

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

Case No. 23SC188947

v.

ROBERT DAVID CHEELEY, ET AL.,

Defendants.

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**DEFENDANT ROBERT DAVID CHEELEY’S  
MOTION TO DISMISS THE GRAND JURY INDICTMENT  
AND DISQUALIFY THE DISTRICT ATTORNEY, HER OFFICE,  
AND THE SPECIAL PROSECUTORS**

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For the second time in this investigation and prosecution, the Fulton County District Attorney has engaged in conduct that creates an impermissible conflict of interest. Defendant Robert David Cheeley therefore moves to disqualify the District attorney, her office, and the special prosecution team.<sup>1</sup>

**I. INTRODUCTION**

“It is a fundamental premise of our society that the state wields its formidable criminal enforcement powers in a rigorously *disinterested* fashion, for liberty itself may be at stake in such matters.” *Young v. U.S.*, 481 U.S. 787, 810 (1987) (emphasis

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<sup>1</sup> As noted below, all Special Assistant District Attorneys engaged by the District Attorney were hired in violation of Georgia law and must be disqualified.

added).<sup>2</sup> Here the District Attorney has repeatedly acted in an *interested* fashion in prosecuting this case.

As noted by Judge Robert McBurney in his July 25, 2022 Recusal Order, the District Attorney previously engaged in a *political* conflict that necessitated her office's disqualification from prosecuting then-Senator Burt Jones who was a target of her Special Purpose Grand Jury ("SPGJ"). *See In re May 2, 2022, Special Purpose Grand Jury*, Case No. 2022-EX-000024, July 25, 2022, Recusal Order (Superior Court, Fulton County, Georgia) at 4, attached hereto as **Exhibit A**. It has now been revealed that the District Attorney *financially* benefited from her prosecution of this case. This new conflict of interest requires her disqualification and the disqualification of her entire office here. *See McLaughlin v. Payne*, 295 Ga. 609, 612 (2014).

## **II. BACKGROUND**

### **A. July 25, 2022 Recusal Order**

Given that this is the second time the District Attorney has engaged in a prohibited conflict of interest related to the present prosecution, the circumstances and ruling related to the prior Recusal Order are important.

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<sup>2</sup> *See also Nichols v. State*, 87 S.E. 817, 821 (1916) ("The administration of ... criminal law[s] should be above suspicion, and should be free from all temptation, bias, or prejudice[.]"); *State v. Wooten*, 273 Ga. 529, 531 (2001) (district attorneys must discharge their duties in the public interest).

On July 25, 2022, Fulton County Superior Court Judge Robert McBurney, who oversaw the SPGJ convened to investigate purported irregularities in the 2020 Presidential election, disqualified the District Attorney, her office, and her special prosecution team from investigating then-State Senator Burt Jones who was running as a Republican to serve as Georgia’s Lieutenant Governor. *See Exhibit A.*

Judge McBurney found that during the 2022 election cycle, the District Attorney hosted and headlined a fundraiser for Charlie Bailey, one of Mr. Jones’s Democrat rivals for Lieutenant Governor. The District Attorney did this even though she had publicly labelled Mr. Jones a “target” of the SPGJ, which had already convened. Judge McBurney determined that the District Attorney bestowed the imprimatur of her office on Mr. Jones’s potential opponent, and that “[t]his scenario create[d] a plain—and actual and untenable—conflict.” As a result, any decision the District Attorney made about prosecuting Mr. Jones would be “necessarily infected” by the conflict of interest. *Id.* at 4.

Judge McBurney determined that whether or not the District Attorney intended for her criminal investigation of Mr. Jones to directly or indirectly benefit Mr. Bailey, her conflict was “‘actual’ because *any* public criminal investigation into Mr. Jones plainly benefit[ted]” his opponent.” *Id.* at 5, n.9 (italics in original). Judge McBurney further found:

It is the fact that concern about the District Attorney’s partiality naturally, immediate, and reasonably arises in the minds of the public,

the pundits, and – most critically – the subjects of the investigation that necessitates the disqualification. An investigation of this significance, garnering the public attention it necessarily does and touching so many political nerves in our society, cannot be burdened by legitimate doubts about the District Attorney’s motives.

*Id.* at 5. If this appearance of **political** conflict regarding a non-party political candidate required her recusal, a **financial** benefit conferred directly to the District Attorney certainly does.<sup>3</sup> The fact that the District Attorney has engaged in multiple, ongoing conflicts of a political and financial nature evidences a disregard of her oath to impartially and fairly exercise the enormous power vested in her office.

## **B. The Present Financial Conflict**

The basic facts (which will be fully presented at an evidentiary hearing)<sup>4</sup> are as follows: (1) the District Attorney has an ongoing romantic relationship with lead

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<sup>3</sup> In the District Attorney’s July 19, 2022, brief opposing her recusal, she contended that neither “District Attorney Willis nor Special Prosecutor Wade have acted out of any personal political motivation. The record before the Court falls far short of requiring disqualification, where the State acted not out of personal interest ‘but alone to subserve public justice.’” *See* July 19, 2022, Brief of District Attorney at 9. This argument was unsuccessful. But in her brief, the District Attorney acknowledged that a showing of personal interest would require her disqualification.

<sup>4</sup> The District Attorney has not denied she accepted public funds that were allocated to Mr. Wade through his improper compensation. And this non-denial is a tacit admission. Rather than address the allegations against her publicly, the District Attorney attacked the parties who raised these issues, and she has threatened a potential witness against her. *See, e.g.,* <https://apnews.com/article/willis-wade-relationship-allegations-trump-election-indictment-aef1b2b7fca5bb03d4886cee4c5fee3b> (attacking witness); <https://www.cnn.com/2024/01/14/politics/lead-prosecutor-in-georgia-election-subversion-case/index.html> (attacking filers alleging “racist” motivations). Such

Special Assistant District Attorney (“SADA”) Nathan Wade; (2) this relationship pre-existed the investigation and Indictment at issue; (3) the District Attorney hired Mr. Wade and compensated him with State funds (including civil asset forfeiture funds) despite O.C.G.A. § 15-18-21(a)’s prohibition of that practice; (4) the District Attorney hired Mr. Wade without approval of the Fulton County Board of Commissioners as required by O.C.G.A. § 15-18-20(b); (5) Mr. Wade’s hourly rate exceeds that of most<sup>5</sup> other SADAs both in this case and in other major felony RICO cases in Fulton County; and *most importantly*, (6) monies paid to Mr. Wade’s law firm pursuant to this prohibited arrangement ultimately benefited the District Attorney financially and personally.

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public comments are improper for a number of reasons, and they contradict Georgia Rule of Professional Responsibility 3.8(g) (precluding such public statements by prosecutors).

<sup>5</sup> SADA Anna Cross receives the same hourly rate as Mr. Wade, but her annual compensation is capped. *See* Contracts and Invoices attached as **Exhibit B**. Mr. Wade and Ms. Cross are paid \$250.00/hour. Mr. John Floyd, the District Attorney’s RICO expert, received \$150.00–\$200.00/hour. *See id.* Mr. Wade had been paid more than \$653,880.00. Other payments to his law firm (for his partners’ work) bring his law firm’s compensation in this case to around \$1 million through around November 2023. According to news reports, Mr. Floyd was paid \$73,000.00 and Ms. Cross was paid \$90,000.00. <https://www.11alive.com/article/news/special-reports/ga-trump-investigation/nathan-wade-paid-substantially-more-than-fulton-special-prosecutors/85-c1fa7418-7608-4417-a685-2fbab1c450aa>. The bulk of SADA payments were made to Mr. Wade. Assistant District Attorneys are paid on average \$73,544.00 annually. *See* <https://www.indeed.com/cmp/Office-of-the-Fulton-County-District-Attorney/salaries/Associate-Attorney/Atlanta-GA>

The personal relationship and financial benefits flowing to the District Attorney create a conflict of interest more manifest and troubling than her political conflict of interest regarding Mr. Jones.<sup>6</sup> These conflicts cause both Defendants, and the public at large, to question the District Attorney's impartiality. Just as with the SPGJ and Mr. Jones, this cannot be countenanced.

### **III. ARGUMENT**

#### **A. The District Attorney Violated Her Oath of Office**

District Attorneys in Georgia swear “that [they] will faithfully and impartially and without fear, favor, or affection discharge [their] duties as district attorney and will take only lawful compensation.” O.C.G.A. § 15-18-2. This oath is supposed to ensure that District Attorneys act impartially and in the public interest. So, whenever a District Attorney “acquire[s] a personal interest or stake in the defendant’s conviction[,]” a “conflict of interest arises and the District Attorney is disqualified

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<sup>6</sup> Prior to the present revelations, the District Attorney did not disclose any financial benefit given to her by Mr. Wade as required by law Section 2-79 of the Fulton County Code of Ethics. *See* 2021 and 2022 Financial Disclosures attached at **Exhibit C**. To the contrary, the District Attorney affirmatively stated she received *no* such benefits from any source during Mr. Wade’s employment as an SADA. This, in conjunction with her failure to follow the oversight requirements and expenditure limitations in O.C.G.A. §§ 15-18-20 and 15-18-2, allowed the District Attorney to secret these benefits until recently. Even so, the attempts to obscure the financial disclosures continue. Both the District Attorney and Mr. Wade have sought to preclude their sworn testimony regarding these issues in Mr. Wade’s Cobb County divorce action. In addition, some open records requests to the Fulton County District Attorney’s office have gone unanswered.

from the prosecution. See *Williams v. State*, 258 Ga. 305, 314 (1988); *see also Whitworth v. State*, 275 Ga. App. 790, 793 (2005).

The oath of District Attorneys also comports with two other immutable Georgia Constitutional principles regarding public officials and public money: (1) public officials cannot privately benefit from their public office; and (2) public coffers are carefully guarded to protect the public against waste, corruption, fraud, and abuse.<sup>7</sup> District Attorneys are paid primarily<sup>8</sup> with State funds, have limited ability to expend any appropriated funds, and are constrained in their ability to hire outside lawyers to assist with their public duties.<sup>9</sup> These safeguards are designed to rein in the awesome power of District Attorneys while promoting public confidence in prosecutions. Where a District Attorney acts partially, accepts financial benefits, and skirts safeguards imposed by the General Assembly, she and her office must be disqualified.

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<sup>7</sup> See, e.g., Ga. Const. Art. I, Sec. II, Par. I (Trustee Clause); Art. III, Sec. VI, Par. VI (Gratuities Clause); Art. VI, Sec. VIII, Par. I(c) (District Attorney Compensation); Art. VIII, Sec. IV, Par. III (Credit Clause); Art. IX, Sec. V, Par. I (Debt Clause).

<sup>8</sup> District Attorneys may only receive statutory state compensation plus a capped local subsidy. O.C.G.A. §§ 15-18-10, 15-18-10.1, and 15-18-19. No other compensation is allowed.

<sup>9</sup> See Ga. Const. Art. VI, Sec. VII, Par. 1(a); *see also* O.C.G.A. §§ 15-18-10, 15-18-10.1, 15-18-11, 15-18-14, 15-18-14.1, 15-18-15, 15-18-17, 15-18-19, 15-18-20, 15-18-21.

## **B. The Appearance of Impropriety Requires Disqualification**

As Judge McBurney also found in his July 25, 2022 Recusal Order, disqualification is warranted even when it merely *appears* that the “prosecution [is] unfairly based on private interests rather than ... properly based on the vindication of public interests[.]” *See Head v. State*, 253 Ga. App. 757, 758 (2022); *see also Young*, 481 U.S. at 811 (same). And “no showing of prejudice [is] required” when establishing a prosecutor’s conflict of interest. *Amusement Sales, Inc. v. State*, 316 Ga. App. 727, 736 (2012). Indeed, “justice must satisfy the appearance of justice.” *Offutt v. U.S.*, 348 U.S. 11, 13 (1954). So, identifying “actual prejudice ... misses the point [when] the public perception of the integrity of our criminal justice system[.]” is at stake. *Young*, 481 U.S. at 811. Instead, just the appearance of bias is enough to disqualify prosecutors, their offices, and whomever they appoint.<sup>10</sup>

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<sup>10</sup> In this case there *is* actual prejudice. As set forth in Defendant Cheeley’s prior motion to dismiss the Indictment, and related briefing and argument, the Indictment makes no legal sense. It: (1) is in direct conflict with the Electoral Count Act; (2) prosecutes Defendants for mere speech in violation of the Georgia and U.S. Constitutions; (3) attempts to expand Georgia RICO beyond its plain limits; (4) fails to identify an actual RICO enterprise; (5) attempts to extend other crimes under Title 16 beyond their plain language; and (6) fails to plead necessary elements of any crime alleged. Prior to the recent revelations discussed herein, it appeared that the Indictment was brought “simply” for political gain, political bias and viewpoint persecution. Now the financial motivations for the ongoing prosecution have been disclosed. Thus, the reasons for bringing such a flawed, and clearly deficient Indictment, that no disinterested prosecutor would have pursued, are crystalized. Defendants should not be fodder for the District Attorneys’ private motives.



### **C. The District Attorney Violated the Georgia Constitution's Trustee Clause**

Georgia Const. Art. I, Sec. II, Par. I provides that “Public officers are trustees of the people and servants of the people and are at all times amenable to them.” This is a foundational principle of Georgia government. “[T]he Trustee clause is applied when a public officer has definitely benefited financially (or stood to benefit financially) as a result of simply performing his or her official duties.” *Dep’t of Labor v. McConnell*, 305 Ga. 812 (2019) (citing *City of Columbus v. Georgia Dep’t of Transp.*, 292 Ga. 878 (2013)). “A public official cannot “reap[] personal financial gain at the expense of the public . . . ” *Id.* Indeed, “[a]ll public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.” *Ianicelli v. McNeely*, 272 Ga. 232 (2000); *see also Crozer v. Reichert*, 275 Ga. 118 (2002); *Ga. Dep’t of Human Resources v. Sistrunk*, 249 Ga. 543 (1982), *overruled on other grounds*, *Ga. Ports Auth. v. Harris*, 274 Ga. 146 (2001). Here, the District Attorney personally benefited directly from monies paid to Mr. Wade from her office for the prosecution of this case. This violates the Trustee Clause and requires the District Attorney’s recusal here.

## **D. The District Attorney Violated Defendants' Due Process Rights**

### **1. The District Attorney's Financial Interest Violates Due Process**

Not only does the Trustee Clause require disqualification, but so do the Federal and Georgia Due Process Clauses. *See* U.S. Const. amend. XIV, § 1; Ga. Const. Art. I, § I, ¶ I. Indeed, due process constitutes one of the foremost “constitutional limits upon [the] exercise” of prosecutorial discretion. *See Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1978).

The Federal Due Process clause “preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done[.]” *Marshall v. Jerico, Inc.*, 446 U.S. 238, 242 (1980) (quotation omitted). “To this end ... no man [or woman] is permitted to try cases where he [or she] has an interest in the outcome. Any “personal interest, financial or otherwise, ... may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.” *Id.* at 249–50. Once prosecutors become “subject to influences that undermine confidence that a prosecution can be conducted in disinterested fashion ... [courts] cannot have confidence in a proceeding in which this officer plays the critical role of preparing and presenting the case for the defendant's guilt.” *Young*, 481 U.S. at 811.

By comparison, “Georgia decisional law ... is a strain of substantive due process that extends protections beyond what federal due process alone affords.”

*Fields v. Rockdale Cnty.*, 785 F.2d 1558, 1561 (11th Cir. 1986). So, the Georgia Constitution’s Due Process clause holds prosecutors to an even higher standard than its federal counterpart. And again, Georgia decisional law is clear—even the appearance that a prosecution is unfairly based on “private interests” rather than “vindication of public interests” requires disqualification. *See Head*, 253 Ga. App. at 758. Because, in the end, “the appearance of evil is as much to be abhorred as is the evil itself.” *Young v. Champion*, 142 Ga. App. 687, 689 (1977).

Where a prosecution is affected, influenced, or motivated in whole or in part by a potential financial benefit to the prosecutor, that prosecution raises serious Due Process concerns, because the prosecution is not “disinterested.” Here those Due Process concerns are readily apparent and warrant disqualification.

## **2. SADA Wade’s Financial Interest Violates Due Process**

In both *Amusement Sales, Inc. v. State*, 316 Ga. App. 727, 735 (2012) and *Greater Georgia Amusements, LLC v. State*, 317 Ga. App. 118, 121–22 (2012) the Georgia Court of Appeals recognized that a SADA, like a District Attorney, must be disqualified from a litigation where the SADA has a personal interest or stake in the defendant’s conviction. 316 Ga. App. at 735; 317 Ga. App. at 121–22. Again, where such a personal stake exists, disqualification is required even without a showing of prejudice. *See Amusement Sales*, 316 Ga. App. at 736. So, for example,

compensating a SADA based on a contingency fee<sup>11</sup> violated Georgia public policy because it allowed the SADA to have a financial interest in the outcome of the case. *Id.* at 736; *Greater Georgia Amusements*, 317 Ga. App. at 121. These holdings are predicated upon the rule that persons representing the State, unlike private lawyers, should not be motivated by financial gain. *Greater Georgia Amusements*, 317 Ga. App. at 121.

The responsibility of a public prosecutor differs from that of the usual advocate; *his duty is to seek justice, not merely convict*. This special duty exists because the prosecutor represents the sovereign and should exercise restraint in the discretionary exercise of governmental powers. Therefore, the district attorney [and SADA] is *more than an advocate* for one party and has *additional professional responsibilities as a public prosecutor to make decisions in the public interest.*”

*Id.* (quoting *State v. Wooten*, 273 Ga. 529 (2001)) (emphasis in original). In other words, where a SADA has a financial incentive in a matter, he must be disqualified.

As noted below, and to avoid this problem, the Georgia General Assembly carefully insured that SADAs are compensated only under a very narrow set of circumstances, namely ones that preclude SADAs from private employment and otherwise require local government oversight. The District Attorney and Mr. Wade avoided those guardrails here and that resulted in the improper payments and financial incentives driving this case.

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<sup>11</sup> These were civil asset forfeiture cases, but the Court of Appeals explained that recusal standards are identical in the criminal context. *See Amusement Sales*, 316 Ga. App. at 735–36.

Tennessee applies the same prosecutorial disqualification rules and standards as does Georgia and the United States. *See State v. Culbreath*, 30 S.W.3d 309, 313-314 (Tenn. 2000). Tennessee similarly circumscribes the use of SADAs and their compensation. *See id.* at 314–16. In *Culbreath*, the Tennessee Supreme Court analyzed whether a SADA’s hourly rate contract (paid by private sources) required his disqualification and the disqualification of the District Attorney’s office, who was also actively involved in the matter, because the SADA’s compensation model created “compromising influences and loyalties” due to the “direct financial interest [it created] in the duration and scope” of the prosecution. *Id.* at 316 (*citing* Tenn. R. Sup.Ct. 8, EC 5–1).<sup>12</sup> Here, as in *Culbreath*, SADA Wade’s financial arrangement (paid here by State funds) has created an “actual conflict of interest [that has] tainted the entire prosecution.” *Id.* at 316-317. Given the manner in which SADA Wade is being paid (in violation of state law), he financially benefits by extending the duration and scope of this prosecution. *Id.*

The Tennessee Court not only disqualified the SADA and the District Attorney’s office, but it also dismissed the indictment as violative of the Federal and Tennessee Due Process Clauses. As the *Culbreath* Court recognized,

We initially observe that dismissal of an otherwise valid indictment returned by a grand jury is a little-used remedy for prosecutorial misconduct. *See United States v. Williams*, 504 U.S. 36, 54, 112 S. Ct. 1735, 1746, 118 L.Ed.2d 352 (1992). It may be appropriate, however,

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<sup>12</sup> As in this case, the SADA did not sign the oath of office.

where prosecutorial misconduct denies a defendant the constitutional right to due process. *See United States v. Carrasco*, 786 F.2d 1452, 1455 (9th Cir.1986); *People v. Torres*, 245 Ill.App.3d 297, 184 Ill. Dec. 311, 613 N.E.2d 338, 340 (1993). Moreover, dismissal of an indictment may be appropriate under a court's general supervisory authority where prosecutorial misconduct, while short of constitutional error, has prejudiced a defendant or affected the charging decision by the grand jury. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 108 S. Ct. 2369, 101 L.Ed.2d 228 (1988).

*Id.* at 317.

Even though dismissal was not the “usual remedy,” dismissal was appropriate in *Culbreath*. The defendants’ liberty interests were significant and there was a risk of deprivation of their liberty interests arising from the participation of the privately funded SADA. *Id.* at 318. Thus, dismissal was appropriate because the SADA’s conflict of interest “tainted the entire prosecution of the case well before the charges were presented to the grand jury.” *Id.*

Again, “a governmental scheme that injects ‘a personal interest, financial or otherwise, into the enforcement process’ or that brings ‘irrelevant or impermissible factors’ into the decision-making process could ‘raise serious constitutional questions.’” *Brucker v. City of Doraville*, No. 1:18-CV-2375-RWS, 2020 WL 8173291, \*12 (N.D. Ga. Dec. 16, 2020) (*quoting Marshall*, 446 U.S. at 250); *see also Hill v. City of Seven Points*, 2002 WL 243261, \*19 (5th Cir. 2002) (same). Here the payment scheme designed to benefit SADA Wade, and the District Attorney by extension, creates such an impermissible financial benefit such that the entire

prosecution team must be disqualified and the Indictment dismissed. This is especially true where Mr. Wade has been involved in every aspect of the litigation.

## **E. The District Attorney Improperly Hired SADAs**

### **1. Title 15 Precludes the SADAs Employment Here**

The District Attorney's failure to follow the express statutory requirements for hiring private outside counsel allowed her to avoid review and scrutiny of the monies used for her personal benefit. Moreover, it requires disqualification of the SADAs here.

O.C.G.A. § 15-18-20(b) explains that SADAs "serve at the pleasure of the district attorney and *shall* be compensated by the county or counties comprising the judicial circuit, 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 or counties comprising the judicial circuit." (emphasis added). It is uncontested (1) there is no local Act permitting Mr. Wade's or any other SADA's employment, and (2) the Fulton County Board of Commissioners did not approve Mr. Wade's hiring, or the hiring of any SADA in this case. SADA Wade's hiring, and those of the other SADAs, was thus not authorized by § 15-18-20(b).

O.C.G.A. § 15-18-21 is the *only* alternate statutory SADA funding mechanism. It mandates "[a]ny assistant district attorney, deputy district attorney, or other attorney at law employed by the district attorney who is compensated *in whole*

*or in part by state funds* shall not engage in the private practice of law.” O.C.G.A. § 15-18-21(a) (emphasis added). It is undisputed (1) the District Attorney employs SADA Wade and the other SADAs, (2) SADA Wade and the other SADAs are compensated with State funds; (3) SADA Wade maintains his private law practice at Wade & Campbell Firm in Atlanta; and (4) the other SADAs maintain their own private practices.

Because there was no Fulton County appropriation allowing for the hiring of any SADA here, the funds used to employ them were necessarily State funds. Records show Mr. Wade (along with SADA Anna Cross) have been compensated, at least in part, with civil asset forfeiture funds. Civil asset forfeiture funds are “state funds.” O.C.G.A. § 9-16-18(a) specifically says “[a]ll property declared to be forfeited *vests with the state* at the time of commission of the conduct giving rise to the forfeiture together with the proceeds of the property after that time.” Thus, forfeiture funds are state money.

Moreover, the District Attorney is an arm of the State. *See* Ga. Const. Art. VI, § VIII, ¶ I(d) (duty of district attorneys is to represent the State); *Goggins v. Boston*, 2018 WL 3385905 (N.D. Ga. 2018) (Georgia district attorneys are state actors). Thus, any funds not appropriated by the Fulton County Board of Commissioners in the possession of the District Attorney here are State funds as well.



Laws imposing expenditure restrictions on District Attorneys ensure public monies are employed solely for legitimate public purposes. These laws also ensure transparency and oversight. Because the District Attorney cannot employ state funds to hire a SADA with a private practice, the District Attorney would have been required to seek approval of the Fulton County Board of Commissioners to hire any private lawyers as SADAs here. Here, the District Attorney used State monies to hire SADAs with private practices rather than securing county funds to hire them.

Appealing to the Fulton County Board of Commissioners would have required the District Attorney to disclose the reasons and purposes for hiring the SADAs to prosecute this case. The District Attorney would have also had to justify the SADAs' compensation. And, in the case of SADA Wade, the District Attorney would have been obligated to explain why his hourly rate substantially exceeded rates paid to most other SADAs in major felony cases—especially because those other SADAs had more felony and RICO prosecution experience. Lastly, the District Attorney would have been forced to disclose how she might benefit from funds appropriated to SADA Wade. Had the District Attorney actually made such disclosures here, it is unlikely that the Fulton County Board of Commissioners would have approved her requests.

Because all the SADAs involved in this matter were not properly hired pursuant to O.C.G.A. §§ 15-18-20 or 15-18-21, they must all be disqualified from representing the State.

## **2. Greater Georgia Does not Allow the SADA hirings**

In *Greater Georgia Amusements, LLC v. State*, the Georgia Court of Appeals found that a contract between a SADA and the State did not require approval from the governing authority within the judicial circuit pursuant to O.C.G.A. § 15-18-20. 317 Ga. App. at 118. The *Greater Georgia* court held a district attorney may hire a SADA *for a specific case* without explicit local government approval. *See id.* at 120 (citing *State v. Cook*, 172 Ga. App. 433, 437 (1984)) (“O.C.G.A. § 15-18-20 ... does not necessarily limit the authority of a district attorney so as to prohibit his appointment of a Special Assistant District Attorney *in a specific case*,” but it does govern a district attorney’s employment of “general and on-going staff” (punctuation omitted; emphasis supplied)).<sup>13</sup>

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<sup>13</sup> This non-binding holding in *Greater Georgia* is plainly erroneous given the unambiguous language of O.C.G.A. § 15-18-20(b), which requires *without exception* that a SADA’s salary “be fixed either by local Act or by the district attorney with the approval of the county or counties comprising the judicial circuit.” Because the *Greater Georgia* court relied on mere dicta in *Cook*, its holding is incorrect and the dicta in *Cook* should be rejected as contradicting the plain language of §§ 15-18-20(b) and 15-18-21.

Because it is “physical precedent” only, *Greater Georgia* is not binding. See Georgia Court of Appeals Rule 33.2(2)<sup>14</sup>; *Fulton County Bd. of Tax Assessors v. Nat’l Biscuit Co.*, 296 Ga. App. 884, 886 (2009). Even if it were, nothing in *Greater Georgia* counsels against the District Attorney’s disqualification here.

First and foremost, whether SADA Wade (or the other SADAs) were properly hired does not speak to the prohibited private benefit conferred to the District Attorney through the payment of public funds to SADA Wade. While the hiring violations allowed the District Attorney to avoid review of her benefit from the public funds,<sup>15</sup> it is that personal benefit that disqualifies the District Attorney—not the hiring violations.

Second, *Greater Georgia* only considered whether a SADA’s hiring was void because local government approval was not given per O.C.G.A. § 15-18-20. *Greater Georgia* did not, however, address the private employment restrictions imposed by O.C.G.A. § 15-18-21 regarding the use of State funds to hire SADAs.

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<sup>14</sup> Per Georgia Court of Appeals Rule 33.2(2), prior to August 1, 2020, any opinion in which less than all judges of a three judge panel join, or where a member of the panel concurs in the judgment only (as in *Greater Georgia*), then the opinion is non-binding “physical precedent” that is persuasive only.

<sup>15</sup> Absent the recent, and still forthcoming, factual disclosures through Mr. Wade’s divorce proceedings, there may have *never* been a disclosure that the District Attorney benefited from monies paid to Mr. Wade. It is that type of secret benefit that the disclosure and oversight rules discussed above are designed to preclude.

Third, *Greater Georgia's* judicial creation of a “specific case” exception must be narrowly construed. Here, Mr. Wade, as well as the other SADAs, were hired to be part of the District Attorney’s RICO task force that handles numerous cases. In other words, Mr. Wade was not hired merely for a “specific case” and thus *Greater Georgia* does not apply for this reason as well.

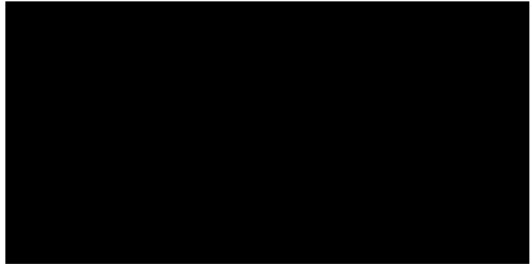
Failure to follow the appropriate hiring provisions set forth above requires the disqualification of all SADAs hired by the District Attorney.

#### **IV. CONCLUSION**

The District Attorney has an impermissible financial interest in this prosecution. Mr. Wade has an impermissible financial interest in this prosecution. This violates the Georgia Constitution, the U.S. Constitution, and the numerous Georgia statutes cited above. Additionally, the SADAs are all employed in violation of Georgia law. Accordingly, and for all the reasons set forth above, the District Attorney, her office, and all the SADAs must be disqualified, and the Indictment should be dismissed.

Respectfully submitted, January 26, 2024.

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# Exhibit A



IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

IN RE 2 MAY 2022 SPECIAL PURPOSE  
GRAND JURY

2022-EX-000024

**ORDER DISQUALIFYING DISTRICT ATTORNEY'S OFFICE**

On 20 January 2022, the District Attorney of Fulton County petitioned the Chief Judge of the Superior Court of Fulton County to convene the Superior Court bench to consider approving the District Attorney's request for impaneling a special purpose grand jury to investigate possible criminal interference in the November 2020 general election in Georgia. On 24 January 2022, the Chief Judge, having received a majority of the twenty judges' assent, issued an Order authorizing the special purpose grand jury. Among the various instances of possible electoral interference this body would be investigating was the decision by State Republican party officials to draft an alternate slate of Presidential electors -- despite the vote count indicating their candidate had lost by thousands of votes. One of the more prominent persons who chose to participate in this scheme was State Senator Burt Jones.

On 2 May 2022, the special purpose grand jury was selected and sworn in; in June 2022 it began receiving evidence.<sup>1</sup> The District Attorney serves as the "legal advisor" to the grand jury; she and her team of prosecutors also largely shape the grand jury's investigation by subpoenaing witnesses and leading their questioning. As forecast, the District Attorney -- and thus the grand jury -- began to investigate the alternate electors

<sup>1</sup> Notably, the District Attorney explained her pause in initiating the special purpose grand jury's investigative activity by referencing the 24 May 2022 primary elections in Georgia, indicating an awareness that her work with the grand jury could have an impact on electoral outcomes.



stratagem. The District Attorney has issued subpoenas to at least twelve of the alternate electors, including one to Senator Burt Jones, who is the Republican candidate for Lieutenant Governor in the upcoming 2022 general election.

Senator Jones has filed a motion to disqualify the District Attorney and her office from further investigation into his connection to the apparent efforts to interfere with or otherwise undermine the outcome of the 2020 general election. Eleven other alternate electors have jointly filed a motion to quash their grand jury subpoenas, asserting their Fifth Amendment privilege against compulsory incrimination. Senator Jones subsequently joined in his fellow electors' motion and they adopted his. On 21 July 2022, the Court held a hearing on these motions. Based on the arguments and evidence presented, and a review of relevant legal authorities, the Court GRANTS Senator Jones's motion to disqualify the District Attorney and her office -- as to Senator Jones only. The Court DENIES the motion to disqualify as to the other eleven alternate electors and also DENIES the motion to quash as to those eleven.<sup>2</sup>

### DISQUALIFICATION

On 24 May 2022, Senator Jones won outright the Republican primary for Lieutenant Governor, earning over 50% of the vote.<sup>3</sup> On the Democratic side, a runoff was necessary, as Kwanza Hall, the top vote getter, secured only 30% of the vote. Trailing him with 18% of the vote was the second-place finisher, Charlie Bailey. Hall and Bailey

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<sup>2</sup> Given the Court's ruling on Senator Jones's motion to disqualify, his adopted motion to quash is moot, as he is no longer a permissible subject (or target or object) of *this* special purpose grand jury's investigation and so may not be compelled to appear before the grand jury. As discussed below, this prohibition does not mean the grand jury cannot receive evidence about Senator Jones's involvement in efforts to undo legitimate electoral results; rather, such evidence simply may not come from Senator Jones and he may not be included in any final recommendations from the grand jury.

<sup>3</sup> All 2022 state primary election information for the lieutenant governor's race is taken from [https://ballotpedia.org/Georgia\\_lieutenant\\_gubernatorial\\_election,\\_2022](https://ballotpedia.org/Georgia_lieutenant_gubernatorial_election,_2022).



stood for a run-off election on 21 June 2022. Bailey turned the tide and triumphed; he now faces Senator Jones in the 8 November 2022 general election.

On 14 June 2022, well after the grand jury had begun receiving evidence from witnesses called and examined by the District Attorney's team of prosecutors, the District Attorney hosted and headlined a fundraiser for Bailey. By this time, media coverage of the grand jury proceedings was national and non-stop and the District Attorney was the very public face of those proceedings. She also was one of the faces on the Bailey fundraiser announcement: it prominently featured the District Attorney's name, photo, and title and was widely shared on Bailey's campaign's social media outlets. The fundraiser appears to have been a success, earning Bailey's campaign thousands of dollars. It is important to note that, as counsel for the District Attorney rightly pointed out at the hearing on the motion to disqualify, the fundraiser was entitled a "Runoff Fundraiser" and occurred when Bailey was battling Kwanza Hall for the Democratic nomination. But more relevant -- and harmful -- to the integrity of the grand jury investigation is that the die was already cast on the other side of the political divide: whoever won the Bailey-Hall runoff would face Senator Jones. Thus, the District Attorney pledged her name, likeness, and office to Bailey as her candidate of choice at a time when, if Bailey were successful (which he was), he would face Senator Jones.<sup>4</sup>

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<sup>4</sup> The District Attorney also, as a private citizen and in her personal capacity only, donated to Bailey's campaign. Senator Jones points to this private donation as another basis for disqualification. Alone, that is an insufficient basis for disqualification. See, e.g., *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 884 (2009) ("Not every campaign contribution by a litigant or attorney creates a probability of bias that requires ... recusal."); *Gude v. State*, 289 Ga. 46, 50 (2011) (same) (both cases involve judicial recusals, where rules are more stringent). However, it does add to the weight of the conflict created by the more extensive, direct, public, and job-related campaign work the District Attorney performed on behalf of candidate Bailey.



This choice -- which the District Attorney was within her rights as an elected official to make -- has consequences. She has bestowed her office's imprimatur upon Senator Jones's opponent. And since then, she has publicly (in her pleadings) labeled Senator Jones a "target" of the grand jury's investigation.<sup>5</sup> This scenario creates a plain -- and actual and untenable -- conflict.<sup>6</sup> Any decision the District Attorney makes about Senator Jones in connection with the grand jury investigation is necessarily infected by it. To label Jones a target or merely a subject, to subpoena him or instead allow him to proffer, to question him aggressively or mildly, to challenge or accept invocations of legislative privilege or assertions of Fifth Amendment privilege, to immunize or not -- each of these critical investigative decisions is different for him because of the District Attorney's actions taken on behalf of the Senator's electoral challenger. Perhaps the evidence shows that there should be a tighter, stricter focus on Senator Jones than on some of the other alternate electors.<sup>7</sup> Yet any effort to treat him differently -- even if justified -- will prompt

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<sup>5</sup> The designation, borrowed from federal criminal practice, is a bit confusing in the context of this grand jury, which has no power to bring criminal charges against anyone. It is nonetheless a potent investigative signal that the District Attorney views Senator Jones (and the other alternate electors) as persons more closely connected to the alleged electoral improprieties than other witnesses who have come before the grand jury or who may yet do so.

<sup>6</sup> The Court appreciates the affidavit provided by Robert Smith, General Counsel for the Prosecuting Attorneys' Council of Georgia, on behalf of the District Attorney. His reliance on *Whitworth v. State*, 275 Ga. App. 79 (2005) and *Bd. of Educ. v. Nyquist*, 590 F.2d 1241, 1247 (2<sup>nd</sup> Cir. 1979) is instructive but not persuasive. He is correct that a mere appearance of impropriety is generally not enough to support disqualification, except, as noted in *Nyquist*, in the "rarest of cases." This is one of those cases. But it is also a case where the conflict is actual and palpable, not speculative and remote.

<sup>7</sup> This is an entirely plausible scenario given the Senator's political experience and public responsibility. That is, if the District Attorney (or the grand jury) decides that participation in the alternate elector scheme constituted impermissible interference in the 2020 general election, someone of the Senator's public stature, influence, and presumed sophistication ought to be treated differently from an alternate elector who had no representative responsibility and who participated in the scheme merely out of partisan loyalty.



entirely reasonable concerns of politically motivated prosecution: is Senator Jones being singled out because of a desire to further assist the Bailey campaign?<sup>8</sup>

Of course, the actual answer does not matter.<sup>9</sup> It is the fact that concern about the District Attorney's partiality naturally, immediately, and reasonably arises in the minds of the public, the pundits, and -- most critically -- the subjects of the investigation that necessitates the disqualification. An investigation of this significance, garnering the public attention it necessarily does and touching so many political nerves in our society, cannot be burdened by legitimate doubts about the District Attorney's motives. The District Attorney does not have to be apolitical, but her investigations do. The Bailey fundraiser she sponsored -- in her official capacity -- makes that impossible when it comes to investigating Bailey's direct political opponent.<sup>10</sup>

The Court GRANTS Senator Jones's motion to disqualify the District Attorney and her office.<sup>11</sup> This District Attorney and her special prosecution team may no longer investigate Senator Jones in the following sense: they may not subpoena him (or seek to

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<sup>8</sup> Candidate Bailey has wielded the District Attorney's investigation as a cudgel in his campaign against Jones. *See, e.g.*, <https://www.ajc.com/politics/contrasts-on-voting-laws-and-ballot-access-define-georgia-candidates/7QT7XHSAGNGVXBNQPZ64AX56OU/> in which Bailey is quoted as saying "The only danger to safe and secure elections is people like Burt Jones, who come in and substitute their will for the will of the voters and try to overturn the election."

<sup>9</sup> Nor is it knowable, which is another reason to separate the District Attorney and her office from any investigation into Senator Jones. An "actual" conflict does not mean that Senator Jones has definitive proof that an investigative decision was made explicitly to benefit candidate Bailey. This rarely, if ever, occurs, absent wiretaps or leaked e-mails. The conflict is "actual" because *any* public criminal investigation into Senator Jones plainly benefits candidate Bailey's campaign, of which the District Attorney is an open, avid, and official supporter.

<sup>10</sup> Senator Jones also sought to disqualify Special Prosecutor Nathan Wade for a campaign donation he made to Charlie Bailey's earlier aborted campaign for Attorney General. As discussed above, a routine campaign contribution is not enough -- and this one was to a different campaign altogether, with no connection to Senator Jones.

<sup>11</sup> When the elected District Attorney is disqualified, so, too, is her entire office. *McLaughlin v. Payne*, 295 Ga. 609, 613 (2014).



obtain any records from him via subpoena), they may not publicly categorize him as a subject or target (or anything else) of the grand jury's investigation, and they may not ask the grand jury to include any recommendations about him in their final report. This does not mean that the District Attorney cannot gather evidence about Senator Jones's involvement in efforts to interfere with or undermine the 2020 general election results. Her office may ask witnesses about the Senator's role in the various efforts the State Republican party undertook to call into question the legitimacy of the results of the election. What her office may *not* do is make use of any such evidence to develop a case against the Senator. That decision, as to whether any charges should be brought, and what they should be, will be left to a different prosecutor's office, as determined by the Attorney General.

The Court DENIES the motion to disqualify as adopted by the other eleven electors. There has been no showing that the District Attorney or any member of her prosecution team is impaired by a conflict of interest vis-à-vis any of these individuals. One of those eleven, Shawn Still, is running for the State Senate but he has offered no evidence that the District Attorney or anyone else from her office has materially supported either his campaign or the campaign of his opponent.<sup>12</sup>

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<sup>12</sup> Counsel for the eleven also raised the specter of the District Attorney releasing the special purpose grand jury's final report on the eve of the November 2022 general election in an effort to advantage Democratic candidates over Republican ones. Apart from offering no basis for this claim beyond unsubstantiated hearsay, counsel's concern displays a misunderstanding of the investigative grand jury process. The grand jury will prepare a final report recommending action (or inaction). That report is released to the undersigned, who in turn passes it to the Chief Judge. Only after a majority of the Superior Court bench subsequently votes to dissolve the grand jury will the report be released to the District Attorney. O.C.G.A. § 15-12-101(b). The undersigned will not begin this dissolution process at or near the time of the 2022 general election, should the grand jury complete its work by then.



## QUASHAL

The eleven other alternate electors have moved to quash their subpoenas on the basis of their collective, blanket assertion of their Fifth Amendment privilege. This group assertion came after the District Attorney upgraded their status from witness to target in late June 2022 (following several alternate electors' voluntary interviews with the District Attorney's team (and the Bailey fundraiser)). These eleven now characterize the subpoenas for their testimony as "unreasonable and oppressive." The Court disagrees. Counsel for the eleven presented several creative legal arguments concerning the possible (in)validity of future charges that might conceivably be brought against these alternate electors. While intriguing, such argumentation is premature. This grand jury has no authority to bring charges. *Kenerly v. State*, 311 Ga. App. 190 (2011). It is merely investigating who did what after the 2020 general election and developing a perspective about whether anyone's post-election actions merit criminal prosecution in Fulton County.

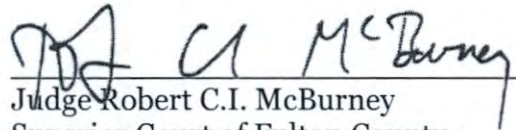
The eleven electors' conduct falls well within the reach of this broad charter. It is not unreasonable to seek their testimony and it is not oppressive to require an appearance by way of subpoena. Nothing about that process deprives the electors of their Fifth Amendment privilege, which they may freely assert *as applicable* when they appear before the grand jury.<sup>13</sup> Their subpoenas will not be quashed. *See Bank of Nova Scotia v. United States*, 487 U.S. 250, 258-59 (1988); *State v. Lampl*, 296 Ga. 892, 898-99

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<sup>13</sup> Counsel for the eleven revealed at the 21 July 2022 hearing that her advice to her clients will be to assert privilege as to *any and every* question asked, even something as mundane as name and profession. While this strikes the Court as a rather expansive view of what might be self-incriminating, that determination can be made at the time of the electors' appearances. *See State v. Pauldo*, 309 Ga. 130, 135 (2020) (investigating authorities may ask basic biographical questions, even in the face of the assertion of Fifth Amendment rights).

(2015) (target of grand jury investigation may be compelled to appear before grand jury);  
O.C.G.A. § 24-5-506(a) (only persons charged with the commission of a criminal offense  
are not compellable to testify).

SO ORDERED this 25<sup>th</sup> day of July 2022.

  
\_\_\_\_\_  
Judge Robert C.I. McBurney  
Superior Court of Fulton County  
Atlanta Judicial Circuit

# Exhibit B

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE FULTON COUNTY  
DISTRICT ATTORNEY'S OFFICE AND ANNA GREEN CROSS, ESQ. OF CROSS  
FIRM LLC.**

**THIS AGREEMENT** is made by and between the FULTON COUNTY DISTRICT ATTORNEY'S OFFICE, (hereinafter "FCDA" whose mailing address is 136 Pryor Street, Atlanta, GA 30303 and Anna Green Cross, ESQ. (hereinafter "Attorney").

**WITNESSETH:**

**WHEREAS**, the FCDA intends to engage the professional services of Attorney to provide legal services as an expert in the area of complex state and federal criminal and civil litigation"; and,

**WHEREAS**, the services to be rendered are of a special and temporary nature which has been determined to be in the best interest of the public to be performed under contract by professional personnel;

**WHEREAS**, the Attorney has agreed to accept the position as July 15, 2022. This contract shall end on June 30, 2023.

**WHEREAS**, FCDA and Attorney, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**SECTION 1: SCOPE OF SERVICES**

Attorney agrees to provide legal services in connection with state and federal litigation for the purposes of advising, researching, and lead council on litigation matters involving criminal and civil state and federal litigation related to the Office of the Fulton County District Attorney and related matters.

Attorney agrees to provide best efforts to the performance of duties and responsibilities as outlined below in accordance with applicable laws, rules, regulations and policies.

Any expansion of this scope will be set forth in a separate letter of engagement or addendum to this contract.

**SECTION 2: CONTRACT TERM**

The term of this contract shall commence July 15, 2022 thru June 30, 2023. The FCDA may terminate this contract at any time, either for convenience or default; in this event, FCDA shall provide thirty (30) days written notice.

Attorney may terminate this contract and withdraw from representation upon grounds as provided for by the Georgia Rules of Professional Conduct and/or any other applicable provision of law; in this event, Attorney must provide thirty (30) days written notice served upon the District Attorney.



### **SECTION 3: ATTORNEY'S COMPENSATION FOR SERVICES**

- 3.1 Attorney shall be compensated at a rate of \$250.00 per hour for services provided.
- 3.2. Attorney is not permitted to work more than eighty (80) hours per month; as such, Attorney's hours for one calendar month (e.g. January 2022) shall not exceed eighty (80) hours.
- 3.3. Attorney will receive legal assignments from District Attorney. If assignments received, require Attorney to work more than 80 hours per month, Attorney must seek written approval from District Attorney Fani T. Willis before exceeding the monthly maximum hours set forth in Section 3.2.
- 3.4. Attorney shall submit invoice to FCDA's Purchasing Manager on the first Friday of the subsequent calendar month work was completed (if work is completed in April, invoice should be submitted on, or before, the first Friday in May). Bills not submitted within sixty (60) days of due date will not be paid by FCDA.
- 3.5 Upon the receipt of a timely payment invoice, FCDA will tender payment within sixty (60) days.

### **SECTION 4: ATTORNEY AGREES**

- 4.1 To accept the employment pursuant to the terms of this agreement;
- 4.2 Attorney contracts herein with the FCDA as an independent contractor, and is NOT an employee of the District Attorney's Office for the purposes of performing the services hereunder;
- 4.3 Attorney shall not be entitled to employee benefits provided under this contract such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the District Attorney's Office;
- 4.4 Attorney cannot represent any party to the controversy that is the subject of the cases in which they offer professional services.

### **SECTION 5: SCOPE OF AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Attorney by FCDA and contains all the covenants and agreements between the parties with respect to such retention in any matter whatsoever.

Each party to this Agreement acknowledges that no representation, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Any modification of the Agreement will be effective only if it is in writing and signed by the party to be charged. For the purpose of this paragraph and of the entire, agreement, the signature of the District Attorney is the only signature that will bind FCDA.

## **SECTION 6: ASSIGNMENT OF AGREEMENT**

This contract is not transferable. Attorney may not assign this agreement or any work within said scope to any other attorney, including attorneys employed within Attorney's office.

## **SECTION 7: GENERAL COMPLIANCE WITH LAWS**

Attorney shall be required to comply with all laws and ordinances applicable to the work.

## **SECTION 8: OWNERSHIP OF DOCUMENTS**

All briefs, memoranda and other incidental Attorney work or materials furnished herein under shall be and remain the property of the FCDA, including all publication rights and copyright interests, and may be used by the FCDA without any additional cost to the FCDA.

Attorney shall be required to execute a separate Confidentiality Agreement prior to Agreement being valid; said Confidentiality Agreement will be possessed by the FCDA's Legal Counsel.

## **SECTION 9: CHANGES**

The FCDA may at any time, in writing, may make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work as defined by the aforementioned scope of services of this Agreement or in the time required for this performance to complete, an equitable adjustment shall through a written Agreement.

## **SECTION 10: TERMINATION**

This contract is terminable by the FCDA at any time by written notice to Attorney, either for convenience or default. By written notice, Attorney may terminate this Agreement and withdraw from representation with the written consent of the FCDA and/or on grounds as provided for by the Georgia Rules of Professional Conduct and/or any other applicable provision of law.

Upon termination, all briefs, reports, summaries, completed work and work in progress, and such other information and materials as may have been accumulated by the Attorney in performing this Agreement shall, in the manner and the extent determined by the FCDA, become the property of and be delivered to the FCDA. If the contract is terminated, Attorney shall be paid the reasonable value for services performed up until the time of termination.

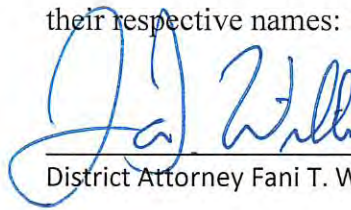
## **SECTION 11: SEVERABLE PROVISIONS**

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken for the Agreement and the Agreement shall be enforced according to its valid and subsisting terms and provisions.

## **SECTION 12: GOVERNING LAW**

The validity of the Agreement and its terms and provisions as well as the rights and duties of the parties of this Agreement shall be governed by the law of the State of Georgia.

IN WITNESS WHEREOF, The parties have executed this Agreement on the dates indicated by their respective names:

 7/15/2022  
\_\_\_\_\_  
District Attorney Fani T. Willis      Date

 7.15-22  
\_\_\_\_\_  
Attorney Anna Cross      Date

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE FULTON COUNTY  
DISTRICT ATTORNEY'S OFFICE AND JOHN FLOYD, ESQ.**

**THIS AGREEMENT** is made by and between the FULTON COUNTY DISTRICT ATTORNEY'S OFFICE, (hereinafter "FCDA" whose mailing address is 136 Pryor Street, Atlanta, GA 30303 and JOHN FLOYD, ESQ. (hereinafter "Attorney").

**WITNESSETH:**

**WHEREAS**, the FCDA intends to engage the professional services of Attorney to provide legal services as a "RICO EXPERT"; and

**WHEREAS**, the services to be rendered are of a special and temporary nature which has been determined to be in the best interest of the public to be performed under contract by professional personnel;

**WHEREAS**, the Attorney has agreed to accept the position as RICO EXPERT; and

**WHEREAS**, the FCDA and the Attorney, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**SECTION 1: SCOPE OF SERVICES**

Attorney agrees to provide legal services in connection with the appointment of RICO EXPERT for the purposes of advising, researching and participating in matters involving the RICO statute.

Attorney agrees to provide best efforts to the performance of duties and responsibilities as outlined below in accordance with applicable laws, rules, regulations and policies.

**SECTION 2: CONTRACT TERM**

The term of this contract shall commence April 1, 2021 thru April 1, 2022. The FCDA may terminate this contract at any time, either for convenience or default; in this event, FCDA shall provide thirty (30) days written notice. Attorney may terminate this contract and withdraw from representation upon grounds as provided for by the Georgia Rules of Professional Conduct and/or any other applicable provision of law; in this event, Attorney must provide thirty (30) days written notice served upon the District Attorney.

**SECTION 3: ATTORNEY'S COMPENSATION FOR SERVICES**

3.1 Attorney shall be compensated at a rate of \$150 per hour for services provided. In the event, that Attorney performs more than forty (40) hours total in any one (1) calendar month, Attorney must, via writing, inform FCDA, that their hours under this Agreement have reached forty (40) hours; at forty (40) hours, all work must stop and cannot begin until written approval from FCDA is received by Attorney.

3.2. Attorney shall submit invoice to FCDA's Purchasing Manager on the first Friday of the subsequent calendar month work was completed (if work is completed in April, invoice should

be submitted on, or before, the first Friday in May). Bills not submitted within sixty (60) days of receiving confirmation will not be paid by FCDA – these invoices are considered untimely.

Since Attorney must seek written approval before exceeding forty (40) calendar work hours in a month, only under rare and unlikely events, will a monthly invoice exceed six thousand dollars (\$6,000.00).

3.5 Upon the receipt of a timely payment invoice, FCDA will tender payment within sixty (60) days.

#### **SECTION 4: ATTORNEY AGREES**

4.1 To accept the employment pursuant to the terms of this agreement;

4.2 Attorney contracts herein with the FCDA as an independent contractor, and is NOT an employee of the District Attorney's Office for the purposes of performing the services hereunder;

4.3 Attorney shall not be entitled to employee benefits provided under this contract such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the District Attorney's Office;

4.4 Attorney cannot represent any party to the controversy that is the subject of the cases in which they offer professional services.

#### **SECTION 5: SCOPE OF AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Attorney by FCDA and contains all the covenants and agreements between the parties with respect to such retention in any matter whatsoever.

Each party to this Agreement acknowledges that no representation, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of the Agreement will be effective only if it is in writing and signed by the party to be charged. For the purpose of this paragraph and of the entire, agreement, the signature of the District Attorney is the only signature that will bind FCDA.

#### **SECTION 6: ASSIGNMENT OF AGREEMENT**

This contract is not transferable. Attorney may not assign this agreement or any work within said scope to any other attorney, including attorneys employed within Attorney's office.

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Attorney shall be required to comply with all laws and ordinances applicable to the work.



## **SECTION 8: OWNERSHIP OF DOCUMENTS**

All briefs, memoranda and other incidental Attorney work or materials furnished herein under shall be and remain the property of the FCDA including all publication rights and copyright interests, and may be used by the FCDA without any additional cost to the FCDA. Attorney shall be required to execute a separate Confidentiality Agreement prior to Agreement being valid; said Confidentiality Agreement will be possessed by the FCDA's Legal Counsel.

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The FCDA may at any time, in writing, may make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work as defined by the aforementioned scope of services of this Agreement or in the time required for this performance to complete, an equitable adjustment shall through a written Agreement.

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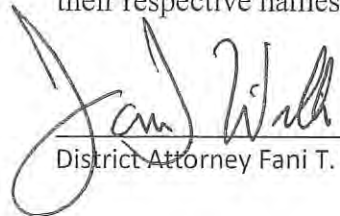
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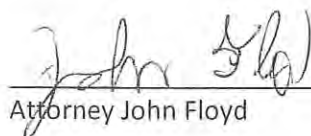
If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken for the Agreement and the Agreement shall be enforced according to its valid and subsisting terms and provisions.

## **SECTION 12: GOVERNING LAW**

The validity of the Agreement and its terms and provisions as well as the rights and duties of the parties of this Agreement shall be governed by the law of the State of Georgia.

IN WITNESS WHEREOF, The parties have executed this Agreement on the dates indicated by their respective names:

 2/23/2021  
District Attorney Fani T. Willis Date

 3/10/2021  
Attorney John Floyd Date

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE FULTON COUNTY  
DISTRICT ATTORNEY'S OFFICE AND JOHN FLOYD, ESQ.**

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**WHEREAS**, the FCDA intends to engage the professional services of Attorney to provide legal services as a "RICO EXPERT"; and

**WHEREAS**, the services to be rendered are of a special and temporary nature which has been determined to be in the best interest of the public to be performed under contract by professional personnel;

**WHEREAS**, the Attorney has agreed to accept the position as RICO EXPERT; and

**WHEREAS**, FCDA and Attorney, in consideration of the mutual covenants hereinafter set forth, agree as follows:

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Attorney agrees to provide best efforts to the performance of duties and responsibilities as outlined below in accordance with applicable laws, rules, regulations and policies.

Any expansion of this scope will be set forth in a separate letter of engagement or agreement.

**SECTION 2: CONTRACT TERM**

The term of this contract shall commence April 1, 2022 thru October 31, 2022. The FCDA may terminate this contract at any time, either for convenience or default; in this event, FCDA shall provide thirty (30) days written notice.

Attorney may terminate this contract and withdraw from representation upon grounds as provided for by the Georgia Rules of Professional Conduct and/or any other applicable provision of law; in this event, Attorney must provide thirty (30) days written notice served upon the District Attorney.

**SECTION 3: ATTORNEY'S COMPENSATION FOR SERVICES**

3.1 Attorney shall be compensated at a rate of \$200 per hour for services provided.

3.2. Attorney is not permitted to work more than twenty (20) hours in one calendar week; Attorney's hours for one calendar month (e.g. January 2022) shall not exceed eighty (80) hours.

3.3. Attorney shall not work more than eighty (80) hours per month. If Attorney, in one monthly billing cycle, needs to work more than eighty (80) hours, Attorney must seek written approval from District Attorney Fani T. Willis.

When Attorney reaches eighty (80) hours in one month, Attorney must stop working until written approval from District Attorney Willis is received by Attorney.

3.4. Attorney shall submit invoice to FCDA's Purchasing Manager on the first Friday of the subsequent calendar month work was completed (if work is completed in April, invoice should be submitted on, or before, the first Friday in May). Bills not submitted within sixty (60) days of receiving confirmation will not be paid by FCDA – these invoices are considered untimely.

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#### **SECTION 4: ATTORNEY AGREES**

4.1 To accept the employment pursuant to the terms of this agreement;

4.2 Attorney contracts herein with the FCDA as an independent contractor, and is NOT an employee of the District Attorney's Office for the purposes of performing the services hereunder;

4.3 Attorney shall not be entitled to employee benefits provided under this contract such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the District Attorney's Office;

4.4 Attorney cannot represent any party to the controversy that is the subject of the cases in which they offer professional services.

#### **SECTION 5: SCOPE OF AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Attorney by FCDA and contains all the covenants and agreements between the parties with respect to such retention in any matter whatsoever.

Each party to this Agreement acknowledges that no representation, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Any modification of the Agreement will be effective only if it is in writing and signed by the party to be charged. For the purpose of this paragraph and of the entire, agreement, the signature of the District Attorney is the only signature that will bind FCDA.

#### **SECTION 6: ASSIGNMENT OF AGREEMENT**

This contract is not transferable. Attorney may not assign this agreement or any work within said scope to any other attorney, including attorneys employed within Attorney's office.



## **SECTION 7: GENERAL COMPLIANCE WITH LAWS**

Attorney shall be required to comply with all laws and ordinances applicable to the work.

## **SECTION 8: OWNERSHIP OF DOCUMENTS**

All briefs, memoranda and other incidental Attorney work or materials furnished herein under shall be and remain the property of the FCDA including all publication rights and copyright interests, and may be used by the FCDA without any additional cost to the FCDA. Attorney shall be required to execute a separate Confidentiality Agreement prior to Agreement being valid; said Confidentiality Agreement will be possessed by the FCDA's Legal Counsel.

## **SECTION 9: CHANGES**

The FCDA may at any time, in writing, may make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work as defined by the aforementioned scope of services of this Agreement or in the time required for this performance to complete, an equitable adjustment shall through a written Agreement.

## **SECTION 10: TERMINATION**

This contract is terminable by the FCDA at any time by written notice to Attorney, either for convenience or default. By written notice, Attorney may terminate this Agreement and withdraw from representation with the written consent of the FCDA and/or on grounds as provided for by the Georgia Rules of Professional Conduct and/or any other applicable provision of law.

Upon termination, all briefs, reports, summaries, completed work and work in progress, and such other information and materials as may have been accumulated by the Attorney in performing this Agreement shall, in the manner and the extent determined by the FCDA, become the property of and be delivered to the FCDA. If the contract is terminated, Attorney shall be paid the reasonable value for services performed up until the time of termination.


## **SECTION 11: SEVERABLE PROVISIONS**

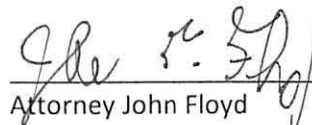
If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken for the Agreement and the Agreement shall be enforced according to its valid and subsisting terms and provisions.

## **SECTION 12: GOVERNING LAW**

The validity of the Agreement and its terms and provisions as well as the rights and duties of the parties of this Agreement shall be governed by the law of the State of Georgia.

IN WITNESS WHEREOF, The parties have executed this Agreement on the dates indicated by their respective names:

 4/1/22  
District Attorney Fani T. Willis      Date

 4/1/22  
Attorney John Floyd      Date

# Exhibit C

Reporting Period:  
Jan. 1, 2021 - Dec. 31, 2021

## FULTON COUNTY INCOME AND FINANCIAL DISCLOSURE REPORT

Name of County Official/Board Member: Fani T. Willis

Title of County Official/Board Member: District Attorney

A. Pursuant to Section 2-79 of the Fulton County Code of Ethics, approved by the Board of Commissioners on February 4, 2004 (Item No. 03-1531) and as amended on August 4, 2004 (Item No. 04-0796), on or before April 15 of each calendar year, each of the following individuals must file this Income and Financial Disclosure Report with the Clerk to the Commission, which Report shall cover the preceding calendar year:

- 1) All elected officials of Fulton County;
- 2) Judges of the Juvenile Court;
- 3) Judges of the Magistrate Court;
- 4) County Manager and Deputy County Managers;
- 5) All Department Heads, County Attorney, Clerk to the Commission, Division Heads reporting to the County Manager and the Deputy Director of Zoning;
- 6) Members of the Board of Tax Assessors and all Property Appraisers;
- 7) Members of the Community Zoning Board;
- 8) Members of the Board of Zoning Appeals; and
- 9) Members of the Board of Ethics.

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*(Attach additional pages, if necessary).*

B. For the Reporting Period stated above, identify by name and address, the source of each of the following, received or accrued during the preceding calendar year, by each person required to file such report and such person's spouse, if any:

- (1) Income for services rendered in the amount of \$1,000.00 or more:

Self/Spouse	Name of Source	Address
Self	Ross Law Firm	
Self	State Accounting Office	200 Piedmont Ave Ste 1604 W Tower; ATL, GA 30334
Self	Fulton County	141 Pryor St.; ATL, GA 30303
Self	Rocheblave Consulting LLC	
SPOUSE	NONE	NONE

*Reporting Period:*  
*Jan. 1, 2021 - Dec. 31, 2021*

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- (2) Each honorarium from a single source in the amount of \$500.00 or more, unless otherwise reported under applicable state law:

Self/Spouse	Name of Source	Address
SELF	NONE	NONE
SPOUSE	NONE	NONE

- (3) Each gift or favor from a single prohibited source in the aggregate amount of \$100.00 or more:

For purposes of this section, *Gifts and favors* means anything of value given by or received from a prohibited source. *Prohibited source* means any person, business, or entity that the involved officer or employee knows or should know:

- (i) is seeking official action from the county; or
- (ii) is seeking to do or is doing business with the county, or
- (iii) represents a person who is seeking official action from the county or who is seeking to do or is doing business with the county; or
- (iv) has interests that may be affected by the performance or non-performance of official duties by the officer or employee; or
- (v) is a registered lobbyist in accordance with state law.

*Code of Ethics, Section 2-67(4)*

Self/Spouse	Name of Source	Address
SELF	NONE	NONE
SPOUSE	NONE	NONE

*Reporting Period:*  
*Jan. 1, 2021 - Dec. 31, 2021*

(4) Dividend income of \$1,000.00 or more:

Self/Spouse	Name of Source	Address
SELF	NONE	NONE
SPOUSE	NONE	NONE

C. For the Reporting Period stated above, identify by name, address and general description:

(1) Any professional organization in which the person reporting is an officer, director, partner, proprietor, or employee, or serves in an advisory capacity, from which \$1,000.00 or more was received:

Name/Address: NONE	Role/Title
General Description:	

Name/Address:	Role/Title
General Description:	

Name/Address:	Role/Title
General Description:	

*Reporting Period:*  
*Jan. 1, 2021 - Dec. 31, 2021*

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- (2) Each business in which the person reporting owns 10% or more of such business's then outstanding stock:

For purposes of this section, *Business* means any corporation, partnership, proprietorship, organization, self-employed individual and any other entity operated for economic gain, whether professional, industrial, or commercial, and other entities, which for purposes of federal income taxation are operated as non-profit organizations.

*Code of Ethics, Section 2-67(1)*

Name of Business	Address
NONE	NONE

- (3) Each parcel of real property in which the person reporting has an ownership interest valued at 5% or more of the property's then assessed value:

Address	Tax Parcel ID Number
Public Employee	

- (4) Each reimbursement of expenses to the person reporting in the amount of \$1,000.00 or more:

Name of Source	Date	Amount
SELF	NONE	NONE

Reporting Period:  
Jan. 1, 2021 - Dec. 31, 2021

To be completed by County Official/Board Member:

Fani T. Willis  
Print Name  
Fani Willis  
Signature

Fulton County DA  
County Official Title  
4/15/2022  
Date

**For Office Use Only:**

Received by: Maria Date: 4/15/2022 via email

Please submit to:  
Office of the Clerk to the Commission  
141 Pryor Street SW, Suite 10075  
Atlanta, Georgia 30303  
(404) 612-8200 Phone  
(404) 730-8254 Fax

Redaction Log

Redaction Reasons by Exemption

Reason	Description	Pages (Count)
Public Employee	Records that reveal a public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access accounts, financial data or information other than compensation by a government agency, unlisted telephone number, and identity of the public employee's immediate family members or dependents; See O.C.G.A. § 50-18-72(a)(21)	4(1)



Reporting Period:  
Jan. 1, 2022 - Dec. 31, 2022

## FULTON COUNTY INCOME AND FINANCIAL DISCLOSURE REPORT

Name of County Official/Board Member: Fani T. Willis

Title of County Official/Board Member: District Attorney

A. Pursuant to Section 2-79 of the Fulton County Code of Ethics, approved by the Board of Commissioners on February 4, 2004 (Item No. 03-1531) and as amended on August 4, 2004 (Item No. 04-0796), on or before April 15 of each calendar year, each of the following individuals must file this Income and Financial Disclosure Report with the Clerk to the Commission, which Report shall cover the preceding calendar year:

- 1) All elected officials of Fulton County;
- 2) Judges of the Juvenile Court;
- 3) Judges of the Magistrate Court;
- 4) County Manager and Deputy County Managers;
- 5) All Department Heads, County Attorney, Clerk to the Commission, Division Heads reporting to the County Manager and the Deputy Director of Zoning;
- 6) Members of the Board of Tax Assessors and all Property Appraisers;
- 7) Members of the Community Zoning Board;
- 8) Members of the Board of Zoning Appeals; and
- 9) Members of the Board of Ethics.

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*(Attach additional pages, if necessary).*

B. For the Reporting Period stated above, identify by name and address, the source of each of the following, received or accrued during the preceding calendar year, by each person required to file such report and such person's spouse, if any:

- (1) Income for services rendered in the amount of \$1,000.00 or more:

Self/Spouse	Name of Source	Address
Self	State Accounting Office	200 Piedmont Ave. Ste 1604 W Tower Atlanta, GA 30334
Self	Fulton County	141 Pryor St. Atlanta, GA 30303
SPOUSE-NONE	N/A	N/A

*Reporting Period:*  
*Jan. 1, 2022 - Dec. 31, 2022*

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- (2) Each honorarium from a single source in the amount of \$500.00 or more, unless otherwise reported under applicable state law:

Self/Spouse	Name of Source	Address
SELF	NONE	N/A

- (3) Each gift or favor from a single prohibited source in the aggregate amount of \$100.00 or more:

For purposes of this section, *Gifts and favors* means anything of value given by or received from a prohibited source. *Prohibited source* means any person, business, or entity that the involved officer or employee knows or should know:

- (i) is seeking official action from the county; or
- (ii) is seeking to do or is doing business with the county, or
- (iii) represents a person who is seeking official action from the county or who is seeking to do or is doing business with the county; or
- (iv) has interests that may be affected by the performance or non-performance of official duties by the officer or employee; or
- (v) is a registered lobbyist in accordance with state law.

*Code of Ethics, Section 2-67(4)*

Self/Spouse-	Name of Source	Address
SELF	NONE	N/A



*Reporting Period:*  
*Jan. 1, 2022- Dec. 31, 2022*

(4) Dividend income of \$1,000.00 or more:

Self/Spouse	Name of Source	Address
SELF	NONE	NONE

C. For the Reporting Period stated above, identify by name, address and general description:

(1) Any professional organization in which the person reporting is an officer, director, partner, proprietor, or employee, or serves in an advisory capacity, from which \$1,000.00 or more was received:

Name/Address:NONE	Role/Title
General Description:	

Name/Address:	Role/Title
General Description:	

Name/Address:	Role/Title
General Description:	

*Reporting Period:*  
*Jan. 1, 2022 - Dec. 31, 2022*

- (2) Each business in which the person reporting owns 10% or more of such business's then outstanding stock:

For purposes of this section, *Business* means any corporation, partnership, proprietorship, organization, self-employed individual and any other entity operated for economic gain, whether professional, industrial, or commercial, and other entities, which for purposes of federal income taxation are operated as non-profit organizations.

*Code of Ethics, Section 2-67(1)*

Name of Business	Address
NONE	NONE

- (3) Each parcel of real property in which the person reporting has an ownership interest valued at 5% or more of the property's then assessed value:

Address	Tax Parcel ID Number
Public Employee	

- (4) Each reimbursement of expenses to the person reporting in the amount of \$1,000.00 or more:

Name of Source	Date	Amount
SELF	N/A	NONE

Reporting Period:  
Jan. 1, 2022 - Dec. 31, 2022

To be completed by County Official/Board Member:

Fani T. Willis

Print Name

District Attorney

County Official Title

[Signature]  
Signature

4/17/2023  
Date

**For Office Use Only:**

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

Please submit to:  
Office of the Clerk to the Commission  
141 Pryor Street SW, Suite 10075  
Atlanta, Georgia 30303  
(404) 612-8200 Phone  
(404) 730-8254 Fax

# Redaction Log

## Redaction Reasons by Exemption

Reason	Description	Pages (Count)
Public Employee	Records that reveal a public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access accounts, financial data or information other than compensation by a government agency, unlisted telephone number, and identity of the public employee's immediate family members or dependents; See O.C.G.A. § 50-18-72(a)(21)	4(1)

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

Case No. 23SC188947

v.

ROBERT DAVID CHEELEY, ET AL.,

Defendants.

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have, this 26th day of January 2024, served a true and correct copy of the within and foregoing **DEFENDANT ROBERT DAVID CHEELEY'S MOTION TO DISMISS THE GRAND JURY INDICTMENT AND DISQUALIFY THE DISTRICT ATTORNEY, HER OFFICE, AND THE SPECIAL PROSECUTORS** via electronic filing.

/s/ Christopher S. Anulewicz

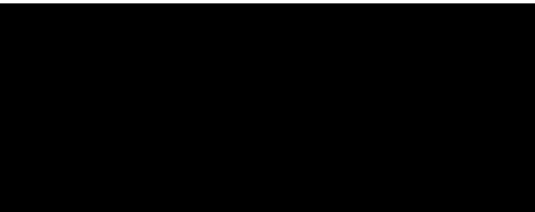
Christopher S. Anulewicz

Georgia Bar No. 020914

**BRADLEY ARANT BOULT**

**CUMMINGS LLP**

Promenade Tower



*Attorney for Defendant Robert David  
Cheeley*