

*Ronald M Adams*  
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT GLYNN COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

vs.

WILLIAM RODERICK BRYAN,

Defendant.

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Case No.: CR-2000433

**ORDER DENYING DEFENDANT'S MOTION TO STRIKE  
ILLEGAL APPOINTMENT OF JOYETTE HOLMES AS  
DISTRICT ATTORNEY PRO TEMPORE**

After reading and considering Defendant's Motion to Strike Illegal Appointment of Joyette Holmes as District Attorney Pro Tempore (hereinafter "Defendant's Motion to Strike"), all argument, evidence of record, and the applicable law, the Court **DENIES** the motion.

**FACTUAL BACKGROUND**

Tom Durden, District Attorney, Atlantic Judicial Circuit (hereinafter "Durden"), was appointed by the Attorney General of Georgia on April 13, 2020 in the Investigation of the Death of Ahmaud Arbery. After reviewing the available evidence and consulting with the Georgia Bureau of Investigation, he authorized the arrests of Gregory and Travis McMichael. Durden's recusal letter reveals that as he got more involved in the case he became concerned that the assigned matter would involve more than his office resources, personnel, or technology would be able to adequately handle, while still trying to manage his own district's increasing caseload. At that point, Durden contacted the Attorney General and voluntarily recused himself from the matter. The Attorney General then appointed Ms. Joyette Holmes, District Attorney, Cobb Judicial Circuit (hereinafter "Holmes"), on May 11, 2020.

Defendant objects to the appointment of Holmes, claiming that the Attorney General "overstepped his legal authority under Georgia law and improperly usurped control over the

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prosecution in this matter”<sup>1</sup> in violation of O.C.G.A. § 15-18-5. Defendant’s asserts that the Attorney General can only appoint a district attorney pro tem when the lawfully assigned district attorney’s office is disqualified from prosecution due to some “interest or relationship”. Defendant relies on Durden’s recusal letter to the Attorney General to support his claim that no “interest or relationship” has been properly asserted.<sup>2</sup> To be sure, Defendant claims that Durden’s reason for withdrawing; “that his office would require additional resources to handle the case”, is not legally sufficient under O.C.G.A. § 15-18-5.”<sup>3</sup> Defendant submits to this Court that the simple remedy for Durden’s “lack of resources” is for him to request additional manpower pursuant to statute. This reasoning and position ignores the controlling rules of professional conduct and is without merit. Defendant also submitted to this Court that Ms. Holmes appointment by the Attorney General is defective due to a failure to properly file the “Appointment”.

### DISCUSSION OF THE LEGAL ISSUES

Defendant is seeking to vacate the appointment of Ms. Holmes. Arguably a criminal defendant has no standing to object to a prosecuting attorney’s voluntary recusal. See State v. Mantooth, 337 Ga. App. 698, 700, 788 S.E.2d 584, 586 (2016)(addressing standing under the related code section O.C.G.A. § 15–18–65 (a)). Pretermittting that threshold issue, Defendant’s argument fails to consider the scope of Durden’s interests, ignores Durden’s existing professional obligations, and overlooks the scope of the rules addressing an attorney’s conduct in the State of Georgia.

A conflict of “interest or relationship” is defined by both case law and the Georgia Rules of Professional Conduct (hereinafter “Rules”). The Rules carefully address a lawyers duties, and specifically, a “conflict of interest”. The Rules specifically apply to Durden in his capacity as a lawyer, District Attorney and District Attorney *pro tem*. See GA R BAR Rule 4-102, RPC

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<sup>1</sup> Defendant’s Motion to Strike Illegal Appointment of Joyette Holmes as District Attorney Pro Tempore, pg. 2, filed June 4, 2020.

<sup>2</sup> Mr. Durden’s letter is attached to Defendant’s Motion to Strike.

<sup>3</sup> Defendant’s Motion to Strike, pg. 2, ¶ 1.

Rule 9.5(a)("[a] lawyer who is a public official and represents the State . . . is bound by the provisions of these Rules.")

The very first section of Georgia's conflict rule states: "A lawyer shall not represent or continue to represent a client if there is a significant risk that . . . the lawyer's duties to another client . . . will materially and adversely affect the representation of the client." GA R BAR Rule 4-102, RPC Rule 1.7(a). The "client" in this instance is the State of Georgia. Ga. Const. art. VI, § 8, ¶ 1 ("[i]t shall be the duty of the district attorney to represent the state in all criminal cases..."). Durden was elected by the people of the Atlantic Judicial Circuit to represent them in accordance with the Georgia Constitution.<sup>4</sup> Therefore, the Atlantic Judicial Circuit is Durden's "existing" client.

One of an attorney's first duties to a client is diligence. The Rules hold that "[a] lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in the Rules means that a lawyer shall not without just cause to the detriment of the client in effect wilfully abandon or wilfully disregard a legal matter entrusted to the lawyer." GA R BAR Rule 4-102, RPC Rule 1.3. Comment (2) of that Rule states that "[a] lawyer's work load should be controlled so that each matter can be handled competently."<sup>5</sup> The concept of "diligence" is so important in the representation of a client, that the Rules further require that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." GA R BAR Rule 4-102, RPC Rule 3.2. Durden in his capacity as a district attorney, has additional diligence requirements "to his client" placed upon him by statute. Under the Crime Victim's Bill of Rights, he has numerous duties to a victim (who is still a "client") including that the victim enjoys "[t]he right to proceedings free from unreasonable delay." O.C.G.A. § 17-17-1.

The Rules provide that if a lawyer (Durden) cannot adequately handle a new client (the Brunswick Judicial Circuit) in addition to a current client (the Atlantic Judicial Circuit), a conflict of interest exists. The Rules state that "a lawyer shall not represent a client or, where

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<sup>4</sup> Ga. Const. art. VI, § 8, ¶ 1.

<sup>5</sup> "The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule." GA R BAR PREAMBLE, SCOPE AND TERMINOLOGY

representation has commenced, shall withdraw from the representation of a client if . . . the representation will result in violation of the Georgia Rules of Professional Conduct.” GA R BAR Rule 4-102, RPC Rule 1.16(a)(1).

Defendant argues that merely hiring more personnel would have remedied Durden’s concerns. Again, this argument is flawed. Durden not only indicated that he lacked adequate personnel to handle the matter, he also indicated that his office lacked sufficient resources and technology. As described above, Durden had to balance the needs of his “existing” client (the Atlantic Judicial Circuit) with the needs of the “new” client (the Brunswick Judicial Circuit). The Rules state that “[f]or good cause a lawyer may seek to avoid appointment by a tribunal,” GA R BAR Rule 4-102, RPC Rule 6.2. That “good cause” includes “when it would impose a financial sacrifice so great as to be unjust,” GA R BAR Rule 4-102, RPC Rule 6.2, comment [2]. With the State of Georgia as a client, O.C.G.A. § 45-10-1 obligates Durden to “[s]eek to find and employ more efficient and economical ways of getting tasks accomplished.” The increased resources that he would have needed (in addition to more personnel that Defendant admits are necessary) are not available to him through his home circuit. Under the Rules, “a lawyer may withdraw from representing a client if the representation will result in an unreasonable financial burden on the lawyer,” GA R BAR Rule 4-102, RPC Rule 1.16(b)(5). The financial burdens in this instance would obviously not be suffered by Durden personally, but by this circuit.

It appears that when Durden realized that the continued handling of the Brunswick case would involve more expense in the form of additional resources, technology, and personnel, he recognized and acknowledged a conflict of interest. At that point, Durden had a duty to recuse and notify the Attorney General. In sum, a conflict of “interest and relationship” arose under Durden’s appointment. Durden clearly articulated this conflict in his letter, stating:

I trust that my representation of the State has been a solid contribution to the case in leading to the arrests and preparing the case for Grand Jury. On the other hand, it would be totally inconsistent with my commitment to the goal of effective prosecution of cases in Georgia, to be a drawback due to an issue of resources. To that end, I recuse my office from the above matter, so that the

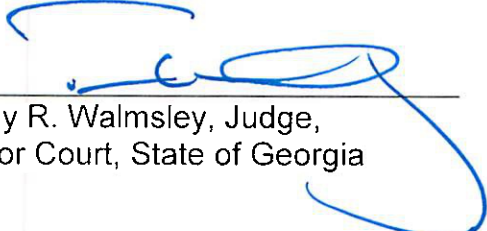
case may continue to be fully and adequately prosecuted . . . I believe that my decision today will accelerate the case toward [justice].<sup>6</sup>

Finally, the Administrative Order appointing Ms. Holmes was signed on May 11, 2020 and filed into the record on June 8, 2020. The Order documents the “appointment” of Ms. Holmes. Defendant, neither in his brief, nor at oral argument has claimed any surprise or prejudice in the late filing of the notice of appointment.

**CONCLUSION**

Defendant’s argument on recusal ignores Durden’s basic ethical obligations and appears to be nothing more than an attempt to unilaterally choose the assigned prosecutor. He submits to this court that it should second guess an attorney’s voluntary recusal. Further, the Court finds that although the appointment of Ms. Holmes was not immediately filed there was no prejudice in this case. There being no basis in law or fact Defendant’s Motion is **DENIED**.

SO ORDERED, this 21<sup>ST</sup> day of July 2020.



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Timothy R. Walmsley, Judge,  
Superior Court, State of Georgia

cc: Kevin R. Gough, Esq.  
Joyette Holmes, District Attorney  
Jesse Evans, Sr. Asst. Dist. Atty.  
Linda Dunikoski, Sr. Asst. Dist. Atty.

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<sup>6</sup> See footnote 2.