BENJAMIN A. LAND

Professional Employment

Judge, Superior Court, Chattahoochee Judicial Circuit; February 7, 2018 – Present
Buchanan & Land, LLP, Columbus, Georgia, August 1, 1992 – February 7, 2018

Bar Admissions

Georgia, 1992; Alabama, 1993; Supreme Court of Georgia, 1993; Court of Appeals of Georgia, 1993; U.S. Court of Appeals for the Eleventh Circuit, 1993; U.S. District Court for the Middle District of Georgia, 1993; U.S. District Court for the Northern District of Georgia, 1993; U.S. District Court for the Middle District of Alabama, 1994; U.S. District Court for the Northern District of Alabama, 2016; Supreme Court of the United States, 2005

Professional Honors and Awards

State Bar of Georgia William B. Spann, Jr. Award for Pro Bono Advocacy, 2004; AV Peer Review Rating; Georgia Super Lawyers; Multi-Million Dollar Advocates Forum

Professional Associations and Memberships

Columbus Bar Association, president-elect; Columbus Inn of Court, president; Chattahoochee Judicial Circuit Bar Association, past president; Joseph Henry Lumpkin American Inn of Court, Master; Georgia Bar Foundation, Fellow

Civic Activities

St. Paul United Methodist Church; Columbus Area Habitat for Humanity; Pine Mountain Trail Association; Youth Sports Coach; speaker at local school and civic events

Education

University of Georgia School of Law, Juris Doctor, *Summa Cum Laude*, 1992
--Graduated second in class of 202 students
--Order of the Coif
--Editorial Board, Georgia Law Review
--Class of 1933 Award for Excellence in the Study of Torts; Verner F. Chaffin Award for Excellence in Fiduciary Law; West Publishing Company Award for Outstanding Scholastic Achievement; American Jurisprudence Awards for Achievement in the Study of Torts, Civil Procedure, Property, Trusts & Estates, and Federal Courts; Blue Key Honor Society
--Selected by Professor Perry Sentell for summer clerkship with Justice George T. Smith, Supreme Court of Georgia

University of Georgia, BBA, Finance, *First Honor Graduate (4.0 GPA), Summa Cum Laude, With Highest Honors*, 1989
--Phi Kappa Phi Honor Society; Golden Key National Honor Society; Mortar Board Honor Society; Beta Gamma Sigma Business Honor Society; President's Award for Scholastic Achievement and Leadership Ability

This questionnaire is submitted in connection with a vacancy on the
Court of Appeals of Georgia.

1. Give your full name.

   Benjamin Arthur Land

2. State both your office and home addresses.

   Office Mailing Address: P.O. Box 1340
   Columbus, GA 31902

   Office Street Address: Columbus Government Center
   100 Tenth Street
   Columbus, GA 31901

   Home Address: [redacted]

   State your office telephone number, home telephone number, and cell phone telephone number.

   Office Telephone Number: 706-653-4667

   Home Telephone Number: N/A

   Cell Telephone Number: [redacted]

   State your e-mail address: [redacted]

3. Give the date and place of your birth.

   [redacted] 1967
   Columbus, Georgia

4. If you are a naturalized citizen, please give the date and place of naturalization.

   N/A

5. Indicate your marital status; if married, the name of your spouse; and the names and ages of your children.

   Married to [redacted]
   Children: [redacted]

6. Indicate the periods of your military service, including the dates, and the branch in which you served, your rank or rate.

N/A

7. List each college and law school you attended, including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.

University of Georgia, Bachelor of Business Administration 1989 (September, 1985 – June, 1989)

University of Georgia School of Law, Juris Doctor 1992 (August, 1989 – May, 1992)

8. List all courts in which you are presently admitted to practice, including the dates of admission in each case. Give the same information for administrative bodies having special admission requirements.

Georgia (trial courts): June 17, 1992 – Present
Court of Appeals of Georgia: May 20, 1993 – Present
Supreme Court of Georgia: May 20, 1993 - Present
U.S. District Court for the Middle District of Georgia: September 15, 1993–Present
U.S. District Court for the Northern District of Georgia: May 20, 1993 – Present
U.S. Court of Appeals for the Eleventh Circuit: September 1, 1993 – Present
Supreme Court of the United States: September 2, 2005 – Present

I am also a member of the Alabama State Bar and was licensed to practice in Alabama from April 23, 1993 until I became a Superior Court judge in 2018. During that time, I was licensed to practice in Alabama's trial and appellate courts, as well as the United States District Courts for the Middle District of Alabama and the Northern District of Alabama. After I became a judge, I became an inactive member of the Alabama State Bar.

9. Are you actively engaged in the practice of law at the present time? If you are connected with a law firm, a corporate law department or a governmental agency, please state its name and indicate the nature and duration of your relationship.

I am actively serving as a Superior Court judge for the Chattahoochee Judicial Circuit. I have held that position since February 7, 2018. Prior to that, I was a partner of Buchanan & Land, LLP in Columbus, Georgia. I began to work for that firm as an associate attorney in August, 1992 after I graduated from Law School. I became a partner of that firm in January, 1997 and remained in that position until I was sworn in as a Superior Court judge.

10. If in the past you have practiced in other localities or have been connected with other law firms, corporate law departments or governmental agencies, please give the particulars, including the locations, the names of the firms, corporate law departments or agencies and your relationship thereto, and the relevant dates. Indicate also any period in the past during which you practiced alone.

N/A

11. Do you presently hold judicial office, or have you in the past held any such office? If so, give the details, including the court or courts involved, whether elected or appointed, and the period of service. Also state whether you have been an unsuccessful candidate for election to judicial office, stating the court and date involved.

I was appointed by Governor Nathan Deal to serve as a Superior Court judge for the Chattahoochee Judicial Circuit on February 7, 2018. I have served in that position since that time. I have never been an unsuccessful candidate for election to any judicial or other office.

12. What is the general character of your practice? Indicate the character of your typical clients and mention any legal specialties which you possess. If the nature of your practice has been substantially different at any time in the past, give the details, including the character of such and the periods involved.

Before becoming a judge, my law practice was devoted almost exclusively to general civil litigation. For the 25 years I spent as an actively practicing lawyer, I regularly represented plaintiffs and defendants in a wide variety of cases, including business disputes, insurance disputes, personal injury, medical malpractice, nursing home neglect, will contests and other litigated probate matters, employment disputes, fraud cases, and class actions. My clients included individuals, small businesses, and large corporations.

Since becoming a judge, the scope of legal matters that I handle has broadened to include not only civil cases but also criminal and domestic cases of nearly all types. I am fortunate to serve in a six county circuit where I have presided over a wide variety of civil, criminal, and domestic cases throughout the diverse region that comprises our circuit. During this time, I have presided over civil and criminal jury trials, bench trials, and many other non-jury proceedings.

13. (a) Have you regularly appeared in court during the past five years?

Yes

(b) What percentage of your appearances in the last five years was in:

(1) Federal Courts (list each court):

10% or less: During the five year period preceding my judgeship, I appeared in cases pending in the U.S. District Court for the Middle District of Georgia; U.S. District Court for the Middle District of Alabama; and the U.S. District Court for the Northern District of Alabama.

(2) State Courts (list all courts):

Approximately 90% or more: During the five year period preceding

my judgeship, I appeared in cases pending in the Superior Court of Muscogee County; Superior Court of Harris County; Superior Court of Marion County; Superior Court of Talbot County; Superior Court of Taylor County; Superior Court of Stewart County; State Court of Muscogee County; State Court of DeKalb County; State Court of Fulton County; State Court of Gwinnett County; State Court of Troup County; State Court of Sumter County; Magistrate Court of Muscogee County; Magistrate Court of Harris County; Magistrate Court of Troup County; Magistrate Court of Sumter County; Probate Court of Muscogee County; Probate Court of Harris County; and the Court of Appeals of Georgia.

(3) other courts (please list all states other than Georgia in which you have appeared):

During the five year period preceding my judgeship, I appeared in cases pending in the Circuit Court of Russell County, Alabama; District Court of Russell County, Alabama; and Circuit Court of Jefferson County, Alabama.

(c) What percentage of your court appearances in the last five years was:

(1) civil? The cases I have presided over as a Superior Court judge include civil, criminal, and domestic cases. The majority of my time on the bench has consisted of presiding over criminal and domestic cases; that time is fairly evenly split between those two categories of cases, with a smaller percentage of time being spent in court on civil cases. During the five year period preceding my judgeship, 100% of my court appearances were for civil cases.

(2) criminal? See above. During the five year period preceding my judgeship, I did not make court appearances in criminal cases.

(d) What percentage of your trials in the last five years was:

(1) jury? As a Superior Court judge, I have presided over ten criminal jury trials that concluded with a verdict and two civil jury trials that concluded with a verdict. I have started several other jury trials that were settled or otherwise resolved before a verdict was returned. During the five year period preceding my judgeship, 80% of my trials were jury trials.

(2) non-jury? As a Superior Court judge, I have presided over many non-jury trials in civil and domestic cases. I have not kept count of the number of those cases, but it is significant. During the five year period preceding my judgeship, 20% of my trials were non-jury trials.

(e) State the approximate number of cases you have tried to conclusion in courts of record during <u>each</u> of the past five years, indicating whether you

were sole, associate, or chief counsel.

See above regarding my trial experience as a judge.

During the five year period preceding my judgeship, I was the lead (or co-lead) counsel in five trials. Four of those trials were jury trials (two in 2013, one in 2015, and one in 2016), and one was a bench trial in 2015. Three of these trials were in Georgia, and two were in Alabama. During that same time period, I was the lead counsel in dozens of other cases that were litigated to conclusion and resolved prior to trial.

(f) Describe five of the more significant litigated matters which you have handled.

As a judge, I have presided over a wide variety of civil, criminal, and domestic cases of nearly all types. The civil cases have included personal injury, medical malpractice, product liability, breach of contract, business disputes, trust disputes, and condemnation matters. The criminal cases have ranged from misdemeanors to serious felonies such as murder, rape, and armed robbery, and nearly everything in between. The domestic cases include divorces, child custody matters, legitimations, and adoptions.

As a practicing lawyer, I participated in the following cases:

Four JS Family, LLLP, Plaintiff, v. Development Authority of Columbus, Georgia, Defendant, Superior Court of Muscogee County and Court of Appeals of Georgia: I represented the Development Authority of Columbus in the defense of this case that challenged the power of Development Authorities across the State to transfer land for economic development projects at a discount from the land's fair market value. After an adverse ruling in the trial court, we appealed to the Court of Appeals and prevailed. The Court of Appeals' decision established a precedent that Development Authorities are statutorily authorized to transfer real estate for economic development projects at a discount from the property's fair market value. The Court's decision properly interpreted and applied Georgia law, upheld the intent of the Legislature, and furthered the statute's purpose of promoting economic development throughout our State. The Court's Opinion is published at *Development Authority of Columbus v. Four JS Family, LLLP*, 340 Ga.App. 474 (2017).

Direct General Insurance Company, Plaintiff, v. David Drawdy, Defendant, Superior Court of Muscogee County, Court of Appeals of Georgia, and Supreme Court of Georgia: This was a *pro bono* case that I accepted on referral from the local Georgia Legal Services office. I represented an insured of a major automobile insurance company in a declaratory judgment action brought by the insurance company. That action sought to insulate the company from the consequences of its denial of coverage for my client following a motor vehicle accident. The case turned on an important procedural question with significant ramifications for insurance

companies and their insureds, specifically whether Georgia's Declaratory Judgment statute authorizes an insurer to seek a declaratory judgment after it has already denied coverage for its insured. We prevailed in the trial court on this question but lost in the Court of Appeals. On behalf of the insured, I filed a Petition for Certiorari with the Supreme Court of Georgia and argued that the Court of Appeals' decision was contrary to Georgia law and created an improper incentive for insurance companies to deny coverage for claims that were, in fact, covered by their insurance policies. Our petition was initially denied by a 4-3 vote, but I persisted in my efforts on behalf of my client and convinced the Court to grant our petition in response to a motion for reconsideration. After the petition was granted, I argued the merits of the appeal before the Supreme Court and prevailed in obtaining a reversal of the Court of Appeals' decision by a unanimous vote of the Supreme Court. My efforts in connection with this case were recognized by the State Bar of Georgia, and I was awarded the William B. Spann, Jr. Award for Pro Bono Advocacy. The Supreme Court's Opinion is published at *Drawdy v. Direct General Insurance Company*, 277 Ga. 107 (2003).

Mosby, Plaintiff, v. Tucker Nursing Center, Inc., Defendant, State Court of DeKalb County, Court of Appeals of Georgia: In this case, I represented the Estate of a deceased nursing home resident who was neglected by the nursing home staff, experienced substantial skin breakdown and malnutrition as a result, and suffered needlessly prior to his death. The nursing home denied liability and contended that the resident's ailments were an unavoidable part of the aging and dying process. The defendant also denied receiving any relevant, prior complaints of neglect or understaffing of the facility. Through the course of my investigation and handling of the litigation, I was able to locate and obtain testimony from four former caregivers of the nursing home (two of whom were out of state and none of whom was initially interested in being involved in the litigation). These former caregivers confirmed the existence of a longstanding and well-known systemic problem at the nursing home concerning understaffing and neglect of residents, including the decedent in my case. The testimony of these caregivers, combined with the physician and nursing experts I located and brought to trial, resulted in a jury verdict in favor of the Estate for $1,250,000.00 following a hard-fought, week-long trial. After an appeal by the nursing home, the Court of Appeals affirmed the judgment entered on the jury verdict in its entirety. The Court of Appeals' Opinion is published at *Tucker Nursing Center, Inc. v. Mosby*, 303 Ga.App. 80 (2010).

Jackson, Plaintiff, v. Goldman, et al., Defendants, Superior Court of Muscogee County: In this medical malpractice case, I represented a former millwright who suffered permanent, disabling injuries due to the effects of an undiagnosed bowel perforation following an abdominal hernia surgery. The litigation was hard fought and involved dozens of witnesses, thousands of pages of medical records, multiple experts, numerous pre-trial motions, and a jury trial that lasted nearly two weeks. In perhaps my greatest challenge as a lawyer, I found myself on the losing end of a pre-trial ruling

that excluded critical testimony from my two primary medical experts just 16 days before the trial was to begin. The effect of the trial court's ruling, if not overcome in a meaningful way, would have ended my client's case with no recovery. Refusing to give in to what I believe was an erroneous ruling that would have caused a substantial miscarriage of justice, I located a new expert witness in very short order and began the trial of the case as scheduled—just 16 days after the adverse ruling. The new expert's testimony was highly credible and convincing, as was the other evidence I presented on my client's behalf. The end result was a verdict in favor of my client and his wife totaling $6,700,000.00.

Bechtel, et al., Plaintiffs, v. Georgia Farm Bureau Mutual Insurance Company, et al., Defendants, Superior Court of Walker County, U.S. District Court for the Northern District of Georgia: In this class action case arising from the discovery of uncremated human remains at the Tri-State Crematory in Walker County, Georgia, I defended Georgia Farm Bureau Mutual Insurance Company on a claim for insurance coverage brought by a plaintiff class that had previously obtained an $80,000,000.00 judgment against Georgia Farm Bureau's insureds in the U.S. District Court for the Northern District of Georgia. I was not involved in the underlying case that gave rise to the $80,000,000.00 judgment. Rather, I was asked to defend the coverage case filed in the Superior Court of Walker County after the $80,000,000.00 judgment was entered in favor of the plaintiff class. Due to the arguably ambiguous policy language (including the absence of an aggregate limit on covered damages), the emotionally charged nature of the case, and a series of unfortunate events that led to the underlying judgment, this case presented a challenge for the defense and substantial exposure for one of our State's most respected insurers. After a significant amount of pre-trial investigation and research, numerous depositions, and consultations with experts from numerous fields, I prepared and filed a motion for summary judgment that led to the settlement of the case for a small fraction of the judgment amount. Subsequent to the settlement, I assisted the insurance company in its effort to recover a substantial portion of the settlement payment from other sources. The end result was that the case was settled and closed at a substantially reduced cost, thereby eliminating a substantial risk for the insurance company.

(g) State with reasonable detail your experience in adversary proceedings before administrative boards or commissions during the past five years.

In a case involving a parcel of property that I own in Columbus, I appealed the denial of an Application for Conservation Use Valuation to the Muscogee County Board of Tax Assessors, the Muscogee County Board of Equalization, and the Superior Court of Muscogee County. After I filed a motion for summary judgment in the Superior Court, the Board of Tax Assessors agreed with my position and consented to the relief I was seeking. All of this occurred before I became a Superior Court judge.

In another matter arising before my judgeship, I appealed a property tax

valuation to the Muscogee County Board of Tax Assessors. After receiving my appeal, the Board of Tax Assessors substantially lowered the valuation of the property in question, and the dispute was resolved.

14. (a) Summarize your experience in court prior to the last five years. If during any prior period you appeared in court with greater frequency than during the last five years, indicate the periods during which this was so and give for such prior periods the same data which was requested in item 13 above.

My experience prior to the last five years was similar in nature to my more recent experience as a practicing lawyer. Throughout my 25 year career as an actively practicing lawyer, I handled a wide variety of civil litigation matters for both plaintiffs and defendants. I have tried cases to verdict in jury trials and non-jury trials; I have filed and defended countless pre-trial and post-trial motions; I have handled and argued appeals in the Court of Appeals of Georgia, the Supreme Court of Georgia, and the Eleventh Circuit; and I have settled many cases.

(b) Summarize your experience in adversary proceedings before administrative boards or commissions prior to the last five years.

In addition to the two cases referenced in item 13(g), I, in my capacity as a lawyer, was involved in other property tax matters similar in nature to the two cases referenced above. In addition, as a practicing lawyer, I appeared in front of a local real estate board on behalf of a real estate agent accused of a real estate ethics violation.

15. Describe your appellate practice during the past five years in detail and give citations if your cases were reported.

I handled more appeals during the early part of my career than during the last five years. *See, e.g., Herring v. Dunning*, 213 Ga.App. 695 (1994) (affirming the trial court's ruling in favor of my client on a motion to enforce a settlement agreement reached by the parties); *Dougherty, McKinnon & Luby, P.C. v. Greenwald, Denzik & Davis, P.C.*, 213 Ga.App. 891 (1994) (affirming the trial court's ruling in favor of my clients regarding the overbreadth and unenforceability of a non-compete covenant); *Williams v. Gant*, 218 Ga.App. 493 (1995) (affirming the trial court's grant of summary judgment in favor of my clients in a case involving alleged parental liability for a motor vehicle accident caused by a child); *Dougherty, McKinnon & Luby, P.C. v. Greenwald et al.*, 225 Ga.App. 762 (1997) (affirming the grant of summary judgment in favor of my clients on their counterclaims against their former accounting firm for sums paid for capital stock in the professional corporation and for loans made to the firm); *Etheredge v. Kersey*, 236 Ga.App. 243 (1998) (affirming the trial court's grant of summary judgment in favor of my client in a substantial injury case arising from a collision between a motor vehicle driven by my client and an injured pedestrian); *Drawdy v. Direct General Ins. Co.*, 277 Ga. 107 (2003) (reversing the Court of Appeals and reinstating the trial court's Order dismissing a procedurally improper declaratory judgment action brought against my client); *Tucker Nursing Center, Inc. v. Mosby*, 303 Ga.App. 80 (2010)

(affirming the judgment entered on a jury verdict in favor of my client in a nursing home neglect case).

During the five years preceding my judgeship, I was involved in the case of *Development Authority of Columbus v. Four JS Family, LLLP*, 340 Ga.App. 474 (2017), as discussed above in item 13(f). The Court of Appeals' decision in favor of my client was important for Development Authorities throughout the State as it confirmed that they are statutorily permitted to transfer real estate for economic development projects at a discount from the real estate's fair market value. In addition, I assisted my former law partner with his successful appeal in the case of *Georgia Casualty & Surety Co. v. Valley Wood, Inc.*, 336 Ga.App. 795 (2016). That case involved a claim for insurance coverage and issues arising from misrepresentations contained in the insurance application. While not directly involved in the case, I also was involved in litigation related to the case of *Callaway Blue Springs, LLLP v. West Basin Capital, LLC*, 341 Ga.App. 535 (2017), and I assisted the prevailing party's attorneys with that appeal. The Court's favorable decision reversed the trial court with respect to the issue of the plaintiff's lack of standing to assert a fraudulent transfer cause of action after that cause of action was assigned to it by a judgment creditor. While my name is also listed as an attorney for the prevailing party in *Callaway v. Garner*, 340 Ga.App. 176 (2017), I did not represent a party to that case and did not participate in the handling of the appeal. Rather, I was tangentially involved in that case on behalf of two non-parties that were not involved in the appeal.

16. Please submit a representative sample of your writing (e.g. brief, order, opinion, opinion letter).

See attached.

17. Describe your practice other than trial practice during the past five years in some detail as it may relate to office and business practice, as well as any other phases of your practice.

For the 16 years that preceded my judgeship, I was the managing partner of my former law firm with responsibility for the administrative and business functions of the law firm, including personnel decisions and supervision, training of young lawyers and staff, payroll, insurance purchasing, vendor purchasing, billing, client development, and the like. During that time, our firm ranged from two to six lawyers with an average of three to four non-lawyer support staff members. As a judge, I manage my judicial office, including the supervision of a law clerk, a judicial assistant, and a court reporter.

18. Have you ever been engaged in any occupation, business or profession other than the practice of law? If so, please give the details including dates.

Part time, small scale hay farming for approximately 20 years.

19. Are you presently acting in a fiduciary capacity? If so, state details.

I am the trustee of a trust created by my grandparents for the benefit of two of my cousins. One of those cousins is now deceased, and the other one is 77 years old and needs limited assistance handling her financial affairs. I have provided that assistance, without charge, for the last 18 years.

20. Please describe your opinion of the role a law clerk or a staff attorney should serve with respect to assisting a judge.

Trial judges use law clerks and staff attorneys in different ways depending on the needs and preference of the judge and the abilities and experience of the law clerk/staff attorney. My law clerk has assisted me with the handling of pro se cases by reviewing pleadings, verifying jurisdictional issues, and providing me in advance of the trial or hearing a summary of the positions taken by the parties. I have found that this assistance saves me considerable time, helps narrow and focus the issues that need to be decided by me, and increases my efficiency in deciding and closing these cases. In addition, my law clerk helps me with legal research and analysis as needed and directed by me. At an appellate level, I believe a law clerk/staff attorney can be of great assistance to the judge by reviewing the parties' briefs, reviewing the appellate record, researching the legal issues raised by the parties, and preparing a summary of the parties' arguments and supporting authority (as well as noting any contrary authority pertaining to the issues before the Court). As a judge, I would be performing many of these tasks myself and would ultimately be responsible for the final product, but the law clerk/staff attorney can and should provide the judge with valuable assistance in this regard. Utilizing a law clerk/staff attorney in this way would help the judge focus on the substantive issues to be decided in each case in a productive and efficient manner.

21. Please describe how a judge of the court for which you are applying might improve the efficiency and effectiveness of the legal system in administering justice.

The judge's primary responsibility is as straightforward as it is vital: to fairly, impartially, and efficiently administer justice in accordance with the law. The way to accomplish this is to be prepared, work diligently, exercise sound judgment, and make decisions that are based upon the evidence and the law and not extraneous considerations or improper bias. This bedrock principle serves as the very foundation of our system of justice, and the efficiency and effectiveness of our system depend on unwavering adherence to it by the judges of our courts.

In addition, for the administration of justice to be most effective, I believe it is critically important for judges to treat all that come before them in a professional and respectful manner. The public needs to know (and see) that judges care deeply about the proper functioning of our system of justice and work to promote the fair, orderly, and lawful resolution of the cases that come before them. While there will always be individuals who are unhappy with the outcomes of cases, the public needs to know and understand that the judges who are making decisions are making them in a conscientious, professional, and dignified manner in accordance with the law.

It is also important that judges resolve the matters that come before them in a

thoughtful but reasonably expeditious and decisive manner. The parties are entitled to have their disputes decided in accordance with the law, and sometimes it takes time for the judge to analyze the issue before the Court and get it right. However, at the same time, the judge should prepare, work diligently, and decide cases in an efficient manner. Given the constitutional time limitations that apply to decisions in the Court of Appeals (i.e., the two-term rule), there is a built-in mechanism for getting this done; however, to get it done right, judges must be diligent and work efficiently.

I have appeared in front of many excellent judges in my career, and they all share the common trait of treating litigants, lawyers, witnesses, jurors, and others with respect and deciding the issues that come before them in a fair, impartial, and reasonably expeditious manner. When judges come up short, my experience has been that it is in one of these key areas. When that happens, the administration of justice suffers, as does the public perception of our judicial system.

In addition to the above, I believe that judges must have a heart for service and a heart for the job with which they are entrusted. It is imperative that judges have the right temperament for the job, that they remain humble and grounded as they serve the public, and that they treat everyone who comes before them in a respectful and dignified manner. The public deserves no less, and public confidence in our system of justice is important to its effectiveness.

Appellate judges should be faithful to the law and mindful of the fact that lawyers and the public will read their opinions and act in reliance upon them. Lawyers read these opinions and rely upon them to advise clients. Accordingly, appellate judges must write in a clearly understandable way that reduces, rather than creates, ambiguity and uncertainty. This is best done when judges write thoughtful, well-crafted opinions that follow existing precedent and controlling law. Where existing precedent needs to be clarified, appellate judges should confront that need directly and clarify it for the benefit of other judges, lawyers, and the public. However, judges need to understand that their role in our system of government is not to make the law but to apply it according to its terms. Judges must strive to consistently apply the law as written and, in doing so, respect the separation of powers that is vital to our system of government. Judges need to remember that they are decision-makers, not policy-makers, and they need to refrain from injecting their personal policy preferences into their decision-making. The judge's responsibility is to find the law, interpret it, and apply it to the cases that come before the Court. Above all else, it is our job to be faithful to the law, not to make it or rewrite it to suit our personal preferences.

In recent years, the Court of Appeals has greatly improved its efficiency by adding judges and changing its internal operating procedures to streamline cases more efficiently through the appellate process. That is a positive development. One additional area of possible improvement that I think Court of Appeals judges should consider is whether they are publishing too many opinions. There is no doubt that every appeal should get the full attention of the judges to whom it is assigned and that every litigant should receive a thorough and thoughtful review by the Court. However, not every opinion needs to be published. If the opinion is not

going to add anything of substance to the body of caselaw that already exists, and if there is a risk that the opinion may create ambiguity and confusion, the judges should carefully consider whether it should be published or not.

22. Have you ever held public office, other than judicial office, or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.

No.

23. Have you ever been sued by a client? If so, please give particulars.

No.

24. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

Many years ago, my former law firm represented a local trust company in a litigated probate matter concerning several issues, including the validity of a Will that our client was probating. Our litigation opponent was an heir of the estate who was unhappy with the terms of the Will and generally unhappy with our client and many others, including our law firm. When the litigation did not produce the results he desired, he filed a pro se Complaint against my firm, my two partners, myself, my client, several of my client's officers, several other well-respected attorneys in the community, and the presiding judge. The case had no merit, and summary judgment was granted in our favor.

I have also been a party to a property tax appeal that made its way to Superior Court. The case involved the local tax assessor's denial of an application I filed for Conservation Use valuation of a parcel of property that I own. I prevailed in that litigation.

25. Have you published any legal books or articles? If so, please list them, giving the citations and dates.

N/A

26. List any honors, prizes, awards, or other forms or recognition which you have received.

<u>College</u>
First Honor Graduate with Highest Honors from University of Georgia (4.0 GPA)
Summa Cum Laude
Phi Kappa Phi Honor Society
Golden Key National Honor Society

Mortar Board Honor Society
Beta Gamma Sigma Business Honor Society
President's Award for Scholastic Achievement and Leadership Ability

Law School
Graduated second in class of 202 students
Summa Cum Laude
Order of the Coif
Editorial Board, Georgia Law Review
Blue Key Honor Society
Class of 1933 Award for Excellence in the Study of Torts
Verner F. Chaffin Award for Excellence in Fiduciary Law
West Publishing Company Award for Outstanding Scholastic Achievement
American Jurisprudence Awards for Achievement in the Study of Torts, Civil Procedure, Property, Trust & Estates, and Federal Courts
Chosen by Torts Professor Perry Sentell to serve as summer law clerk for Justice George T. Smith, Supreme Court of Georgia

Profession
William B. Spann, Jr. Award for Pro Bono Advocacy, 2004
AV peer review rating by Martindale-Hubbell
Georgia Super Lawyers
Million Dollar Advocates Forum
Multi-Million Dollar Advocates Forum

27. List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance.

State Bar of Georgia, Member
Alabama State Bar, Member (inactive)
Council of Superior Court Judges, Member
Chattahoochee Judicial Circuit Bar Association, Past President
Columbus Bar Association, Current President-Elect; former secretary (2018-2019) and former treasurer (2017-2018)
Columbus Inn of Court, Current President
Joseph Henry Lumpkin American Inn of Court, Master
Muscogee County Law Library Board of Trustees, Former Member
Former Member of Local Rules Advisory Committee for the U.S. District Court for the Middle District of Georgia (2007-2011)
Fellow, Georgia Bar Foundation

28. Have you read and carefully studied the Code of Judicial Conduct?

Yes.

29. Will you adhere to the letter and the spirit of such Code should you be appointed

as judge?

Yes.

30. You are requested to execute and transmit to the Chairman of the Commission two copies of the form of Authorization for Access to Information Concerning Disciplinary Matters included with this questionnaire.

See attached.

31. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprise, please give details, including the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please so indicate, giving reasons. List all companies in which you, your spouse or minor children hold stock.

I am not engaged in the management of any business enterprise.

I own stock in the following companies: AFLAC, Inc.; Altria Group, Inc.; Apple, Inc.; AT&T, Inc.; Bank of America Corp.; Charter Communications, Inc.; Citigroup; Coca-Cola Co.; DXC Technology Co.; Entergy Corp.; Exxon Mobil Corp.; Fannie Mae; Ford Motor Co.; General Electric Co.; General Motors Co.; Global Payments, Inc.; Hewlett Packard; Home Depot, Inc.; HP, Inc; Intel Corp.; J.P. Morgan Chase & Co.; Kraft Heinz Co.; L Brands, Inc.; McDonalds Corp.; Micro FCS Int.; Microsoft Corp.; Mondelez Int'l, Inc.; Motors Liq Co.; New York Life; NRG Energy, Inc.; Perspecta, Inc.; Pfizer, Inc.; Philip Morris Int'l, Inc.; Procter & Gamble; Southern Company; Suntrust Bank; Synovus Financial Corporation; Travelers Companies, Inc.; Wabtec Corp.; Wal Mart, Inc.; and Walt Disney Co.

I own shares in the following mutual funds: American Growth Fund of America, Clearbridge Value Trust, Columbia Acorn Emerging Markets Fund, Invesco American Franchise, Invesco QQQ Trust, Invesco Technology, Principal LargeCap S&P 500 Index Fund, QS S&P 500 Index, SPDR S&P 500 ETF Trust, Vanguard Extended Market Index Fund, Vanguard Prime Money Market Fund, and Vanguard Total Stock Market Index Fund.

I own shares in the following mutual funds as the custodian for the benefit of my minor children: Vanguard Balanced Index Fund and Vanguard Total Stock Market Index Fund. I also have a "Path2College" 529 college savings plan for my children; that plan is offered by the State of Georgia and managed by TIAA-CREF Tuition Financing, Inc.

My wife owns stock in the following companies: AT&T, Inc.; Dominion Energy, Inc.; Eversource Energy; Frontier Communications Corp.; Global Payments, Inc.; Mesabi Trust; Pepsico, Inc.; Synovus Financial Corp.; YUM Brands, Inc.; and YUM China Holdings, Inc.

My wife owns shares in the following mutual funds: Principal LargeCap S&P 500 Index Fund and Vanguard Target Retirement 2035 Fund.

32. List the non-professional organizations to which you belong and civic and service activities in which you have participated in the past two years.

Since becoming a judge, I have spoken at a number of civic and community events throughout our community, including events that have benefitted schools, churches, and other charitable endeavors. I am an active member of St. Paul United Methodist Church in Columbus and have served on that Church's administrative board. I am a volunteer and former board member for the Pine Mountain Trail Association, a former board member for the Columbus Area Habitat for Humanity, and a former coach for youth baseball, basketball, and soccer.

33. Have you ever been arrested, charged, or held by federal, state or other law-enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of $50.00 or less was imposed.

I have received traffic tickets in the past but do not recall which ones may have resulted in fines greater than $50.00. I have never received a ticket or citation for any serious traffic violation and have never been arrested or held by law enforcement. I do not currently have any points on my driving record according to the Georgia Department of Driver Services. When I was 19 years old and a sophomore at the University of Georgia, I was given a citation for underage possession of alcohol. I accepted responsibility for the citation and paid a $150 fine. I was told at the time by the Judge of State Court that the charge would be expunged from my record, and I believe it has in fact been expunged.

34. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

No.

35. The Governor's Ethics Order prohibits the appointment by the Governor of any person to fill a judicial vacancy:

(a) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee at any time after the vacancy occurs; or

(b) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee within the 30 days preceding the vacancy, unless such person requests and is granted a refund of such contributions or reimbursement of such expenditure.

36. Have you made a contribution or expenditure as described in 35(a) above?

No.

37. (a) Have you made a contribution or expenditure as described in 35(b) above?

No.

(b) If you answered yes to 37(a), have you been granted a refund or reimbursement?

N/A

Applicant's Signature

Date: October 23, 2019

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

GEORGIA, MUSCOGEE COUNTY
SUPERIOR / STATE COURT
FILED IN OFFICE
DEC 20 2018
DEPUTY CLERK

STATE OF GEORGIA, *
*
v. *
* SU-12-CR-1097
SHANE ERIC HINKSON, *
*
Defendant. *
*

ORDER

The Defendant, Shane Eric Hinkson, was found guilty by a jury of felony murder and other related offenses in connection with the injuries and death of his 8 month old son, Alexander Cabanayan. He was sentenced to life imprisonment with the possibility of parole, and he now brings this Motion for New Trial. Defendant's motion was timely filed on August 20, 2015 and was supplemented on September 28, 2018. (In this Order, the Court will, at times, refer to Defendant's Motion for New Trial, as supplemented, as "Defendant's Motion for New Trial" or simply "Defendant's Motion.") The judge who presided over the trial of this case, Frank J. Jordan, Jr., retired at the end of 2017, and the undersigned was appointed to be his successor on February 7, 2018. After learning that Defendant's Motion for New Trial was pending, the Court conducted a status conference and then scheduled a hearing on the Motion. That hearing occurred on December 3, 2018, and the issues presented by Defendant's Motion are now ripe for decision.

The Court has considered Defendant's Motion, all issues raised by counsel, the argument of counsel, the pre-trial and trial transcripts, and all other matters of record. For the reasons stated herein, the Court has concluded that Defendant received a fair trial, that the verdict is supported by the evidence, and that Defendant's Motion should be and hereby is DENIED.

FINDINGS OF FACT

Alexander Cabanayan was an 8 month old infant who was in the care of his father, Defendant Shane Eric Hinkson, on January 1, 2012. They were alone at Defendant's apartment that morning. Defendant had consumed an unspecified quantity of alcohol on December 31, 2011 and January 1, 2012 and had been arguing, via telephone and text message, with his fiancé Jennifer Cabanayan. Ms. Cabanayan is Alexander's mother. (T691-701; State's Exh. 2). As the sole care provider for the infant that morning, Defendant became increasingly frustrated and agitated with the baby's incessant crying. After trying without success to soothe the crying baby, Defendant covered the baby's mouth with his hand and began to repeatedly pick the baby up and put the baby down. In an interview with the police later that day, the Defendant admitted that he "just snapped" and must have applied excessive force to the baby. (State's Exh. 2). The baby suffered a severe brain injury that resulted in his death five days later. (T723-724, 893)

After the Defendant realized that he had apparently injured his child, he became distraught and called the baby's mother, telling her that "something bad had happened", that "he had did something bad," and that she needed to come to the apartment right away. (T702-703). The child's mother testified that Defendant "was very distraught. He was saying things, like pretty horrific, scary things, that I couldn't call anybody, that I needed to come there. And if I called anybody, that he would be taken away." (T706). After Ms. Cabanayan suggested that an ambulance should be called, Defendant responded that "if I called anybody, that they would take him away. And if I called an ambulance and it wasn't anybody but me that he would shoot them." (T706-707)

When Ms. Cabanayan arrived at the apartment, she first encountered the Defendant standing near the kitchen with a gun to his head. (T719-720). She walked into the bedroom where Alexander was, and what she saw was alarming. One of Alexander's eyes was looking up, and

the other was looking down. The baby was whimpering and moaning. (T720-721). Ms. Cabanayan left the Defendant at the apartment alone (with a gun to his head) and took the baby to the hospital. (T721-722)

At the hospital, the attending physician determined that Alexander had suffered a significant brain injury resulting from a "severe amount of trauma." (T790). The injury was characterized by, among other findings, a "midline shift" of the brain and a subdural hematoma. (T789-791). The baby's mother informed the medical providers that Defendant had admitted to shaking the baby, and the medical testimony confirmed that the baby's injury was consistent with "shaken baby syndrome" or, in one physician's words, "a shaking and a slam." (T783, 892-893, 899-902, 934-935)

The Columbus Police Department was called to the hospital. A patrol officer first arrived, followed by Detective Andrew Tyner, a 28 year law enforcement veteran. (T610-612). While at the hospital, Detective Tyner was told that the 8 month old infant had suffered a severe brain injury that had apparently been caused by his father. (T612-615). The attending physician told the detective that the injury was severe and that the baby had bruises around his neck consistent with having been choked. (T614-615). Detective Tyner spoke with Ms. Cabanayan who informed him that Alexander had been in the care of the Defendant; she also told the detective what she discovered when she arrived at Defendant's apartment, including finding Defendant in a distraught mental state with a gun to his head, "stating that he had messed up and he was sorry." (T614-615)

Concerned by what he had been told, Detective Tyner left the hospital, went to Defendant's apartment, and, along with other law enforcement officers, entered without a search warrant. After entering the apartment, the officers found a loaded gun but did not find the Defendant or anyone else in the apartment. (T615-616). After the police confirmed that no one was present, photographs

of what the detective called "the crime scene" were taken. (T615-616). Those photographs were excluded from evidence and not presented to the jury. The gun was not admitted into evidence at the trial of the case; nor was it offered into evidence. However, Detective Tyner did testify that a loaded gun was found inside the apartment. (T616)

Shortly after leaving Defendant's apartment on the day of the incident, Detective Tyner learned that the Defendant, a soldier, had gone to Ft. Benning, Georgia and "turned himself in to the military police." (T617). While the precise details of how Defendant ended up "turn[ing] himself in" are not entirely clear from the record, Detective Tyner testified that "[w]e'd gotten a call through 911 stating that he had turned himself in to the military police." (T617). In response to this information, Detective Tyner met with the military police, and the Defendant was taken into custody by the detective. (T617). Defendant was taken to an interview room at the Columbus Police Department for questioning; he was shackled with a "belly chain" and leg chains during that questioning. (T617-618, 646). Detective Tyner advised Defendant of his *Miranda* rights; Defendant stated that he understood those rights; Defendant signed an Advice of Rights/Waiver form acknowledging that he understood those rights and wished to waive them by speaking with the police without a lawyer; and Defendant proceeded to freely and voluntarily speak with the detectives. (T618-620, State's Exh. 1, State's Exh. 2). During this interview, Defendant made several incriminating statements, including the following:

- When asked what happened, Defendant stated that "I was watching him. I broke down again. . . . I got angry. . . Again. . . . Sometimes I can't control myself. I get really mad."
- "I'm angry every day."
- Question: "Okay, well did you, ah, did you vent your anger today on, ah, Alexander?" Answer: "Yes sir."

- After recounting the trouble he had with Alexander's crying and the ongoing argument with Alexander's mother, Defendant stated: "She hung up. I went back to bed. She kept calling and texting and talking shit. He kept crying. She kept calling, he kept crying. And I just, I just snapped. . . .That's why I snapped. I have a problem lately. I get really angry, and I just fucking react and don't think about what I'm doing. . . .Sometimes I just get so freaking mad that I just – I lose it and then I explode. . . ."

- Question: "So what do you think actually pushed you over the edge? Was it the conversation with her or was it him crying?" Answer: "I definitely think it was both put together. Him whaling. He just, he was fucking screaming. . . ."

- When asked if he recalled exactly what happened to Alexander, Defendant stated: "I remember I put my hand over his mouth to try to get him to stop crying. And I put him down. . . .I just remember picking him up and putting him down. Picking him up and putting him down cause he wouldn't stop crying and I kept trying to walk away and he just kept crying."

- Question: ". . . did you put him down harder than you should have?" Answer: "I don't know, obviously." He later stated: "So I imagine I picked him up too hard. I put him down too hard."

- "I put my hand over his mouth and I just kept putting him up, picking him up and putting him down. Picking him up and putting him down. I kept picking him up and putting him down. I don't even know how long I was doing that for. He stopped crying and I fucking get more texts and calmed down and went back to bed. I woke up and I looked at him and something was wrong. . . .I walked up to him and he sounded like he was crying in his sleep. I've never seen him do that before."

- Defendant stated that he called his mother after he realized the baby was apparently injured. "I told her I think I fucked up."

- Defendant stated that he had a gun in his hand when he called the baby's mother. When asked why, he stated that "if I can lose complete control of myself and allow my anger to overcome me to the point to where I can hurt my family then I don't need to be around my family. I don't need to be around anyone."

- Toward the end of the interview, when asked if there was anything else he could tell the detective about the incident, Defendant stated: "I got mad. I got mad. I put my hand over his face and I put him down and . . . I just lost it."[1]

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[1] Defendant's statement was video-recorded. The recording appears in the record as State's Exhibit 2. A transcript of the recording, apparently prepared by defense counsel, was marked as Defense Exhibit 3 to the *Jackson-Denno* hearing; that transcript appears in the record but was

Alexander did not survive his injuries, dying at a children's hospital in Atlanta on January 6, 2012. (T723-724). Following his death, Defendant was indicted for Malice Murder, Felony Murder based on Aggravated Assault, Aggravated Assault, Felony Murder based on Cruelty to Children in the First Degree, Cruelty to Children in the First Degree, Felony Murder based on Cruelty to Children in the Second Degree, and Cruelty to Children in the Second Degree. The last two counts were dropped by the State, and the parties proceeded to trial on the remaining counts.

Prior to trial, Defendant moved to dismiss the Aggravated Assault count of the indictment (Count Three) and the Felony Murder count arising from the Aggravated Assault (Count Two) on the basis that the wording of the Aggravated Assault count was deficient. Defendant's motion to dismiss those two counts was denied. In addition, Defendant moved to suppress the statement he gave to Detective Tyner on the basis that (1) it was the product of an unlawful arrest, and (2) Detective Tyner did not adequately advise Defendant of his rights under *Miranda*. After a *Jackson-Denno* hearing, Defendant's motion to suppress the statement was denied. Defendant also moved to suppress the evidence that the police seized from his apartment during the search described above, specifically the handgun and bullet that was contained in it, as well as the photographs that were taken at the apartment after the police had confirmed that no one was present. Finding that the officers' entry into and search of the apartment were justified by exigent circumstances (i.e., the report that Defendant was last seen inside of the apartment, distraught and with a gun to his head, after realizing that he had injured his infant child), the Court denied Defendant's motion to suppress the gun and bullet. However, the Court found that the exigent

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neither admitted nor tendered into evidence. In connection with Defendant's Motion, the Court has relied on the actual video recording itself and not the transcript.

circumstances no longer existed after the police determined that no one was present and accordingly granted the motion to exclude the subsequently taken photographs.

The case proceeded to trial, and the jury found the Defendant not guilty of Malice Murder but guilty of all remaining counts, to include Felony Murder based on Aggravated Assault, Aggravated Assault, Felony Murder based on Cruelty to Children in the First Degree, and Cruelty to Children in the First Degree. Concluding that all of the guilty verdicts merged into the guilty verdict on Felony Murder based on Aggravated Assault, the Court sentenced Defendant to one term of life imprisonment with the possibility of parole.

On August 20, 2015, Defendant filed a motion for new trial and raised the general grounds, contending that the verdict was contrary to the evidence and without evidence to support it, was decidedly and strongly against the weight of the evidence, and was contrary to law and the principles of justice and equity.

On September 28, 2018, Defendant supplemented his motion, contending that he should receive a new trial for three separate reasons: (1) the trial court erroneously admitted into evidence the statement Defendant gave to Detective Tyner; (2) the trial court erroneously denied Defendant's motion to suppress evidence seized during the warrantless search of Defendant's apartment;[2] and (3) the Aggravated Assault count of the indictment failed to properly charge on the crime of Aggravated Assault, thus making that charge and the Felony Murder charge based on it defective.

[2] Although Detective Tyner did testify that a loaded gun was found inside of the apartment, neither the gun nor the bullet it contained were admitted into evidence (or even tendered) at trial. Moreover, the trial court suppressed the photographs taken at the apartment.

CONCLUSIONS OF LAW

Defendant's Motion for New Trial is DENIED for the reasons stated by the Court at the December 3, 2018 hearing and for the reasons stated in this Order.

First, there was substantial and credible evidence of Defendant's guilt presented to the jury. The Court has considered and weighed that evidence, as contemplated by controlling precedent. *See, e.g., Walker v. State*, 292 Ga. 262 (2013) and *Copeland v. State*, 327 Ga.App. 520 (2014). The Court has exercised its discretion in accordance with this precedent and has concluded that this is not a proper case for setting aside the jury's verdict and granting a new trial. Thus, the Court declines to do so. Simply put, the verdict was not contrary to the evidence; there was substantial evidence to support the jury's verdict; the verdict was not decidedly and strongly against the weight of the evidence; and the verdict was not contrary to law and the principles of justice and equity. Based on the evidence that was admitted at trial, Defendant's assertion of these general grounds is neither compelling nor persuasive and is therefore rejected.

Second, Defendant's statement to Detective Tyner was not the result of an unlawful arrest. At the time the detective spoke with the Defendant at the police department, the detective had been informed that the otherwise healthy infant had arrived at the hospital with a serious brain injury; the baby had been in the sole care of the Defendant prior to arriving at the hospital; the Defendant had called the mother of the child, imploring her to come to his apartment immediately because he had done something bad and the baby was injured; and Defendant had become distraught as a result of his actions to the point of taking overt steps that suggested he may commit suicide. Based on this evidence, there was probable cause for the police to take Defendant into custody and detain him for questioning related to the injuries to the young child. There was no unlawful arrest. *See* OCGA §17-4-20(a)(2)(C) (authorizing warrantless arrest if the officer has probable cause to

believe that an act of family violence has been committed); *State v. Grant*, 257 Ga. 123, 125 (1987) (cits. omitted) ("If probable cause to arrest exists at the time of detention and the person detained is outside of his home, the law does not require a warrant. . . .The decision on whether probable cause exists rests upon a test of reasonableness and probabilities. . . .Probable cause existed if at the time of the arrest the officers had knowledge and reasonably trustworthy information about facts and circumstances sufficient to warrant a prudent man in believing that [defendant] had committed an offense.") *Durden v. State*, 250 Ga. 325, 326-327 (1982) (same); *Minor v. State*, 180 Ga.App. 869, 871 (1986) (warrantless arrest is authorized if officer has probable cause to believe that arrested individual has committed a crime, even though the exact nature of the crime has not yet been discovered); *Berry v. State*, 163 Ga.App. 705, 707-708 (1982) (cits. omitted) (probable cause "deal[s] with probabilities. They are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. . . .There is also a great difference between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search. . . .As Judge Learned Hand said. . .: It is well settled that an arrest may be made upon hearsay evidence; and indeed, the 'reasonable cause' necessary to support an arrest cannot demand the same strictness of proof as the accused's guilt upon a trial, unless the powers of peace officers are to be so cut down that they cannot possibly perform their duties.")

Third, Defendant was properly advised of his *Miranda* rights and voluntarily waived those rights before making his statement to the police. The advising of the Defendant of these rights by the police detective was video recorded, and the Court has reviewed that recording. It speaks for itself. The detective advised Defendant of his *Miranda* rights; Defendant stated he understood those rights; Defendant voluntarily signed a waiver of those rights and further waived those rights

by voluntarily and without coercion speaking with the detective; and the statements Defendant gave the detective were freely and voluntarily given without any hope of benefit or fear of injury. Defendant's argument that Detective Tyner vitiated Defendant's clear waiver of his rights by his statements to Defendant about the waiver form he signed is not supported by the record and is therefore rejected. Defendant's video-recorded statement to police was properly admitted at trial.

Fourth, the police's warrantless entry into Defendant's apartment and the detective's testimony that a gun and bullet were found inside did not violate Defendant's constitutional rights and provide no basis for a new trial. The entry into the apartment without a warrant was justified by the exigent circumstances that existed at the time. Defendant's Motion correctly notes that a warrantless entry into a residence is justified and permissible "to protect or preserve life or to avert serious injury." *See* Defendant's Motion, page 25. That describes the situation here. The police officers had probable cause to believe that the apartment was the scene of a crime that resulted in a serious brain injury to a young baby, and they had been told by the child's mother that Defendant was last seen inside of that apartment by her in a fragile emotional state with a gun to his head, after realizing that his actions had injured the young child. These were exigent circumstances that justified the entry into and search of the apartment. *See Love v. State*, 290 Ga.App. 486, 487-488 (2008) (holding that "[a]n exception to the warrant requirement exists, however, where the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment" and declaring that exigent circumstances exist where the police "enter in response to what they reasonably perceive as an emergency involving a threat to life or property"); *Burk v. State*, 284 Ga.App. 843, 844 (2007) ("An exigent circumstance which does justify the warrantless entry of a private home is the officer's reasonable belief that such action is a necessary response on his part to an emergency

situation. . . . Similarly, the Fourth Amendment does not bar police from making a warrantless entry when the officer reasonably believes that a person within the dwelling needs immediate aid.") Given the fact that the entry and search of the apartment were authorized by exigent circumstances, there was no error committed by the trial judge in allowing Detective Tyner to testify that he found a gun loaded with one bullet inside of that apartment.[3]

Finally, Count Three of the Indictment—charging the Defendant with Aggravated Assault—recites the pertinent language of OCGA §16-5-21(a) and is not defective or deficient in any way. Further, it cannot seriously be contended that Defendant was not on notice of the charges against him and was somehow prejudiced or harmed by the wording of the indictment. In short, Defendant was charged with Aggravated Assault in accordance with the language of the controlling statute, and his argument that the Court should overturn his convictions on Count Three (Aggravated Assault) and Count Two (Felony Murder based on Aggravated Assault) is therefore rejected. *See Kaufman v. State*, 344 Ga.App. 347, 353 (2018) (reiterating the well-accepted rule that an indictment is not void "if it is sufficient to place the defendant on notice of the charges against [him] and enable [him] to prepare an intelligent defense" and further declaring that "in attacking an indictment after the verdict, every presumption and inference is in favor of the verdict").

For each of these reasons, and for each of the reasons stated by the Court at the December 3, 2018 hearing, Defendant's Motion for New Trial is DENIED.

SO ORDERED, this 19th day of December, 2018.

Benjamin A. Land
Judge, Superior Court of Muscogee County

[3] As noted, the gun and bullet were neither admitted into evidence nor tendered by either party.

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	*	
	*	
v.	*	CASE NO. SU-17-CR-3037
	*	
ALICIA NARSIS DAVENPORT,	*	
	*	
Defendant.	*	
	*	

ORDER

On October 27, 2017, a Muscogee County Grand Jury indicted the Defendant for "Violation of Oath by Public Officer," charging her with willfully and intentionally violating her oath as a Deputy Marshal of Muscogee County on or about October 28, 2013 by "unlawfully leav[ing] the scene of a traffic accident before providing the relieving officer with all appropriate investigative information. . . ." *See* Bill of Indictment returned by Grand Jury on October 27, 2017. Defendant moved to quash the Indictment due to the State's failure to comply with OCGA §17-7-52, which requires the State to provide a peace officer with a copy of a proposed bill of indictment "not less than 20 days prior to the date upon which a grand jury will begin hearing evidence." It is undisputed that the above-referenced statute applies to the indictment returned against the Defendant in this case and that the State provided the required statutory notice on Monday, October 9, 2017, *18 days* before the grand jury met, heard evidence, and returned the bill of indictment at issue.

Based on these undisputed facts, it is clear that the State failed to comply with OCGA §17-7-52. The mandated statutory notice was provided 18 days prior to the grand jury presentment, in contravention of the "not less than 20 days" requirement. Because the Defendant is entitled to the

protection of the statute and the Court has no authority to rewrite it, the untimely notice in this case requires the grant of Defendant's motion.

OCGA §17-7-52 is designed to protect peace officers like the Defendant from unfounded, and potentially harassing and frivolous, charges being brought against them. *State v. Smith*, 286 Ga. 409, 411 (2010). While the Court offers no opinion on the merits of the criminal charge, the fact is that the statute extends to peace officers "certain due process rights . . . not provided to citizens in general." *Smith v. State*, 297 Ga.App. 300, 304 (2009), *aff'd* by *State v. Smith*, 286 Ga. 409 (2010). The Court is obligated to protect those rights. The Legislature has concluded that peace officers are entitled to receive sufficient advance notice (20 days according to the express language of the statute) to decide whether and how to explain their conduct to the grand jury "so that if the case [is] one without foundation, they should not be annoyed by being required to defend, and (what is more important) should not be injured in the public estimation, or their public efficiency be impaired, while resting under a baseless charge." *Id.* at 304-305. The Supreme Court has held that the procedural protections afforded to peace officers are rationally related to a legitimate government purpose since

> "peace officers must make split-second decisions regarding the safety of themselves and others that can often involve life and death in the very moment that a decision is being made. When the performance of such official duties leads to possible criminal charges, it is rational to allow for additional procedural protections that will reduce the likelihood of a frivolous or harassing indictment being pursued against the officer and to help to ensure that the peace officer's split-second decisions can be fully explored in a more deliberative fashion."

Ellis v. State, 300 Ga. 371, 379 (2016).

In short, the "fundamental goal" of the statute is to afford peace officers "an opportunity to fend off potentially baseless charges prior to indictment." *Smith*, 297 Ga.App. at 305. The manner in which the Legislature has sought to accomplish that goal is to provide peace officers with at least 20 days notice of the presentation of a proposed bill of indictment so that the officer can deliberatively decide whether to attend the grand jury proceeding and what to say, if anything, to the grand jury. Here, the State failed to provide the mandated notice within the time specified by the Legislature and hence deprived Defendant of the full 20 days granted by the controlling statute. Allowing this case to proceed under these circumstances would not only ignore the express terms of the statute but would also detract from the legislative purpose by reducing the time that the officer is legislatively given to consider her pre-presentment options. The Court has no authority to do either.

While the State has advocated a "reasonableness" standard for the provision of the required statutory notice (i.e., a standard that would excuse the State's failure to provide 20 days notice in light of the fact that it gave 18 days notice and otherwise acted in good faith), the Court declines to adopt this standard. The courts did not write OCGA §17-7-52, and they have no authority to rewrite it. The Legislature has spoken, and its words and intent are clear. Regardless of whether one believes 18 days notice to be reasonable, that is not the standard adopted by the Legislature, and this Court must follow and apply the mandate of the statute. The Supreme Court has previously cautioned against the application of a "reasonableness" standard to the time component of the required notice, and this Court believes it is wise to heed that caution. *See Smith*, 286 Ga. at 412, footnote 7, where the Court, after noting that the *content* of the statutory notice must be assessed pursuant to a reasonableness standard, expressly warned against the application of such a standard to the "*express time directive*" of the statute: "The requirement of reasonable notice is

not to be confused with or controlled by the express time directive . . . that the accused public officer is to be served with a copy of the proposed bill of indictment at least 15 [now 20] days prior to presentment to the grand jury." It is evident that the 20 day "express time directive" of OCGA §17-7-52 means what it says and must be complied with pursuant to its terms. That did not happen here, and the Bill of Indictment must therefore be dismissed.[1]

At the hearing on Defendant's Motion to Quash, the Court raised a question concerning the potential applicability of OCGA §1-3-1(d)(3), which states, in relevant part, the following:

> "Except as otherwise provided by time period computations specifically applying to other laws, when a period of time measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and, if the last day falls on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise the privilege or to discharge the duty."

In response to the Court's question, the State argues that since "not less than 20 days" notice ***would have been provided*** if notice had been provided on Saturday, October 7, 2017, the notice provided on the following Monday should be sufficient. While this creative argument has, as its origin, the Court's questioning at the hearing, the argument will not survive a careful analysis.

For one, Saturday, October 7, 2017 was never a deadline for the exercise of any privilege or the discharge of any duty by the State. Thus, there is no legitimate reason to treat the Monday notice as having been provided on or before Saturday.

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[1] OCGA §17-7-52 has been amended since *Smith* was decided, but the amendments did not effect any material change relevant to the Court's analysis in this case. *See State v. Peabody*, 343 Ga.App. 362, 366 (2017) (discussing the statutory amendment at footnote 2 and also holding that absent "***timely notice*** of the proceeding and a copy of the proposed indictment", the indictment of a peace officer was properly dismissed).

For another, there is no reported decision that applies OCGA §1-3-1(d)(3) in the manner advocated by the State. In fact, while the Court of Appeals' decision in *C&H Development, LLC v. Franklin County*, 294 Ga.App. 792 (2008) arose in a different context, that decision's handling of OCGA §1-3-1(d)(3) is instructive and contrary to the State's position. In that case, the Court was faced with a law that required the county to provide notice of a public hearing at least 15 days but not more than 45 days before the hearing. The county provided the notice 46 days before the Monday hearing and contended that OCGA §1-3-1(d)(3) should be applied to save the untimely notice since Day 45 was a Sunday. The Court of Appeals rejected the argument, holding as follows:

> "The County argues if the 45th day following publication fell on Sunday, February 5, 2006, then its Board of Commissioners was permitted to hold the public hearing on the following Monday, February 6, 2006. However, OCGA §36-66-4(a) required the County to publish notice of the hearing '[a]t least 15 but not more than 45 days prior to the date of the hearing,' and so it is the hearing date that is the date certain from which the timeliness of the notice must be considered. Since the hearing was neither set for Sunday, February 5, 2006 nor held on that date, no pertinent date 'falls on' a Sunday for purposes of OCGA §1-3-1(d)(3)."

C& H Development, 294 Ga.App. at 794. The same analysis applies here. Substituting the words "grand jury presentment" for the word "hearing" in the above-quoted passage leads to the following result:

> "It is the [grand jury presentment] date that is the date certain from which the timeliness of the notice must be considered. Since the [grand jury presentment] was neither set for [a

> Saturday or Sunday] nor held on that date, no pertinent date 'falls on' a [Saturday or] Sunday for purposes of OCGA §1-3-1(d)(3)."

Id. In short, OCGA §1-3-1(d)(3) does not save or cure the State's untimely notice.

In addition, the Court notes that OCGA §1-3-1(d)(3) does *not* extend the statute of limitations for criminal prosecutions to the following Monday where the statute would otherwise expire on a weekend. As the Court of Appeals explained in *State v. Dorsey*, 342 Ga.App. 188, 190-191 (2017),

> "OCGA §1-3-1(d)(3) does not apply to the statute of limitation in criminal prosecutions. . . .Criminal defendants have the right to be prosecuted in a timely manner, and it is clear that the General Assembly did not grant the State additional time in which to seek such a prosecution if the statute of limitation falls on a weekend or a legal holiday."

If OCGA §1-3-1(d)(3) cannot be used to extend the statute of limitations, the Court sees no reason why it should be used to shorten the 20 day "express time directive" of OCGA §17-7-52. For these reasons, OCGA §1-3-1(d)(3) does not cure the State's failure to comply with OCGA §17-7-52 and cannot save this indictment.

For each of these reasons, Defendant's Motion to Quash is GRANTED, and the Bill of Indictment in this case is DISMISSED.

SO ORDERED, this 27th day of December, 2018.

Benjamin A. Land
Judge, Superior Court of Muscogee County

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

SHANNON JONES,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIVIL ACTION
	*	FILE NO. SU-19-DM-408
WILL L. STOKES, SR.,	*	
	*	
Defendant.	*	
	*	

ORDER

The Court has considered the Request of the Defendant to Disqualify Plaintiff's Counsel ("Defendant's Motion") and all other matters of record. The Court conducted a hearing on Defendant's Motion on May 15, 2019, at which time the Court heard from counsel for both parties and received evidence pertaining to the Motion. For the reasons stated at the hearing, and for the reasons outlined below, Defendant's Motion is hereby GRANTED.

The Relevant Facts Giving Rise To The Issue Before The Court

In this case, Plaintiff has filed a Complaint For Change of Custody, seeking to modify this Court's prior custody and visitation Orders with respect to the parties' minor child. These prior Orders were entered by Superior Court Judge J. Ronald Mullins, Jr. on December 22, 2015 and June 21, 2017, and they resulted from contested litigation involving the appointment of a guardian ad litem and multiple hearings. Plaintiff's current counsel, Mandi McDonough, was hired as a law clerk for Judge Mullins during the pendency of that litigation; specifically, her employment as Judge Mullins' law clerk began in July, 2016 and continued until after the Final Order had been entered on June 21, 2017. While Ms. McDonough was serving as Judge Mullins' law clerk, counsel for both parties had communications with her about this case, specifically including

communications about the entry of the Final Order that Ms. McDonough now seeks to modify for the benefit of her client.

Defendant has raised two separate arguments for why he believes Ms. McDonough should be disqualified from representing Plaintiff in this case. First, Defendant contends that since Judge Mullins currently has a standing policy of recusing in any case in which Ms. McDonough is counsel, then Ms. McDonough "hired into a conflict" within the meaning of *Price v. Welsh*, 335 Ga.App. 491 (2015) since she knew or should have known that this case would ultimately be assigned to Judge Mullins pursuant to Uniform Superior Court Rule 3.2. Second, Defendant contends that Ms. McDonough should be disqualified since she served as Judge Mullins' law clerk during the litigation giving rise to the Order that she now seeks to modify. In essence, Defendant contends that this is the same matter that was pending before Judge Mullins when Ms. McDonough served as his law clerk and that it would be improper for her to now switch roles to that of an advocate for one of the parties to that matter. The Court agrees with Defendant's second argument, thus making it unnecessary for the Court to reach the merits of Defendant's first argument.

The Law

There is no doubt that the lawyer/client relationship is a sacred one and that the Court should exercise caution when asked to disqualify a lawyer. However, there are exceptions to the right to hire any lawyer of one's choosing, and this case presents one of those exceptions. The relationship between a judge and his law clerk is a unique and important one that carries with it significant ethical concerns for all concerned, including the judge, his law clerk, the litigants, counsel, and the public. Where a former law clerk for a judge seeks to shift her position from that of a neutral, unbiased arm of the Court to that of an advocate seeking to modify the very Order that was entered during her term of service as law clerk, these ethical concerns substantially

outweigh the right to retain counsel of one's choice and counsel's right to earn a living without excessive restrictions from the Court.

The very first Canon of Georgia's Code of Judicial Conduct declares what is perhaps the most fundamental rule that applies to judges and their staff. Canon 1 states: "Judges shall uphold the independence, integrity, and impartiality of the judiciary and shall avoid impropriety *and the appearance of impropriety* in all of their activities." There can be no serious debate concerning the fact that this fundamental principle applies equally to a judge's law clerk, who is nothing more than an arm or extension of the judge himself. *See* Rule 2.12 of the Code of Judicial Conduct ("Judges shall require their staffs, court officials, and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges, to refrain from manifesting bias or prejudice in the performance of their official duties, and to act in a manner consistent with the judge's obligations under this Code.") *See also Hall v. Small Business Administration*, 695 F.2d 175, 179 (5th Cir. 1983) ("We agree with the Sixth Circuit that the clerk is forbidden to do all that is prohibited to the judge.") There can be little doubt that permitting a law clerk to leave the employment of a judge who has conducted hearings, reached decisions, and entered Orders in a matter and take up the role of advocate for one of the parties to that very matter creates at least an appearance of impropriety. In fact, at the May 15, 2019 hearing, Plaintiff's counsel conceded as much. The law supports her candid concession.

In *Pope v. State*, 257 Ga. 32, 35 (1987), a unanimous Supreme Court, citing the judicial canon involving the appearance of partiality, declared the following:

> "That a law clerk leaves a judge's employ and afterwards participates as counsel in a case pending before her judge during her term of service is ***doubtless improper***. . . ."

In an earlier appearance of the same case before the Supreme Court, the Court observed the unique and important role that law clerks serve:

> "Law clerks are not merely the judge's errand runners. They are the sounding boards for tentative opinions and legal researchers who seek the authorities that affect decisions. Clerks are privy to the judge's thoughts in a way that neither parties to the law suit nor his most intimate family members may be. . . . Whether or not the law clerk actually affected the [trial judge's] decisions, her continuing participation in a case in which her future employers were counsel gave rise to an appearance of partiality."

Pope v. State, 256 Ga. 195, 213-214 (1986).

While the Supreme Court's pronouncements in the two *Pope* decisions make clear that a law clerk should not be permitted to leave a judge's employment and then participate as counsel in a case that was pending before the judge during her term of service, the U.S. District Court's decision in *Monument Builders of Pennsylvania, Inc. v. Catholic Cemeteries Association, Inc.*, 190 FRD 164 (E.D.Pa. 1999) provides further context to this issue that is particularly relevant here. The *Monument Builders* Court confronted the precise issue that is present in this case, namely a former law clerk who left her judge's employment and later worked on a new case that arose out of an old case that was before the judge while she was that judge's law clerk. Underscoring the importance of the principles giving rise to the decision is the fact that the new case was pending before a different judge for whom the law clerk had not worked. Thus, it is not the identity of the judge in the new case that is controlling; rather, it is the fact that the law clerk previously served a judge who worked on the original case *during the law clerk's term of service*. The Court stated the issue as follows:

> "Before us is the question of whether a lawyer who was a law clerk of a judge may, after she has left the judge's employ, later work on a new case that arises out of an old case that was before the judge while the lawyer was his law clerk."

Id. at 164.

In holding that a law clerk may not do this, the *Monument Builders* Court relied upon two separate reasons. First, it held that Pennsylvania's Rule of Professional Conduct 1.12(a) prohibited the law clerk's subsequent representation of one of the parties since the law clerk had "participated personally and substantially" in the matter while she was a law clerk. Second, and most importantly as far as this Court is concerned, the Court held that the applicable ethical canons requiring law clerks to "avoid impropriety and the appearance of impropriety in all activities" prohibited the clerk's subsequent representation of one of the parties to the matter. In so holding, the Court specifically noted that the ethical canons requiring the avoidance of even the appearance of impropriety are broader in scope and "go well beyond the 'participated personally and substantially' language of the Rule of Professional Conduct." *Id.* at 167. In other words, whether or not the law clerk participated "personally and substantially" in the matter while a law clerk is not dispositive since the canons requiring her to "avoid impropriety and the appearance of impropriety in all activities" apply to this situation and contain no such qualifying language.

To fully understand the import of the *Monument Builders* decision, one must understand the unique nature of the relationship between a judge and his law clerk, as well as the public's perception when this relationship devolves to the point of having the clerk exit the chambers of the judge and take a seat at counsel table. The *Monument Builders* Court explained the situation as follows:

> "[W]e find that her shift from law clerk to advocate, on what we have already found to be the same 'matter', implicates at least the appearance of impropriety. . . .[H]er representation of [plaintiff] in this matter would, to reasonable eyes, appear improper. . . [T]his proscription stems from the extraordinarily close relationship that exists between judge and law clerk. Because of that relationship's very uniqueness and value, the Court has an institutional duty to the public—independent of any litigant's interest or consent—to assure that there is never even a hint that it is being exploited to advance a private party's interest in a lawsuit."

Id. at 167. This Court agrees with the *Monument Builders* Court and, in furtherance of its "institutional duty to the public," is compelled by the circumstances to grant Defendant's Motion.

In reaching this decision, the Court has carefully considered all of the circumstances and the controlling and persuasive authority. The Court has concluded that this case involves the same subject matter that was at issue in the litigation when Plaintiff's counsel served as Judge Mullins' law clerk, specifically the custody and visitation of the parties' minor child. The parties are the same, and the legal issues to be decided are the same. Thus, even though this is technically a new "case", it is nothing more than an outgrowth of the prior cases that led to the entry of the Orders that Plaintiff's counsel now seeks to modify. It is, in appearance and in fact, the same matter that was before Judge Mullins when Plaintiff's counsel was his law clerk. *See Monument Builders*, 190 FRD at 166-167 (holding that a new case that arises out of an old case involving the same parties and involving largely the same issues should be treated as the same "matter" for attorney disqualification purposes); *Outdoor Advertising Association of Georgia, Inc. v. Garden Club of Georgia, Inc.*, 272 Ga. 146, 148 (2000) (holding that the same litigation is the same matter, as is "[t]he same issue of fact involving the same parties and the same situation or conduct")

Plaintiff makes much of the fact that this custody modification action was originally assigned to Judge Bobby Peters and not Judge Mullins and that defense counsel allegedly had improper contacts with one or more of these judges for the purpose of getting the case reassigned to Judge Mullins pursuant to Uniform Superior Court Rule 3.2. Plaintiff's arguments are a red herring that seek to shift the Court's focus from the real issue, which is the appearance of impropriety that exists as a result of her counsel's decision to accept representation in a matter that she was previously involved in as a law clerk for Judge Mullins. First, Plaintiff has not sufficiently proven that defense counsel had any improper *ex parte* contacts with either judge. Defense counsel denies Plaintiff's accusations and stated in her place that no such contacts have been made. Second, and more importantly for purposes of the pending Motion to Disqualify, whether this case is assigned to Judge Mullins or Judge Peters is not controlling. Either way, the fact remains that this case arises out of an older case that was assigned to and handled by Judge Mullins while Plaintiff's counsel served as his law clerk. That fact, combined with Plaintiff's counsel's entry into this case as counsel of record for one of the parties, is what creates the unacceptable appearance of impropriety.[1]

Conclusion

If the judicial canons and the rules of professional conduct are to be more than mere lofty and high-sounding words on paper, then they must be enforced according to their terms and their

[1] Given the Court's holding in this regard, it is not necessary for the Court to decide whether Plaintiff's counsel should be disqualified for the additional reason of allowing herself to be "hired into a conflict" arising from Judge Mullins' standing policy of recusing from all cases in which she is counsel. Regardless of how one views that issue, it is undeniable that Plaintiff's counsel "hired into a conflict" by agreeing to take on the role of advocate in a matter for which she had previously served as law clerk. It is this fact, and not the fact that Judge Mullins always recuses in Plaintiff's counsel's cases, that serves as the basis for this Court's ruling. In addition to the authority cited above, *see also* Rule of Professional Conduct 1.16, Comment 1 ("A lawyer should not accept representation in a matter unless it can be performed . . . without improper conflict of interest.")

intent. A judge's law clerk may not exit the private chambers of the judge and take a seat at counsel table for one of the parties. If this is permitted, what is the opposing party to think? Isn't he left to wonder what is wrong with this picture? Does his adversary now have the upper hand since she is represented by the former law clerk who worked on this very matter? Does his adversary's lawyer know something he doesn't know and is not privy to? Is the playing field no longer level and balanced? Does it at least appear that way, or, as Plaintiff's counsel conceded, isn't this at least very odd? Just as importantly, what is the public that we serve to think? How is it that a neutral and unbiased arm of the Court is now permitted to serve as advocate for one of the parties? If the law clerk is permitted to do this, are we going to let the judge do it? After all, judges and law clerks, by judicial canon, are to be held to the same standards of fidelity and diligence.

The very fact that these questions are raised shows why the Supreme Court held in the *Pope* case that it is "doubtless improper" for a law clerk to take on the role of advocate in the same matter that she worked on as law clerk. It is also why the *Monument Builders* Court reached the same decision in a case involving subsequent litigation in front of a different judge. The fact that these perplexing questions are raised shows why there is an unacceptable appearance of impropriety that exists here. While litigants, as a general rule, are free to choose the lawyer of their choice, the parties and the public are entitled to a system of justice that is not only free from impropriety but also free from the appearance of such. To allow Plaintiff's counsel to continue as an advocate in this case would create this appearance and is thus intolerable.

> "A lawyer must avoid even the appearance of impropriety. . . to the end that the image of disinterested justice is not impoverished or tainted. Thus it is that sometimes an attorney, guiltless in any actual sense, nevertheless is required to stand aside for the sake of public confidence in the probity of the administration of justice."

Love v. State, 202 Ga.App. 889, 891 (1992). In furtherance of these principles, and in faithfulness to the Court's institutional duty to the public to assure that there is no impropriety or the appearance of such, Defendant's Motion is GRANTED.[2]

SO ORDERED, this 20th day of May, 2019.

Benjamin A. Land
Judge, Superior Court

[2] For the reasons stated in this Order (including this Court's conclusion that Plaintiff's counsel should be disqualified regardless of whether this case is assigned to Judge Mullins or Judge Peters), Plaintiff's Motion To Dismiss Defendant's Motion To Disqualify Plaintiff's Counsel And Motion For Attorney's Fees is DENIED.

STATE OF GEORGIA

COUNTY OF Muscogee

The undersigned, being a nominee for appointment by the Governor of the State of Georgia, to a position of Judge in one of the courts in this State and being fully cognizant of the responsibility to the public, the Bench and the Bar of this State, lodged with the Judicial Nominating Commission of the State of Georgia in the selection of persons to be submitted to the Governor for any such appointment do hereby:

1. Authorize the State Bar of Georgia and its Disciplinary Board (and the disciplinary authority of any other state in which the undersigned may have practiced law) and/or the Judicial Qualifications Commission of the State of Georgia to answer any inquiries, questions or interrogatories concerning the undersigned which may be submitted to them by the Judicial Nominating Commission of the State of Georgia or its authorized representative, and to give full and complete information regarding the undersigned in any of their files and to permit said Commission or its authorized representative to inspect and make copies of any documents, records and other information concerning the undersigned and any complaint which might have been made against the undersigned at any time whatsoever:

2. Does hereby release and exonerate the Governor of the State of Georgia, the State Bar of Georgia, the Judicial Nominating Commission of the State of Georgia, the Judicial Qualifications Commission of the State of Georgia, and every other person, firm, officer, corporation, association, organization or institution which might be involved in complying with, or receiving information under, the authorization and request made herein from any and all liability of every nature and kind growing out of or in any wise pertaining to compliance with this authorization and request.

IN WITNESS WHEREOF the undersigned has set his/her hand and seal this 23rd day of October, 2019

Please fill in: Date of birth [redacted]1967

State Bar Number [redacted]

Print Name Benjamin A. Land

Subscribed before me this 23 day of October, 2019

Notary Public

CARINA JOY THOMPSON NOTARY PUBLIC MUSCOGEE CO., GEORGIA MY COMMISSION EXPIRES DEC. 18 2022


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STATE OF GEORGIA

COUNTY OF Muscogee

The undersigned, being a nominee for appointment by the Governor of the State of Georgia, to a position of Judge in one of the courts in this State and being fully cognizant of the responsibility to the public, the Bench and the Bar of this State, lodged with the Judicial Nominating Commission of the State of Georgia in the selection of persons to be submitted to the Governor for any such appointment do hereby:

1. Authorize the State Bar of Georgia and its Disciplinary Board (and the disciplinary authority of any other state in which the undersigned may have practiced law) and/or the Judicial Qualifications Commission of the State of Georgia to answer any inquiries, questions or interrogatories concerning the undersigned which may be submitted to them by the Judicial Nominating Commission of the State of Georgia or its authorized representative, and to give full and complete information regarding the undersigned in any of their files and to permit said Commission or its authorized representative to inspect and make copies of any documents, records and other information concerning the undersigned and any complaint which might have been made against the undersigned at any time whatsoever:

2. Does hereby release and exonerate the Governor of the State of Georgia, the State Bar of Georgia, the Judicial Nominating Commission of the State of Georgia, the Judicial Qualifications Commission of the State of Georgia, and every other person, firm, officer, corporation, association, organization or institution which might be involved in complying with, or receiving information under, the authorization and request made herein from any and all liability of every nature and kind growing out of or in any wise pertaining to compliance with this authorization and request.

IN WITNESS WHEREOF the undersigned has set his/her hand and seal this 23rd day of October, 2019.

Please fill in: Date of birth 1967

State Bar Number [redacted]

Print Name Benjamin A. Land

Subscribed before me this 23 day of October, 2019

Notary Public

GABRIEL JOY THOMPSON NOTARY PUBLIC STATE OF GEORGIA MUSCOGEE COUNTY MY COMMISSION EXPIRES DEC. 19 2022


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