

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

Case No. 23SC188947

v.

DAVID J. SHAFER *et al.*,

Defendants.

**DEFENDANT DAVID J. SHAFER’S SUPPLEMENT TO MOTION
TO DISQUALIFY THE DISTRICT ATTORNEY FOR
FULTON COUNTY, GEORGIA**

Defendant David J. Shafer files this Supplement to Motion to Disqualify the District Attorney for Fulton County, Georgia, and hereby supplements his Motion to Disqualify The District Attorney for Fulton County, Georgia, Atlanta Judicial Circuit, and The District Attorney’s Office from Further Prosecution of This Action (Motion to Disqualify), respectfully showing that, upon information and belief, Special Assistant District Attorney Nathan J. Wade has made knowingly false and misleading statements concerning his relationship with Fulton County District Attorney Fani T. Willis. Mr. Shafer submits the statements as additional evidence of misconduct by the prosecution in this action, as additional grounds for disqualification of District Attorney Willis and her office.

I. Special Assistant District Attorney Wade’s Interrogatory Responses in the Action of *Wade v. Wade*, civil action file number 21-1-08166-68 (Super. Ct. Cobb Cnty. 2021)

Attorney Nathan J. Wade entered into a contract with the Fulton County District Attorney’s Office on November 1, 2021, to provide “legal services related to anti-corruption matters.” *See* 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, Exhibit G, p. 1. On November 2, 2021, counsel for Mr. Wade filed a complaint for divorce against Mr. Wade's spouse in the Superior Court of Cobb County, Cobb Judicial Circuit, initiating the divorce action of *Wade v. Wade*, civil action file number 21-1-08166-68 (Super. Ct. Cobb Cnty. 2021) (divorce action).

Counsel for Mr. Wade's spouse served Defendant's First Continuing Interrogatories to Plaintiff (Defendant's Continuing Interrogatories) on Mr. Wade's counsel on November 30, 2021. On May 30, 2023, Mr. Wade served a response to Defendant's Continuing Interrogatories on counsel for Mrs. Wade. Mr. Wade provided, in relevant part, the following responses:

[4.]

Describe each instance in which you have had sexual relations with a person other than your spouse during the course of the marriage, including the period of separation, by providing the complete contact information for each and every such person and a complete description of the sexual relation(s)... **Answer: None**

[5.]

Identify any and all occasions in which you entertained a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage or in which a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage entertained you, including, but not limited to dining and/or drinking at any restaurant(s), bar(s), pub(s), hotel(s) or person's home from date of marriage to the present... **Answer: None**

Exhibit A, pp. 5-6 (emphasis in original). Mr. Wade did not verify his responses to the interrogatories.

II. Defendant Michael Roman's Motion to Dismiss and Disqualify, and Special Assistant District Attorney Wade's Supplementation of His Interrogatory Responses

On November 20, 2023, counsel for Mrs. Wade served Defendant's Notice to Plaintiff to Supplement Discovery Pursuant to O.C.G.A. § 9-11-26(E) on counsel for Mr. Wade. *See* Exhibit B.

On January 8, 2024, Defendant Michael A. Roman filed a 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 (Roman Motion to Dismiss and Disqualify), seeking dismissal of the prosecution's Indictment and disqualification of Fulton County District Attorney Fani T. Willis and her office. *See* Roman Motion to Disqualify. The Roman Motion to Dismiss and Disqualify alleged that Mr. Wade and District Attorney Willis were involved in a personal, romantic relationship at the time that District Attorney Willis offered Mr. Wade his contract with the Fulton County District Attorney's Office. *Id.* at 5, 6. It stated that Mr. Wade paid for personal trips, cruises, and hotel rooms for District Attorney Willis from the account used to receive payments under his contract with Willis. *Id.* at 5-6. The Roman Motion to Dismiss and Disqualify furthermore alleged that Mr. Wade and District Attorney Willis had co-habited with each other at a location owned by another party during Mr. Wade's employment as a special assistant district attorney. *Id.* at 6.

After the filing of the Roman Motion to Dismiss and Disqualify, which contained allegations of a relationship between Mr. Wade and District Attorney Willis that directly contradicted Mr. Wade's May 30, 2023, interrogatory responses, Mr. Wade realized that he was caught. On January 26, 2024, counsel for Mr. Wade in Mr. Wade's divorce action filed Plaintiff's Objections and Responses to Defendant's Notice to Plaintiff to

Supplement Discovery, in which Mr. Wade supplemented his prior responses to his spouse's and her counsel's interrogatories as follows:

4.

Describe each instance in which you have had sexual relations with a person other than your spouse during the course of the marriage, including the period of separation, by providing the complete contact information for each and every such person and a complete description of the sexual relation(s)...

Original Response: None

Updated Response: The Plaintiff declines to respond to this interrogatory and asserts his privilege pursuant to O.C.G.A. Sec. 24-5-505.¹

5.

Identify any and all occasions in which you entertained a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage or in which a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage entertained you, including, but not limited to dining and/or drinking at any restaurant(s), bar(s), pub(s), hotel(s) or person's home from date of marriage to the present...

Original Response: None

Updated Response: The Plaintiff declines to respond to this interrogatory and asserts his privilege pursuant to O.C.G.A. Sec. 24-5-505.

Exhibit C, pp. 5-6 (emphasis in original).

III. Special Assistant District Attorney Wade's Sworn Declaration or Affidavit in Support of The State's Opposition to Defendants Roman, Trump, and Cheeley's Motions to Dismiss and to Disqualify The District Attorney

On February 2, 2024, the prosecution, in the name of the District Attorney, filed the State's Opposition to Defendants Roman, Trump, and Cheeley's Motions to Dismiss and to Disqualify The District Attorney (Opposition). See Opposition. The first exhibit to

¹ O.C.G.A. § 24-5-505 provides, in relevant part, that "[n]o party or witness shall be required to testify as to any matter which may incriminate or tend to incriminate such party or witness or which shall tend to bring infamy, disgrace, or public contempt upon such party or witness or any member of such party or witness's family." O.C.G.A. § 24-5-505(a).

the prosecution's Opposition was a sworn declaration or affidavit by Mr. Wade. *Id.*, Exhibit A. In his declaration, Mr. Wade stated under oath that, in pertinent part:

26. While professional associates and friends since 2019, there was no personal relationship between District Attorney Willis and me prior to or at the time of my appointment as special prosecutor in 2021.
27. In 2022, District Attorney Willis and I developed a personal relationship in addition to our professional association and friendship...
29. No funds paid to me in compensation for my role as Special Prosecutor have been shared with or provided to District Attorney Willis...
31. I have never cohabitated with District Attorney Willis.
34. The District Attorney and I are both financially independent professionals; expenses for personal travel were roughly divided equally between us.

Id. at ¶¶ 26, 27, 29, 31, 34.

The prosecution's Opposition repeatedly cites Mr. Wade's declaration in support of its arguments and for denial of the motions to dismiss or disqualify filed by the defendants in this action. *See* Opposition, pp. 2, 4, 6, 7, 10, 12, 15, 26, 27. It claims it has provided Mr. Wade's affidavit "in an effort to be as candid and transparent with the Court as possible..." *Id.* at 26. During a hearing on various motions to quash held on February 12, 2024, counsel for the prosecution furthermore represented to the Court:

Ms. Merchant represented that these witnesses subpoenaed, I think, two weeks ago now, prior to the filing of Mr. Wade's affidavit, that any of these witnesses would refute the allegations, or the representations, that were made in the Wade affidavit... These witnesses that have been subpoenaed now for a hearing this afternoon have nothing at all to add to the allegations that were made. Nothing in support. Nothing that would undermine the affirmations that were made in the Wade affidavit. *The affirmations and the facts sworn by an officer of the Court that were made are categorically true. They are 100% true.*

<https://www.youtube.com/watch?v=ewtzcoo9ics> (emphasis added).

IV. Special Assistant District Attorney Wade’s False and Misleading Statements

Mr. Wade’s sworn statement in his affidavit on behalf of the District Attorney’s Office opposing the defendants’ motions to dismiss and disqualify that “[i]n 2022, District Attorney Willis and I developed a personal relationship in addition to our professional association and friendship...,” Opposition, Exhibit A, ¶ 27, demonstrate that Mr. Wade’s responses to his spouse’s interrogatories in May of 2023 regarding whether he had had sexual relations with any other persons were false, *see* Exhibit A, p. 5. Similarly, Mr. Wade’s admission that he and District Attorney Willis traveled together and shared expenses directly contradicts his interrogatory response that there were no occasions during which Mr. Wade entertained a member of the opposite sex. *Id.* at 5-6. Financial documents which have come into the possession of the defense refute or contradict Mr. Wade’s claim that the travel expenses were “roughly divided equally.”

As attorneys and officers of the Court, Mr. Wade and District Attorney Willis owe duties of truthfulness and candor to the Court. Georgia Rule of Professional Conduct 3.3, governing “candor towards the tribunal,” states:

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of material fact or law to a tribunal...
 - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
 - (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6...
- The maximum penalty for a violation of this Rule is disbarment.

Ga. R. Prof. Cond. 3.3. As the State Bar of Georgia’s comments to Rule 3.3 state, a lawyer “must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.” Ga. R. Prof. Cond. 3.3 cmt. 2; *accord Miller v. State*,

295 Ga. 769, 773 (2014) (stating that Rule 3.3 “prohibits a lawyer from offering evidence the lawyer knows to be false”). He or she possesses an “obligation as an officer of the court to prevent the trier of fact from being misled by false evidence.” Ga. R. Prof. Cond. 3.3 cmt. 4. “Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal.” Ga. R. Prof. Cond. 3.3 cmt. 4. Georgia Rule of Professional Conduct 3.4, relating to “fairness” to opposing parties and counsel, furthermore provides, in relevant part, that a lawyer shall not “counsel or assist a witness to testify falsely...” Ga. R. Prof. Cond. 3.4(b)(2).

Mr. Shafer and the other defendants to this action possess due process rights to a disinterested prosecutor. *See Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807 (1987). “The prosecution has a special duty not to mislead; the government should, of course, never make affirmative statements contrary to what it knows to be the truth.” *United States v. Universita*, 298 F.2d 365, 367 (2d Cir. 1962). The defendants have raised serious grounds in support of disqualification of the District Attorney and her office, and the defendants’ allegations must be taken seriously by the Court and the State in order to preserve public confidence in the “integrity and impartiality” of the administration of justice. *See Allen v. Lefkoff, Duncan, Grimes & Dermer, P.C.*, 265 Ga. 374, 376 n. 5 (1995) (emphasis added) (quoting Preamble, Ch. 1, Part III, Appendix; 219 Ga. 885 (1963)). Any knowingly untrue statement submitted by, or on behalf, a prosecutor in responding to a disqualification challenge should be held to constitute misconduct amounting to forensic misconduct, and should be found to constitute an additional ground for disqualification.

CONCLUSION

Based upon the facts and authorities set forth herein and in Defendant David J. Shafer’s Motion to Disqualify The District Attorney for Fulton County, Georgia, Atlanta

Judicial Circuit, and The District Attorney's Office from Further Prosecution of This Action, defendant David J. Shafer respectfully requests that the Court grant defendant's Motion to Disqualify The District Attorney for Fulton County, Georgia, Atlanta Judicial Circuit, and The District Attorney's Office from Further Prosecution of This Action and order that Fulton County, Georgia, Atlanta Judicial Circuit, District Attorney Fani T. Willis and her office are disqualified from representing the State of Georgia in this action.

Respectfully submitted, this 13th day of February, 2024.

/s/ Craig A. Gillen

Craig A. Gillen
Georgia Bar No. 294838
Anthony C. Lake
Georgia Bar No. 431149
GILLEN & LAKE LLC
400 Galleria Parkway
Suite 1920
Atlanta, Georgia 30339
(404) 842-9700
cgillen@gwllawfirm.com
aclake@gwllawfirm.com

/s/ Holly A. Pierson

Holly A. Pierson
Georgia Bar No. 579655
PIERSON LAW LLC
2851 Piedmont Road NE, STE 200
Atlanta, GA 30305
(404) 353-2316
hpierson@piersonlawllc.com

Counsel for David J. Shafer

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of February, 2024, filed the foregoing filing with the Court using the Court's Odyssey eFileGa system, serving copies of the filing on all counsel of record in this action, and furthermore have sent a copy of the filing to the parties and the Court.

/s/ Craig A. Gillen
Craig A. Gillen
Georgia Bar No. 294838
Anthony C. Lake
Georgia Bar No. 431149
GILLEN & LAKE LLC
400 Galleria Parkway
Suite 1920
Atlanta, Georgia 30339
(404) 842-9700
cgillen@gwllawfirm.com
aclake@gwllawfirm.com

Counsel for David J. Shafer

EXHIBIT A

INTERROGATORIES

1.

Please identify any and all expert and/or lay witnesses you propose to present at any hearing or final trial in the above case, indicating, for each such witness, his or her full name, complete address, and telephone number, as well as all of the information which you are required to give pursuant to O.C.G.A. § 9-11-26(b)(4)(A)(I), which includes information as to the subject matter on which this witness is expected to testify, the substance of the facts and opinions to which each such witness is expected to testify, and a list of all reports, letters, evidence, or documents which said witness has provided for you.

Answer: None

2.

Please identify all persons whom you know or believe to have knowledge of the

following issues or areas of fact in this action:

(a) The causes of the separation; **Answer: None**

(b) Your earnings and earning capacity; and, **Answer: Ben Compani CPA**

(c) The assets and value of the assets accumulated during the marriage.

Answer: Ben Compani CPA

3.

What do you contend was the cause or causes of your separation from your spouse? In your response, please specify any conduct that you contend your spouse

engaged in that contributed to the causes of the separation in any manner and identify everything you did or did not do that contributed to the separation.

Answer: Irreconcilable differences

1.

Describe each instance in which you have had sexual relations with a person other than your spouse during the course of the marriage, including the period of separation, by providing the complete contact information for each and every such person and a complete description of the sexual relation(s), including, but not limited to the date, time of day, persons present, location where the sexual relations took place, the location of your spouse during the sexual relation(s), if known, etc. Such sexual relations to include without limitation sexual intercourse, oral and/or anal sex (passive or active partner), kissing, and/or fondling of the penis, vagina or other genitalia, breasts and/or buttocks of any person(s) other than your spouse. **Answer: None**

1.

Identify any and all occasions in which you entertained a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage or in which a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage entertained you, including, but not limited to dining and/or drinking at any restaurant(s), bar(s), pub(s), hotel(s) or person's home from date of marriage to the present by detailing the activities which took place during each such occasion of entertainment, including, but not limited to the date, time of day, persons present, location of the restaurant(s), bar(s), pub(s) or person's home, the location of your spouse during the entertainment, if known, as well as the reason you were entertaining or being

entertained by a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage. If any such individual has been introduced to your children, please indicate when the children were introduced, where the introduction took place, and the number of times that your children have interacted with any such person(s) since meeting him/her. **Answer: None**

1.

List all property, real or personal, you claim is your separate property, and include in your list the date on which such property was purchased or otherwise acquired; from where the funds derived in order to purchase said items, if applicable; the identity of any persons having knowledge with respect to the separate property; the identity of any documents which support such a contention; the present fair market value of such property; the fair market value of such property at the time of acquisition; and any improvements that have been made to such property. **Answer: personal clothing**

1.

State with specificity the amount of cash you have in your possession, including in

any safe and/or safety deposit box. **Answer: \$2,300**

1.

Please list and identify any and all real property you have owned, or otherwise have had an interest in from the date of your marriage to Defendant to present. For each property list the following:

- a) the date the property was purchased;
- b) the location of the property;

28.

Please provide the username for all email accounts, personal accounts, social media accounts, and /or dating websites and accounts, either in your name or used by you, or which you paid for, for either business or personal use, or "Apps" used on your cellular device for pictures or videos, including but not limited to Facebook, Instagram, Twitter, E-Harmony, Match.com, LinkedIn, VWhatsApp, Snapchat, Tiktok, Tinder, Hinge, OnlyFans, etc. from November 1, 2016 through the date of trial. For each such account provide the name of the authorized user, the amount of the monthly charges, the date the website was created and the name under which the website was created.' **Answer: None**

This 30th day of May, 2023.

respectfully submitted,

R

Nathan J Wade

EXHIBIT B

Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

NATHAN WADE,

Plaintiff,

v.

JOYCELYN WADE,

Defendant.

CIVIL ACTION

FILE NO. 21108166

DEFENDANT'S RULE 5.2 CERTIFICATE OF SERVICE

COMES NOW, JOYCELYN WADE, Defendant herein, and, pursuant to Uniform Superior Court Rule 5.2, hereby certifies that on today's date she served the Plaintiff herein with the following discovery materials via Statutory Electronic Service as follows:

- ✓ **DEFENDANT'S SECOND CONTINUING INTERROGATORIES TO PLAINTIFF**
- ✓ **DEFENDANT'S NOTICE TO PLAINTIFF TO SUPPLEMENT DISCOVERY PURSUANT TO O.C.G.A. § 9-11-26(E)**

M. Scott Kimbrough
skimbrough@dupree-lawfirm.com

Dated this 20th day of November 2023.

HASTINGS SHADMEHRY LLC

ANDREA DYER HASTINGS

Georgia Bar No. 929208

MALI C. SHADMEHRY

Georgia Bar No. 670858

KEESHA C. ROBINSON

Georgia Bar No. 770970

Attorneys for Defendant

3650 Mansell Road, Suite 475
Alpharetta, Georgia 30022
770-641-8200

andee@hsfamilylaw.com
mali@hsfamilylaw.com
keesha@hsfamilylaw.com

EXHIBIT C

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

NATHAN WADE,)

Plaintiff,)

v.)

JOYCELYN WADE,)

Defendant.)

CIVIL ACTION

FILE NO. 21-1-08166-68

PLAINTIFF'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S NOTICE TO PLAINTIFF TO SUPPLEMENT DISCOVERY
PURSUANT TO O.C.G.A. §9-11-26(e)

COMES NOW, NATHAN WADE, Plaintiff in the above-styled case, by and through his counsel of record, and files this his Objections and Responses to Defendant's Notice to Plaintiff to Supplement Discovery Pursuant to O.C.G.A. §0-11-26(e), and supplements his responses to Defendant's Interrogatories to Plaintiff as follows:

GENERAL OBJECTIONS

(a) Plaintiff objects to each and every Interrogatory to the extent that it would require or is calculated to require Plaintiff to respond by disclosing his attorney's or other of his representative's mental impressions, conclusions, opinions, computations, calculations, projections, reasons, legal theories, other work product, files, records, notes, or the like prepared in anticipation of and during litigation of this case. As phrased and stated, to this extent, said Interrogatory exceeds the permissible scope of discovery under the Georgia Civil Practice Act.

(b) Plaintiff objects to each and every Interrogatory to the extent that it, whether standing alone or taken in conjunction with any and all other Interrogatories, is calculated or would operate to annoy, embarrass, oppress, unduly burden, or unduly cause expense to Plaintiff, or would be

Original Response: Irreconcilable differences

Updated Response: Irreconcilable differences. The Defendant had an affair with Mr. Jay Fitzgerald from approximately 2011 – 2015. Upon learning of this, the Plaintiff confronted the Defendant with this information and informed her that the marriage was over. The parties agreed to remain together and cohabitate and coparent until their youngest child graduated from high school and went to college. The parties' youngest child graduated from high school in 2021 and went to college in the fall of 2021. Shortly thereafter, the Plaintiff filed this action.

4.

Describe each instance in which you have had sexual relations with a person other than your spouse during the course of the marriage, including the period of separation, by providing the complete contact information for each and every such person and a complete description of the sexual relation(s), including, but not limited to the date, time of day, persons present, location where the sexual relations took place, the location of your spouse during the sexual relation(s), if known, etc. Such sexual relations to include without limitation sexual intercourse, oral and/or anal sex (passive or active partner), kissing, and/or fondling of the penis, vagina or other genitalia, breasts and/or buttocks of any person(s) other than your spouse.

Original Response: None

Updated Response: The Plaintiff declines to respond to this interrogatory and asserts his privilege pursuant to O.C.G.A. Sec. 24-5-505.

5.

Identify any and all occasions in which you entertained a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage or in which a member of

the opposite sex (other than your spouse), who is not related to you by blood or marriage entertained you, including, but not limited to dining and/or drinking at any restaurant(s), bar(s), pub(s), hotel(s) or person's home from date of marriage to the present by detailing the activities which took place during each such occasion of entertainment, including, but not limited to the date, time of day, persons present, location of the restaurant(s), bar(s), pub(s) or person's home, the location of your spouse during the entertainment, if known, as well as the reason you were entertaining or being entertained by a member of the opposite sex (other than your spouse), who is not related to you by blood or marriage. If any such individual has been introduced to your children, please indicate when the children were introduced, where the introduction took place, and the number of times that your children have interacted with any such person(s) since meeting him/her.

Original Response: None

Updated Response: The Plaintiff declines to respond to this interrogatory and assert this privilege pursuant to O.C.G.A. Sec. 24-5-505.

6.

List all property, real or personal, you claim is your separate property, and include in your list the date on which such property was purchased or otherwise acquired; from where the funds derived in order to purchase said items, if applicable; the identity of any persons having knowledge with respect to the separate property; the identity of any documents which support such a contention; the present fair market value of such property; the fair market value of such property at the time of acquisition; and any improvements that have been made to such property.

Original Response: Personal clothing

Updated Response: Personal clothing and affects.

Respectfully submitted this 26th day of January, 2024.

DUPREE, KIMBROUGH & CARL, LLP

/s/ M. Scott Kimbrough
M. SCOTT KIMBROUGH
Georgia State Bar No. 418998
Attorney for Plaintiff

49 Green Street, S.E.
Marietta, GA 30060
770.424.7171 telephone
skimbrough@dupree-lawfirm.com

49 Green Street, S.E.
Marietta, GA 30060
770.424.7171 telephone
skimbrough@dupree-lawfirm.com