could be appointed, he would only be paid a rate of $140.00 per hour. (*Id.*).

Wade's initial contract with Willis commenced on November 1, 2021, and was in effect until October 31, 2022. The only copy of this "contract" that FCDA has is a copy labeled an "Addendum" that was not signed until March 1, 2022 and permitted Wade to be reimbursed for any work-related travel that was "associated with the performance of duties". (Exhibit E). On November 2, 2021, one day after the initial contract commenced, Wade filed his Complaint for Divorce in Cobb County Superior Court, docket number 21108166. Upon information and belief, Willis and Wade had already begun a personal, romantic relationship with each other. Willis' initial contract with Wade does not identify any hourly rate or specific parameters on how much Wade was to be paid under the contract. During this year-long period, however, Wade was paid a total of $299,700.00 and received $3,526.51 as reimbursement for travel. Wade's invoices for his services in connection with the instant case were broken down as follows:

- Invoice #1 was for November 2021 work for $15,000.00[5]
- Invoice #2 was for December 2021 work for $15,000.00

[5] On November 5, 2021, Wade's invoice is for 24 hours of work.

- Invoice #3 was for January 2022 work for $15,000.00
- Invoice #4 was for February 2022 work for $9,250.00
- Invoice #5 was for March 2022 work for $32,450.00
- Invoice #6 was for April 2022 work for $33,750.00
- Invoice #7 was for "reimbursement" for travel costs to Denver and Washington DC of $3,526.51.00
- Invoice #8 was for May 2022 work or $33,500.00
- Invoice #9 was for June 2022 work for $34,000.00
- Invoice #10 was for July 2022 work for $34,000.00
- Invoice #11 was for August 2022 work for $35,000.00
- Invoice #12 was for September 2022 work for $35,000.00
- Invoice #13 was for October 2022 work for $7,750.00[6]

The first three invoices were paid for out of the "confiscated funds/ seized property" fund and the remaining were paid out of the County "general" fund. (Exhibit F).

The second contract between Willis and Wade covered the period November 15, 2022 through May 15, 2023, and provided for payment to Wade at the rate of $250.00 per hour for up to 600 hours for a cap of $150,000.00 during this contract period. (Exhibit G). That contract was not signed until June 12, 2023. (Exhibit G).[7] Wade was paid at total of $173,500.00 under the second contract. The invoices were broken down as follows:

- Invoice #14 was for November 2022work for $25,250.00
- Invoice #15 was for December 2022 work for $23,250.00

[6] All of these invoices are attached collectively hereto as Exhibit "F".

[7] Based on the foregoing, it appears that Willis and Wade did not have an executed contract for his firm's services in connection with this case at any time while Wade was involved in assisting the SPGJ or presenting the case to the criminal grand jury.

- Invoice #16 was for January 2023 work for $20,000.00
- Invoice #17 was for February 2023 work for $34,000.00
- Invoice #18 was for March 2023 work for $36,000.00
- Invoice #19 was for April 2023 work for $35,000.00.[8]

The third contract between Willis and Wade covered the period June 12, 2023, through December 31, 2023, and provided for payment to Wade at the rate of $250.00 per hour for up to a total of $210,000.00.[9] According to the terms of the third contract, if Wade needed to work beyond these limits, he could seek written approval from Willis to do so. (*Id.*) As of June 2023, Wade has been paid approximately $548,977.00 from FCDA for his work with the "anti-corruption" unit.[10] As of December 2023, Wade has been paid a

[8] The foregoing invoices are attached collectively hereto as Exhibit "H".

[9] A copy of the third contract is attached hereto as Exhibit "I". Notably, there is no contract for the period May 15, 2023, through June 12, 2023, on file or referenced in any of the contracts that are on file, but if the prior amounts hold true, Wade's total compensation under contracts with Willis likely total close to or more than $1,000,000.00.

[10] Wade's law partner, Chris Campbell, also entered into agreements with Willis to provide legal services. On March 1, 2021, Campbell entered into an agreement to serve as an attorney in the anti-corruption unit of the FCDA. Campbell served as an attorney tasked with reviewing confidential materials provided to law enforcement to determine whether the FCDA's Anti-Corruption unit could legally possess said materials. He was also tasked with, after determining that these materials could be provided to Wade and his team, providing said confidential materials to the Chief Investigator of the Anti-Corruption unit of the FCDA.

To date, Campbell has been paid approximately $126,070.00 by FCDA and is still under contract to receive more. Wade is a "partner" at Wade & Campbell Firm, LLC according to the company website and the State Bar of Georgia. However, there are no Georgia corporations registered as such an entity but there are separate entities for Nathan J. Wade, P.C., and Christopher A. Campbell, P.C. A recent mailer indicated that Wade and Campbell are operating and advertising as law partners. Additionally, Wade's address on file with the Georgia Bar also indicates they are operating as partners as does their law firm website.

total of $653, 881 which does not include all of his billing to date and does not include the amounts paid to his law firm through his partners.

In comparison, Willis receives $129,473.00 as a salary from the State of Georgia, plus an additional $6,000 accountability supplement, plus an additional $62,793.66 supplement from Fulton County for a total annual salary of $198,266.66. *See https://openpayrolls.com/fani-willis-131675566* (last accessed on January 6, 2024). The amounts Wade has been paid under the contracts is far greater than the justices on the Supreme Court of Georgia. The Judicial Council of Georgia recently recommended the Supreme Court justices receive a pay increase from their current $186,112.00 to $223,400.00 per year. *See https://www.ajc.com/politics/top-georgia-judges-seek-big-pay-raises-from-lawmakers-in-2024/LZMALVNIXRD2JJYKLXIUBO5JX4/* (last accessed January 6, 2024). Also, as noted above, some amount of Wade's income has been used to travel with Willis to traditional vacation destinations and they may have done so with certain members of their families.

Wade's former partner, Terrence Bradley, also entered into agreements with Willis to provide legal services. Prior to Bradley and Wade dissolving their law firm, Bradley had been paid a total of $74, 480. After dissolving their association, Bradley no longer received funds from FCDA.

ARGUMENT AND CITATION TO AUTHORITY

I. THE INDICTMENT AGAINST MR. ROMAN IS INVALID AND VOID BECAUSE IT WAS SOUGHT AND OBTAINED, IN PART, BY WADE, BUT WILLIS NEVER HAD AUTHORITY FROM THE GOVERNING AUTHORITY, FULTON COUNTY, GEORGIA, TO APPOINT WADE AS A SPECIAL PROSECUTOR AND WADE NEVER FILED HIS OATH OF OFFICE PRIOR TO HIS WORK ON THIS CASE.

A. When Willis Failed To Obtain Prior Approval From Fulton County To Contract With Wade, She Failed To Comply With O.C.G.A. § 15-18-20, So She Was Without Authority To Appoint Wade.

Under O.C.G.A. § 15-18-14, an elected district attorney appoints assistant district attorneys who serve only at the district attorney's pleasure. An elected district attorney also has the power and authority to appoint "special assistant district attorneys." *See* GA. UNIF. SUPER. CT. R. 42.1. All personnel employed by the district attorney derive their authority from the district attorney. O.C.G.A. §§ 15-18-19(b), 15-18-20(b). In other words, the entire proceeding of a Georgia criminal prosecution—from the time the case is laid before the prosecutor until the rendition of the verdict—is under the direction, supervision, and control of that officer, subject to such restriction as the law imposes. The Georgia Supreme Court has long held that "[c]ounsel employed to assist in the prosecution of criminal cases can perform no duties as such, except those agreeable to and under the direction of the [district attorney]." *Jackson v. State*, 120 S.E. 535, 539 (Ga. 1923).

The discretion the district attorney enjoys over employees of her office, however, does not extend in the same way to non-employees such as special prosectuors. With respect to special prosecutors, the district attorney's power and authority to appoint special prosecutors requires the appointment to be affected pursuant to either O.C.G.A. § 15-18-20 or, in the case of a potential conflict, O.C.G.A. § 15-18-5. Willis has not recused herself from this prosecution. Thus, Wade's appointment would fall under O.C.G.A. § 15-18-20.

That statute provides that such an appointment is legal if, "provided for by local law or . . . authorized by the governing authority of the county." O.C.G.A. § 15-18-20(a). Although the statute authorizes the district attorney to employ additional prosecutors who are compensated from county funds,[11] the Georgia Supreme Court has made clear that this authority is expressly conditioned upon prior approval of the governing authority of the county. *Wilson v. Southerland*, 371 S.E.2d 382, 383 (1988). In addition, Section 102-82 of the Fulton County Laws also requires outside counsel to be selected and approved by the Board of Commissioners.

Applying the above principles to the case at hand, the indictment must be dismissed because it was obtained by a special prosecutor who had no legal authority to act since Willis never had authority from Fulton County to contract with Wade. It appears evident that Willis did not obtain prior approval to contract with Wade as a special prosecutor. There is no documentation and no other evidence in Fulton County's public records that show the BOD approved Wade.[12] Indeed, Fulton County indicated that no such records exist. Willis also did not obtain the BOD's approval for her selection of Wade as outside counsel, so she violated Section 102-82 of the Fulton County Laws.

Since Willis knew how to obtain approval for additional funding and made a full

[11] The "[p]ersonnel employed by the district attorney . . . shall be compensated by the county," and "the manner and amount of compensation to be paid to be fixed either by local Act or by the district attorney ***with the approval of the county***. . . ." O.C.G.A. § 15-18-20(b) (emphasis added).

[12] While Fulton County did provide evidence of its authorization to utilize additional funds to clear the backlog of cases due to the Covid pandemic and other specific types of cases, there was no authority for Willis to use funds to retain a special prosecutor in connection with the prosecution of the instant matter. (Exhibit C). As an example, Exhibit J is attached for illustrative purposes to show what Fulton County documents when an independent contractor agreement is approved by the County for outside legal services.

presentation to the BOD for that purpose in 2021, then she knew how to obtain permission for funding from the BOD. Yet, she specifically chose not to obtain the required authorization from the BOD to retain Wade as a special prosecutor. Why? Placed in the context of her other actions outlined herein, the answer becomes obvious: She knew the BOD would ask her about her relationship with Wade and his experience—both questions she did not want to answer. With her power as the district attorney, perhaps she thought no one would notice or care and she would ask for forgiveness (not permission) later. In any event, she acted without approval from the governing authority, so Willis violated and failed to comply with O.C.G.A. §15-18-20(a) and she had no authority to delegate to any prosecutorial responsibilities to Wade.[13] *Wilson v. Southerland*, 371 S.E.2d 382, 383 (1988).

Since Willis never had any authority from Fulton County to contract with Wade as a special prosecutor, Wade, in kind, had no authority to investigate this case or seek an indictment. Accordingly, the indictment is fatally defective and must be dismissed.

[13] Wade's contract is not provided for by local law. Nor, based upon information and belief and responses to records requests, has it been approved or authorized by the Fulton County Board of Commissioners or any other governing authority for the County. Instead, Wade's contract appears to be authorized solely by the District Attorney without the County being involved in such an agreement other than to supply taxpayer funds to pay Wade. And if the County had been asked to approve such a contract, it would have been unable to since it is in clear violation of the Counties "Code of Laws" as well as the amounts that are typically approved for outside counsel.

B. Wade Never Filed His Oath Of Office Prior To Beginning Work On This Case, So He Was Never Duly Authorized Under Georgia Law To Serve In His Role As Special Prosecutor.[14]

Despite being paid these large amounts of money and representing himself as a duly authorized "special assistant district attorney", Wade was never statutorily authorized under Georgia law to act in the role of a public officer when he presented the instant case to the SPGJ and GJ. Willis' lack of authority to appoint him notwithstanding, Wade also was not authorized under Georgia law to prosecute this matter because he and Willis failed to comply with the statutes authorizing his appointment and oath of office. At the time Wade appeared before the SPGJ, he was not a "duly authorized" special prosecutor because he had no oath of office on file and was not under a valid employment contract with FCDA. OCGA Sec. 45-3-8 ("[n]o officer or deputy required by law to take and file the oaths prescribed in Code Section 45-3-1 shall enter upon the duties of his office without first taking and filing the same in the proper office.") Indeed, under Georgia law, Wade had no more legal authority than any private member of the State Bar of Georgia to even be present in the grand jury room, let alone serve as the grand jury's legal advisor.

Wade, however, signed numerous subpoenas for the special purpose grand jury as a "special prosecutor" with the power of the State to command appearance. Wade obtained Court orders to compel the attendance of out of state witnesses and to compel witnesses

[14] Mr. Roman understands and acknowledges that this issue was raised by other defendants in prior filings and the Court has rejected the argument in the context of their arguments. Mr. Roman raises it herein again to show the Court that, standing alone, it may seem like a technicality, but in the larger context of the various issues surrounding his appointment, Willis' lack of authority to appoint him, and the conflict of interest issues addressed below, the fact that Wade did not file his oath before beginning work takes on new and more significant meaning and, indeed, constitutes a structural defect in the indictment.

who were asserting privilege or immunity from testifying. Wade negotiated legal immunity deals on behalf of the State for certain witnesses appearing before the special purpose grand jury. Wade presented this indictment to a grand jury on behalf of the State of Georgia. Significantly, Wade has represented to counsel and this Court that he is a duly authorized special prosecutor, but all of his actions were taken without any statutory legal authority and while suffering a conflict of interest.

While this issue has been raised and rejected in the context of arugments submitted by other defendants previously, Mr. Roman reasserts this ground since Wade appeared to have no more authority than a private citizen invited to participate by the district dttorney in the proceedings which would render this a structural defect and require dismissal of the indictment. *Olsen v. State*, 302 Ga. 288 (2017) made clear that members of a prosecutor's staff or an expert witness hired by the district attorney could be present during the grand jury proceedings, it also clearly stated that its holding did "not mean that prosecutors have unfettered discretion to invite mere spectators to grand jury proceedings." *Olsen* at 291.

Pursuant to O.C.G.A. § 15-18-6, the District Attorney is the legal advisor for the Grand Jury. The District Attorney is responsible for advising the grand jury on any questions of law or procedure which it may have as a Grand Jury. In 1973 the Georgia Supreme Court held that the Grand Jury must rely on the District Attorney for legal advice and may not employ any other lawyer for that purpose. *Daniel v. Yow*, 226 Ga. 544 (1970). Assisting the District Attorney in carrying out these duties will be Assistant District Attorneys and other employees of his or her office. *Mach v. State*, 109 Ga. App. 154 (1954); *State v. Cook*, 172 Ga. App. 433, 440 (1984).

In this case, Wade was not a member of the district attorney's staff and was not a sworn and duly authorized "special assistant" prosecutor. He was present because Willis, alone, had authorized him to be present despite her not having the legal authority to permit a member of the public to be present during a secret grand jury proceeding. The statutory authority Willis relied upon in appointing Wade is clear that such is legal only if "provided for by local law or . . . authorized by the governing authority of the county." O.C.G.A. § 15-18-20(a). As noted above, the Georgia Supreme Court has made clear that this authority is expressly conditioned upon prior approval of the governing authority of the county. *Wilson v. Southerland*, 371 S.E.2d 382, 383 (Ga. 1988). Willis had no such permission. Therefore, Wade was a mere spectator who not only participated, but significantly influenced the grand jury proceedings in this case.

There are sound reasons why all prosecutors must be sworn and authorized to perform the public duty of prosecutor. Prosecutors have "the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice." *See* Ga. R. Pro. Conduct 3.8, cmt. [1]. Indeed, "[t]he prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations."[15] "The prosecutor can order arrests,

[15] Robert H. Jackson, U.S. Attorney General, Address at the Second Annual Conference of United States Attorneys: The Federal Prosecutor (Apr. 1, 1940), *https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf.*

present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial."[16]

Wade asserted such power and control by presenting the case to the special purpose grand jury, subpoenaing witnesses, granting or denying immunity, negotiating testimony, seeking arrest warrants, deciding who to include on the indict, deciding what evidence to present to the grand jury. All of these acts are acts that are only to be entrusted to a person who is legally authorized to hold such power according to the laws of Georgia and is sworn under our constitution to fulfil this lawful duty. Wade had no such authorization or power when he not only was present but ran the grand jury proceedings.[17] Mr. Roman, therefore, respectfully submits that the indictment against Mr. Roman in this matter was obtained

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[16] *Id.*

[17] Mr. Roman is charged in Count 9 with conspiring to commit impersonating a public officer by allegedly "conspiring to cause individuals to falsely hold themselves out as the duly elected and qualified presidential electors…with the intent to mislead …others...into believing they actually were such officers." It could be argued that Willis conspired with Wade to falsely hold himself out as the duly appointed and qualified special prosecutor from the Fulton County District Attorney's Office with the intent to mislead witnesses, grand jurors, court staff, law enforcement, defendants and defense counsel. It could further be argued that they did so for pecuniary gain in the amounts that Wade has been paid from taxpayer funds.

Mr. Roman is similarly charged in Count 11 with conspiring to commit forgery in the first degree for knowingly, with the intent to defraud, make a document other than a check in such manner that the writing as made purports to have been made by authority of the duly elected and qualified presidential electors from the State of Georgia, who did not give such authority and to utter and deliver said document to be filed. It could similarly be argued that Willis conspired with Wade to knowingly, in with the intent to defraud, make a document (Wade's oath of office) other than a check in such manner that the writing as made purports to have been made by authority of Willis (who did not have such authority) and that document was uttered and delivered to the clerk for filing.

It could further be argued that they did so for pecuniary gain in the amounts that Wade has been paid from taxpayer funds and that Willis has enjoyed through her relationship with Wade.

without legal authority, is structurally and fatally defective and should be dismissed in its entirety.

II. WILLIS BREACHED HER DUTIES AS A PUBLIC OFFICER AND WILLIS AND WADE'S PERSONAL, ROMANTIC RELATIONSHIP AND PERSONAL FINANCIAL INTERESTS IN THE CASE HAS CREATED AN IMPERMISSIBLE, UNCONSTITUTIONAL CONFLICT OF INTEREST REQUIRING THEIR DISQUALIFICATION.

A. Willis' Conflict Of Interest In This Case Violates Mr. Roman's Right To Due Process And A Fair Trial Under Both The United States And Georgia Constitutions.

The Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section I, Paragraph I and Article VI, Section VIII, Paragraph I of the Georgia Constitution guarantee under principles of due process Mr. Roman the right to be prosecuted by a "disinterested" prosecutor. Prosecution by someone with conflicting loyalties "calls into question the objectivity of those charged with bringing a defendant to judgment." *Younger v. United States*, 481 U.S. 787, 810 (1987)(plurality opinion): As outlined in *Younger*,

> It is a fundamental premise of our society that the state wield it's formidable criminal enforcement powers in a rigorously disinterested fashion, for liberty itself may be at stake in such matters. We have always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty.

Id.; see generally Berger v. United States, 295 U.S. 78 (1935).

Georgia courts have developed their own standard for disqualification of prosecutors. In *Whitworth v. State*, 275 Ga. App. 790, 793, 622 S.E.2d 21 (2005), the Court recognized a conflict of interest as a ground for disqualification of a district attorney. Such a conflict of interest has been held to arise where the prosecutor has acquired a personal interest or stake in the defendant's conviction. *Id*. (*citing Williams v. State*, 258 Ga. 305, 314, 369 S.E.2d 232 (1988)). If the assigned prosecutor has acquired a personal interest or

stake in the conviction, the trial court abuses its discretion in denying a motion to disqualify him, and the defendant is entitled to a new trial, even without a showing of prejudice. *See Whitworth v. State*, 275 Ga.App. 790, 796(1)(d), 622 S.E.2d 21 (2005) (physical precedent only). *See also Young v. United States*, 481 U.S. 787, 809–814(III)(B), 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987) (plurality opinion as to Division (III)(B)). See also *Amusement Sales v. State*, 316 Ga.App. 727, 730 S.E.2d 430 (2012). Some errors are so fundamental and pervasive that they require reversal without regard to the facts or circumstances of the particular case. *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674 (1986).

An error is fundamental if it undermines confidence in the integrity of the criminal proceeding. *Rose v. Clark,*478 U.S. 570, 577–578, 106 S.Ct. 3101, 3105–3106, 92 L.Ed.2d 460 (1986); *Van Arsdall, supra,* 475 U.S., at 681–682, 106 S.Ct., at 1436–1437; *Vasquez v. Hillery,* 474 U.S. 254, 263–264, 106 S.Ct. 617, 623–624, 88 L.Ed.2d 598 (1986). "The appointment of an interested prosecutor raises such doubts." *Young v. U.S. ex rel. Vuitton et Fils S.A.,* 481 U.S. 787, 809–10, 107 S. Ct. 2124, 2139, 95 L. Ed. 2d 740 (1987). "Prosecution by someone with conflicting loyalties calls into question the objectivity of those charged with bringing a defendant to judgment." *Id*. (citing *Vasquez, supra,* at 263, 106 S.Ct., at 623 (internal quotations omitted)). "It is a fundamental premise of our society that the state wield its formidable criminal enforcement powers in a rigorously disinterested fashion, for liberty itself may be at stake in such matters." *Young*, 481 U.S. 809-10. "We have always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty." *Id*. As shown below, Willis and Wade are operating under a conflict of interest and

should be disqualified under federal and state constitutional due process grounds because both of them have acquired a personal interest and stake in Mr. Roman's conviction, thus depriving Mr. Roman of his right to a fundamentally fair trial.

B. Willis Breached Her Duties, And Violated Her Oath Of Office, As A Public Officer By Contracting With Wade And Personally Benefitting From His Appointment As The Special Prosecutor.

O.C.G.A. § 15-18-2 requires district attorneys in Georgia to take the following oath: "I do swear that I will faithfully and impartially and without fear, favor, or affection discharge my duties as district attorney and will take only my lawful compensation. So help me God." *See also Georgia State Bar Rules and Regulations generally*.

Here, Willis violated that oath of office and should be disqualified. Willis has benefitted substantially and directly, and continues to benefit, from this litigation because Wade is being paid hundreds of thousands of dollars to prosecute this case on her behalf. In turn, Wade is taking Willis on, and paying for vacations across the world with money he is being paid by the Fulton County taxpayers and authorized *solely* by Willis. As noted elsewhere, this has happened even though Willis has not sought or obtained Fulton County's approval to hire and pay Wade and even though she has never disclosed the personal nature of her relationship with Wade.

Willis has numerous salaried prosecutors in her office, and more who could have been hired with her additional Covid backlog funding, who could have prosecuted this case. Instead, on the day before Wade filed for divorce, she entered into an agreement to pay Wade *far above* what any other prosecutor in her office was being paid, and she hid this agreement from Fulton County, despite Wade being the single biggest expenditure in her office for professional service contractors for both 2022 and 2023. (Exhibit K)

Based on the foregoing, Willis and Wade should be disqualified, as well as their respective offices and firms. *See McLaughlin v. Payne*, 295 Ga. 609, 612 (2014)(when the elected district attorney is wholly disqualified from a case, the assistant district attorneys – whose only power to prosecute a case is derived from the constitutional authority of the district attorney who appointed them – have no authority to proceed.). *See also* Georgia Rule of Professional Conduct 1.10(a)("While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7: Conflict of Interest: General Rule, 1.8 (c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary."); Rule 1.10, Comment [1], defining "firm" to include "lawyers in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization" and Comment [2], noting "With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Georgia Rules of Professional Conduct.")

C. Willis and Wade Violated Fulton County's "Code Of Laws" Regarding Conflicts of Interest.

Fulton County Code of Laws § 2-66 declares it the policy of Fulton County government that officers such as Willis are:

> in fact and in appearance, independent and impartial in the performance of their official duties; that public service not be used for private gain; and that there be public confidence in the integrity of the county. Because the attainment of one or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interests and public responsibilities of county officers and employees, the public interest requires that the county protect against such conflicts of interest by establishing appropriate ethical standards of conduct. It is also essential to the efficient operation of the county that those persons best qualified be encouraged to serve in positions of public trust. Accordingly, the standards hereinafter set forth must be so interpreted and understood as not to

> unreasonably frustrate or impede the desire or inclination to seek and serve in public office by those persons best qualified to serve. To that end, no officer or employee of the county, except as otherwise provided by law, should be denied the opportunity available to all other citizens to acquire and maintain private, economic and other interests, except where a conflict of interest situation would necessarily result. The policy and purpose of this code of ethics, therefore, is to make clear those standards of ethical conduct that shall be applicable to the persons hereinabove named in the discharge of their official duties; to implement the objective of protecting the integrity of the county's government; and to prescribe only such essential restrictions against conflicts of interest as will not impose unnecessary barriers against public service.

Fulton County Code of Laws § 2-68(a) addresses "conflicts of interest" and "impartiality" and requires Officers, such as Willis, to "avoid even the appearance of a conflict of interest." An appearance of a conflict of interest exists when a reasonable person would conclude from the surrounding circumstances that the ability of the officer or employee to protect the public interest or impartially perform a public duty is compromised by financial or personal interests in the matter or transaction." (*Id.*) Section (b) further states that:

> "[n]o officer or employee shall, by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her, or unduly enjoy his or her favor, in the performance of any official acts or actions."

Section 2-69 prohibits an officer such as Willis from "directly or indirectly" receiving a "gift, loan, favor, promise, or thing of value, in any form whatsoever" for herself from any source "including, without limitation any person or business", which Willis knows or should have known is doing business with the county. Section 2-73 governs "nepotism" and subsection (a) would prohibit Willis from employing Wade while also engaged in a personal relationship with him.

Here, it is clear that Willis violated the Fulton County laws requiring that she avoid a conflict of interest in contracting with Wade. First, under Section 2-66, she "in fact and in appearance", has violated numerous provisions. She has failed to remain "independent and impartial in the performance of her official duties" because she specifically awarded lucrative contracts to her boyfriend, from which she now benefits financially through personal trips, hotel rooms, and the like paid for by Wade. *See id*.

Second, she has used her public service for private gain, i.e., by giving Wade the lucrative contracts as the special prosecutor on this case, she now is able to use those monies for personal trips and expenses in violation of Fulton County's Code of Laws. *See id*. This completely undermines "public confidence in the integrity of the county." *See id*. Indeed, this situation presents exactly the situation Section 2-66 contemplates, "a conflict between the private interests [of Willis and Wade] and the public responsibilities of [Willis and Wade]". *See id*. When such a conflict exists, Fulton County has established "appropriate ethical standards of conduct", *see id*., which Willis and Wade here have violated.

Third, Willis also violated Section 2-66, because she failed to appoint a person "best qualified" for the position. As noted above, there are numerous lawyers in the City of Atlanta and across the State of Georgia with ample experience prosecuting and defending felony RICO cases, yet Willis chose to appoint her boyfriend, who has little to no experience trying felony cases, much less complex RICO actions. Put into context, it is clear that Willis did this, not because Wade was the most or even generally qualified, but because she wanted herself and Wade to enjoy financial gain from his relationship with

Willis and she had the power to make that happen, though she never obtained the authority from Fulton County to do so.

Fourth, while Mr. Roman submits that there is an irreparable conflict of interest in Wade's appointment, there can be no doubt that Willis' action in appointing Wade fails to "avoid even the appearance of a conflict of interest" under the Fulton County Laws. *See* § 2-68(a). In light of Willis' personal relationship with Wade both before and after his appointment, no reasonable person could conclude from the surrounding circumstances that Willis or Wade would be able "to protect the public interest or impartially perform a public duty" when they both were obviously "compromised by financial or personal interests in the matter or transaction." *See id*. Indeed, the personal and financial conflict of interest here between Willis and Wade strikes at the whole purpose of Fulton County's conflict of interest rules and undermines public confidence in the ability of Willis and Wade to discharge their duties impartially and without self-interest or gain.

Fifth, Willis' work in this case relates exclusively to Fulton County, so her ability through her personal relationship and trips with Wade to enjoy the financial gain of her decision to appoint him violates Section 2-69. In other words, Willis "directly or indirectly" received a "gift, loan, favor, promise, or thing of value, …" for herself from her payments to Wade. *See Id.* Likewise, she has violated Section 2-73, designed to prevent "nepotism", because she has employed him (or, at the very least paid him) while also engaged in a personal relationship with him. *See id*.

Finally, the Fulton County Code of Laws § 102-464 states that "it shall be a breach of ethical standards" for Willis to contract with Wade when Willis knew she had a financial interest, by virtue of her personal relationship with Wade, in contracting with Wade. Under

Fulton County Code of Laws, this would be considered a conflict of interest and require Willis to "promptly submit a written statement of disqualification and shall withdraw from further participation in the transaction involved." (*Id.)* Section 102-466(a) also states that "[i]t shall be unethical for any person to …give any employee ….a gratuity ….in connection with … a contract."

The meaning of all of this is simple; Willis violated her own county's ethical standards and created an impermissible conflict of interest when she contracted with Wade knowing full well she had a personal and financial interest in the appointment, particularly since she never disclosed her relationship with Wade to Fulton County and never obtained Fulton County's approval prior to appointing him. *See Id*., § 102-464. As the Fulton County Laws make clear, under those circumstances, Willis was laboring under a conflict of interest, which required her to "promptly submit a written statement of disqualification and shall withdraw from further participation in the transaction involved." (*Id.*). Obviously knowing she wanted to continue prosecuting this case, Willis did not make any such disclosure and has not withdrawn from her representation of the State in this matter even though she is prevented from doing so. Accordingly, based on the conflict of interest in this case that cannot be avoided or fixed, Mr. Roman respectfully requests that both Willis and Wade, and their respective offices and firms, be disqualified from any further involvement in this matter.

D. Willis and Wade Have Violated The Rules of Professional Conduct Regarding Conflicts Of Interest.

Under the Georgia Rules of Professional Conduct, "[a] lawyer shall not represent or continue to represent a client if there is a significant risk that the ***lawyer's own interests*** or the lawyer's duties to another client, a former client, or ***a third person*** will materially

and adversely affect the representation of the client, except as permitted in (b). Georgia Rule of Professional Conduct 1.7(a), "Conflict of Interest: General Rule" (emphasis added). Subsection (b) of Rule 1.7 provides:

> "If client informed consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected client or former client gives informed consent, confirmed in writing, to the representation after:
>
> 1. consultation with the lawyer, pursuant to Rule 1.0 (c);
> 2. having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation, and
> 3. having been given the opportunity to consult with independent counsel."

Id. Subsection (c) provides that:

> "Client informed consent is not permissible if the representation:
>
> 1. is prohibited by law or these rules;
> 2. includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
> 3. involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients."

"Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests." Rule 1.7, Comment [2]. "If an impermissible conflict arises after representation has been undertaken, the lawyer should withdraw from the representation." *Id*., Comment [3] (citing Rule 1.16). "The lawyer's personal or economic interests should not be permitted to have an adverse effect on representation of a client."

Id. Comment [6]. "If the propriety of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice." *Id*. "A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest." *Id*.

Rule 1.8(j) provides that, "[a] lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

> 1. acquire a lien granted by law to secure the lawyer's fees or expenses as long as the exercise of the lien is not prejudicial to the client with respect to the subject of the representation; and
>
> 2. contract with a client for a reasonable contingent fee in a civil case, except as prohibited by Rule 1.5."

Id. "Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation." *Id.*, Comment [10].

Rule 8.4(a)(4) of the Georgia Rules of Professional conduct prohibits a lawyer from engaging in conduct that involves dishonesty, fraud, deceit or misrepresentation. The American Bar Association, Standards of Criminal Justice, 3-2.1(c) provides when the appointment of a special prosecutor from outside the office is required on a particular matter, such special prosecutor "who has a personal or financial interest in the prosecution of particular charges …. Should not be permitted to serve as prosecutor in that matter." Disqualification of the district attorney is proper when the prosecutor has acquired a personal interest or stake in the defendant's conviction. *See Whitworth v. State*, 275 Ga. App. 790, 793, 622 S.E.2d 21 (2005); *Williams v. State*, 258 Ga. 305, 314, 369 S.E.2d 232

(1988).[18]

Applying these principles here, both Willis and Wade are laboring under a conflict of interest that violates Mr. Roman's constitutional right to due process and fair trial and violates the Rules of Professional Conduct. First, both have acquired a personal financial interest in Mr. Roman's conviction. Wade has personally and financially benefitted from his personal relationship with Willis since he has received lucrative amounts under his continued contracts with Willis. He will continue to be incentivized to prosecute this case based on his personal and financial motives, so he has acquired a unique and personal interest or stake in Mr. Roman's continued prosecution. That is, he is motivated to prosecute Mr. Roman for as long as possible because he will continue to make exorbitant sums of money.

Likewise, Willis has created a system where she receives indirect personal and financial benefits (i.e., trips, hotel stays, and other benefits) from Wade due to her awarding him the contracts to be a special prosecutor. While she is not paying herself directly, she nonetheless reaps the rewards from the funds due to her personal relationship with Wade and, thus, has also acquired a personal interest and stake in Mr. Roman's continued

[18] It is worth noting, though not the focus of the instant Motion, that Willis has been on numerous national media outlets discussing the instant case. If it continues, Mr. Roman will have no choice but to file a motion to prevent her from continuing to make such statements under Georgia Rule of Professional Conduct Rule 3.8(g), "Special Responsibilities of A Prosecutor", which provides that Willis should, "except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused. There is no doubt that some of the statements she has made publicly were designed to condemn Mr. Roman and others before trial begins. It threatens to poison the jury pool, and Mr. Roman intends to act with additional motions if it continues.

prosecution. Accordingly, they both have deprived Mr. Roman of his due process and fair trial rights under the United States and Georgia Constitutions and they should be disqualified. *See Whitworth v. State*, 275 Ga. App. 790, 793, 622 S.E.2d 21 (2005); *Williams v. State*, 258 Ga. 305, 314, 369 S.E.2d 232 (1988).

Similarly, they both suffer and labor under now unavoidable conflicts of interest that violate the Rules of Professional Conduct. Under Rule 1.7, Willis and Wade both cannot continue to represent the State of Georgia or Fulton County in this matter because there is a "significant risk that the [Willis and Wade's] own interests or [Willis'] duties . . . [Wade] will materially and adversely affect the representation…." (*See id*). of the client, except as permitted in (b). Willis and Wade have both a personal and financial stake in this litigation and in the prosecution of Mr. Roman specifically and given their personal and financial relationship with each other, there can be no doubt that the relationship Willis has with Wade (a "third party") under Rule 1.7, will materially and adversely affect Willis' representation in this matter.[19] Rule 1.7 contemplates that under such circumstances, Willis and Wade must withdraw from representation. *Id*., Comment [3] (citing Rule 1.16). Likewise, it is clear that "[Willis and Wade's] personal or economic interests should not be permitted to have an adverse effect on representation of a client." *Id.* Comment [6].

Due to their receipt of county money and use of that for their personal relationship, Willis and Wade have also acquired a propriety interest in the instant prosecution and have, therefore, violated Rule 1.8(j). *See id*. ("[a] lawyer shall not acquire a proprietary interest

[19] There has been no evidence that Willis or Wade disclosed the potential conflict to either the State of Georgia or Fulton County, Georgia in any manner, so the exceptions set forth in Rule 1.7(b) and (c) following informed consent do not apply.

in the cause of action or subject matter of litigation the lawyer is conducting for a client, . . ."), Comment [10]

Finally, Willis and Wade have hidden the nature of their personal relationship from both the State of Georgia, Fulton County and the defendants in this matter and failed to disclose the financial compensation from which they both benefit as a result of Wade's appointment as a special prosecutor. This arguably would constitute a misrepresentation in violation of Rule 8.4(a)(4) of the Georgia Rules of Professional Conduct and require disqualification. This is in keeping with The American Bar Association, Standards of Criminal Justice, 3-2.1(c), which provides that Willis' appointment of Wade is improper when he "has a personal or financial interest in the prosecution of particular charges. *See id*.

III. WILLIS MAY HAVE VIOLATED 18 U.S.C. § 1346, THE FEDERAL RICO STATUTE BY FAILING TO DISCLOSE HER CONFLICT OF INTEREST.

The district attorney's apparent intentional failure to disclose her conflict of interest to Fulton County and the Court, combined with her decision to employ the special prosecutor based on her own personal interests may well be an act to defraud the public of honest services since the district attorney "personally benefitted from an undisclosed conflict of interest" which is a crime under 18 U.S.C. § 1346 as well as a predicate act which could result in a RICO charge against both the district attorney and the special prosecutor.

Willis has failed to disclose this conflict of interest which resulted in her own personal gain, i.e., vacations paid for by the Law Offices of Nathan Wade. Honest services fraud is a crime defined in 18 U.S.C. § 1346 which includes public sector honest service fraud by a public official failing to disclose a conflict of interest resulting in person gain to

that official. Prosecutions under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") frequently use violations of the honest services statute as predicate acts of racketeering. As such, two direct deposits or mailed checks into Wade's account by Fulton County would constitute two transmissions in the execution of honest services fraud that could form "a pattern of racketeering activity."

The irony that Willis and Wade engaged in a pattern of racketeering that could be charged in a federal RICO indictment is not lost here. Indeed, prosecutors have highly favored using this law, much like the State of Georgia has enjoyed using the state RICO charge, because the statute is vague enough to be applied to corrupt public officials' unethical activities when they do not squarely fall into another specific category such as bribery or extortion. If a government official makes an official decision, such as the employment of Wade, based on their own personal interests or personally benefits from an undisclosed conflict of interest, that official has defrauded the public of their honest services. *United States v. Lopez-Lukis*, 102 F.3d 1164 (11th Circ. 1997).

As explained in *Lopez-Lukis*, "[t]he crux of this theory is that when a political official uses his office for personal gain, he deprives his constituents of their right to have him perform his official duties in their best interest. Elected officials generally owe a fiduciary duty to the electorate." *Id.* at 1169. When a government official, such as Willis, personally benefits from an undisclosed conflict of interest, like she has from her employment of Wade, she has defrauded the public of her honest services. *See United States v. Sawyer*, 85 F.3d 713, 724 (1st Cir. 1996) ("The cases in which a deprivation of an official's honest services is found typically involve either bribery of the official or her failure to disclose a conflict of interest, resulting in personal gain."). *See also United States*

v. Langford, 647 F.3d 1309 (11th Cir. 2011)(Honest services mail fraud may be proved through the defendant's non-action or non-disclosure of material facts intended to create a false and fraudulent representation.)

In *Langford*, a county commissioner was convicted of defrauding the public of his honest services by accepting gifts of clothing and jewelry which he did not disclose to the public or his county from the banking firm he awarded the contract to perform county work. Defendant was conferred with public authority to choose who would be awarded the public contract and chose a firm which provided him with gifts. His failure to disclose this fact along with the use of mails and wires for the contracted firm to be paid (much like Wade was paid through use of the banking system) constituted sufficient evidence of honest services fraud.

It is not our intention here to find ways to prosecute the prosecutor, but it must be brought to the attention of the Court that the actions of the two lead district attorneys in this case arguably constitute crimes under federal law.

CONCLUSION

For all of the foregoing reasons, Mr. Roman respectfully requests that this Honorable Court grant the instant motions, dismiss the indictment against Mr. Roman, and disqualify Willis, Wade and their respective offices and firms from any participating in this matter any further.

Respectfully submitted this 8th day of January, 2024.

THE MERCHANT LAW FIRM, P.C.

/s/ Ashleigh B. Merchant
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
v.	)	**INDICTMENT NO.**
	)	**23SC188947**
MICHAEL A. ROMAN,	)	
	)	
Defendant.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within and foregoing ***DEFENDANT MICHAEL ROMAN'S MOTION TO DISMISS GRAND JURY INDICTMENT AS FATALLY DEFECTIVE AND MOTION TO DISQUALIFY THE DISTRICT ATTORNEY, HER OFFICE AND THE SPECIAL PROSECUTOR FROM FURTHER PROSECUTING THIS MATTER*** has been served upon counsel for the State of Georgia by filing same with the Court's electronic filing system, which will deliver a copy by e-mail to the following counsel of record for the State:

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I further certify that, in compliance with Judge Scott McAfee's Standing Order a copy of this pleading has been emailed to the Court via the Litigation Manager Cheryl Vortice at *Cheryl.vortice@fultoncountyga.gov* with copies of such communication provided to all counsel of record for the State at the email addresses provided above.

This 8th day of January, 2024.

THE MERCHANT LAW FIRM, P.C.

/s/ Ashleigh B. Merchant
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Georgia Bar No. 040474