

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

JEFFREY BOSSERT CLARK,
DAVID JAMES SHAFER,
SIDNEY KATHERINE POWELL, and
CATHLEEN ALSTON LATHAM.

Indictment No.
23SC188947

**ORDER DENYING DEFENDANTS' MOTIONS FOR
AN EVIDENTIARY HEARING REGARDING IMPROPER CONTACT**

On September 7, 2023, Defendant Shafer filed a motion requesting an evidentiary hearing after receiving a letter and brochure from the law firm of Wade & Campbell, of which Special Prosecutor Nathan Wade is a member. (Doc. 20).¹ The firm apparently mailed the materials to the Defendant's home address in an effort to highlight their criminal defense practice and obtain a new recently-indicted client. While Defendants accurately point out that Georgia Rules of Professional Conduct ("G.R.P.C.") 3.8(c) and 4.2(a) forbid a prosecutor from "communicat[ing] about the subject of the representation with a person the lawyer knows to be represented by another lawyer," on its face the mailer appears to be the type of mass-generated material to which all citizens with a mailbox are regularly subjected. Nothing indicates that Special Prosecutor Wade knowingly sent the mailer or specifically targeted the Defendants, and after considering the circumstances surrounding this case and the contents of the exhibits themselves, the Court feels comfortable inferring a lack of knowledge without the need for a protracted evidentiary hearing and briefing schedule. *See* G.R.P.C. 1.0(m) ("[K]nows" denotes actual knowledge of the fact in question. A

¹ The motion was subsequently joined by Defendants Clark, Powell, and Latham, each of whom added exhibits indicating that they too received similar solicitations.

person's knowledge may be inferred from the circumstances.”). Other concerns regarding the content and layout of the advertisement are better left to the discretion of the State Bar, as such transgressions would not affect these proceedings. *See* G.R.P.C. 7.3 (“Advertising”). While presumably embarrassing on the part of Special Prosecutor Wade and his firm, this case should not be sidetracked by matters which facially lack merit. Going forward, the substantive and unprecedented legal arguments generated by this case will require many hearings. But this is not one of them. The motions are **DENIED**.

SO ORDERED this 14th day of September, 2023.



Judge Scott McAfee
Superior Court of Fulton County
Atlanta Judicial Circuit