

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

| | | |
|----------------------------------|---|-------------|
| STATE OF GEORGIA |) | |
| |) | CASE NUMBER |
| v. |) | |
| |) | 23SC188947 |
| DONALD JOHN TRUMP, |) | |
| RUDOLPH WILLIAM LOUIS GIULIANI, |) | |
| JOHN CHARLES EASTMAN, |) | |
| MARK RANDALL MEADOWS, |) | |
| KENNETH JOHN CHESEBRO, |) | |
| JEFFREY BOSSERT CLARK, |) | |
| JENNA LYNN ELLIS, |) | |
| RAY STALLINGS SMITH III, |) | |
| ROBERT DAVID CHEELEY, |) | |
| MICHAEL A. ROMAN, |) | |
| DAVID JAMES SHAFER, |) | |
| SHAWN MICAH TRESHER STILL, |) | |
| STEPHEN CLIFFGARD LEE, |) | |
| HARRISON WILLIAM PRESCOTT FLOYD, |) | |
| TREVIAN C. KUTTL, |) | |
| SIDNEY KATHERINE POWELL, |) | |
| CATHLEEN ALSTON LATHAM, |) | |
| SCOTT GRAHAM HALL, |) | |
| MISTY HAMPTON a/k/a |) | |
| EMILY MISTY HAYES |) | |
| Defendants. |) | |

**SPECIAL PROSECUTOR NATHAN WADE’S POST-HEARING BRIEF ON
IN CAMERA EXAMINATION OF ATTORNEY TERRENCE BRADLEY**

COMES NOW, Special Prosecutor Nathan Wade, by and through the undersigned counsel, and files this post-hearing brief concerning *in camera* examination of Attorney Terrence Bradley by the Court, which may unlawfully compel Bradley to disclose communications with Wade that the Court has already determined are protected by attorney-client privilege from any disclosure to any person. Nothing under Georgia

law authorizes the Court to conduct such an examination once the determination has been made that attorney-client privilege applies, and should the Court compel the disclosure anyway, it would vitiate one of the oldest and most fundamental privileges recognized both at common law and by statute. St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C., 293 Ga. 419, 421 (2013); O.C.G.A. § 24-5-501(a).

Moreover, the Defendants were allowed broad leeway to pry into the private life of Special Prosecutor Wade in an unprecedented and public manner, spanning two full days of testimony. The Defendants sought to introduce intrusive and legally irrelevant personal details of multiple people's lives for the world to watch unfold in real time, but still no credible evidence exists in the record to support their tenuous claims. If the Court were now to disregard "the most sacred of all legally recognized privileges" whose "preservation is essential to the just and orderly operation of our legal system," it would be a step too far, and Special Prosecutor Wade is constrained to object. United States v. Ivers, 967 F.3d 709, 715-16 (8th Cir. 2020) (quoting United States v. Bauer, 132 F.3d 504, 510 (9th Cir. 1997)). **The Court should not conduct the examination under any circumstance.** The attorney-client privileged communications at issue between Wade and his own former attorney Bradley, made during the course of and in relation to Bradley's representation of Wade, **must** be protected from disclosure. Any decision of the Court to the contrary would fly directly in the face of long-recognized public policy "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." Upjohn Co. v. United States, 449 U. S. 383, 389 (1981).

ARGUMENT AND CITATION OF AUTHORITY

The attorney-client privilege is “the oldest of the privileges for confidential communications known to the common law.” Upjohn, 449 U. S. at 389. In Georgia, the “long recognized” attorney-client privilege attaches “when legal advice is sought from an attorney, and operates to protect from compelled disclosure any communications, made in confidence, relating to the matter on which the client seeks advice.” St. Simons Waterfront, 293 Ga. at 421-22 (emphasis added); *see also* Rushin v. Fulton Cnty., 2023 Ga. Super. LEXIS 4262, Order on Mots. In Lim. at *17 (Fulton Sup. Ct. Sept. 11, 2023) (McAfee, J.) (“The attorney-client privilege is intended to protect the attorney-client relationship by protecting communications between clients and attorneys ...”). The protection from compelled disclosure applies under every circumstance—whether in open court or *in camera*—unless either an exception is proven or privilege is waived by the client, Sullivan v. State, 327 Ga. App. 815, 818-19 (2014), and the Court has already correctly determined that neither applies to the communications at issue here.

I. The Court has already held at least 14 times that attorney-client privilege applies to the communications at issue.

As the Court has already acknowledged, the record clearly shows that: (1) an attorney-client relationship was formed when Special Prosecutor Nathan Wade hired Terrence Bradley to represent him in his divorce in 2015; (2) the attorney-client relationship existed at least until late 2022, and the attorney-client privilege continues through today; (3) the attorney-client relationship was in the context of Wade’s divorce proceeding; (4) any alleged communications made by Wade to Bradley concerning any

alleged “personal relationships” would have been made in confidence and would have been directly related to the matter in which Bradley represented Wade; and (5) Wade has never waived attorney-client privilege as it relates to any statements made to Bradley in the course of the representation. The Court specifically found:

I think the law is clear that money doesn’t even have to change hands [to establish an attorney-client] relationship. I’m making a finding based on the evidence that has already been presented – namely the fact that he signed pleadings and attended depositions on Mr. Wade’s behalf – that an attorney-client relationship did exist at some point.

JudgeScottMcAfee, “2/16/24 Roman Motion Hearing Day 2 – 23SC188946,” YouTube (last accessed Feb. 21, 2024), available at <https://www.youtube.com/watch?v=351j4vLffYU> at 6:19:04. The Court’s own findings were reinforced when it sustained as many as 11 objections on attorney-client privilege grounds and *sua sponte* prohibited Defense counsel from invading into attorney-client privilege three additional times.¹ Accordingly, the Court has already determined that any statements made by Wade to Bradley within the course of the representation and related to the subject of the representation are absolutely privileged, and neither Wade nor Bradley can be compelled by the Court to disclose those communications, even *in camera*.

¹ See JudgeScottMcAfee, “2/16/24 Roman Motion Hearing Day 2 – 23SC188946,” YouTube (last accessed Feb. 21, 2024), available at <https://www.youtube.com/watch?v=351j4vLffYU> at 4:31:26; 5:00:47; 5:02:10; 5:36:44; 5:37:34; 5:41:03; 5:46:22; 5:46:47; 5:50:15; 6:04:33; 6:22:37; 6:23:22; 6:24:23; and 6:28:14.

II. Attorney Bradley testified that he has no relevant personal knowledge, and he sought advice of both counsel and the State Bar of Georgia on attorney-client privilege prior to his testimony.

Because he received a subpoena to testify, Attorney Bradley retained experienced counsel to represent him in this matter and to advise him on issues related to attorney-client privilege. It should be noted that Bradley's attorney, Attorney Bimal Chopra, has been licensed to practice law in Georgia for 29 years, and Bradley himself has been licensed to practice law in Georgia for 17 years. Both have spent their practices primarily representing clients and are well-versed in the boundaries of attorney-client privilege. Even so, out of an abundance of caution, Bradley testified that he and his attorney sought advice from the State Bar of Georgia to ensure that he would not improperly disclose communications protected by attorney-client privilege. Bradley clearly understands which communications are and are not privileged, and the record shows that he took affirmative steps to protect both his former client's confidential communications and his own oath to uphold the Georgia Rules of Professional Conduct.

Moreover, based on the record before the Court, and contrary to representations made in the Defendants' motions and assertions made by counsel for the Defendants in open court, Bradley testified, "I have no personal knowledge of when [the beginning of any alleged relationship between Wade and Willis] actually happened. I was not there. **I do not have any personal knowledge.**" *Id.* at 4:35:24 (emphasis added). When asked by the Court if Bradley's lack of personal knowledge included anything Bradley "may have seen or heard outside of communications with [Wade]," Bradley unequivocally answered, "That's correct." *Id.* at 4:49:43. Bradley further testified that no third parties

were ever present during any of those communications that would have resulted in a waiver and that he had never received any kind of affirmative waiver of attorney-client privilege from Wade. Id. at 4:50:28. The Court itself acknowledged, “I think it was quite explicit that Mr. Wade never waived anything regarding communications between him and Mr. Bradley. He was willing to discuss the subject matter, but he was never willing to get into communications that occurred between him and Mr. Bradley.” Id. at 4:45:36.

III. Georgia law clearly prohibits compelled disclosure of the attorney-client privileged communications at issue, even *in camera*.

The Georgia Supreme Court analyzed the “inviolable” nature of the statutory privileges codified in O.C.G.A. § 24-5-501(a), which includes attorney-client privilege, in Cooksey v. Landry, 295 Ga. 430 (2014). In that case, a decedent was under the care of a psychiatrist for several years before committing suicide. Id. at 430. During that time, the psychiatrist prescribed two drugs known to cause an increased risk of suicidal thinking and behavior in young adults. Id. Following the decedent’s death, his parents sought to investigate a potential civil action against the psychiatrist and moved the trial court to order the psychiatrist to disclose the decedent’s psychiatric records. Id. The psychiatrist refused, citing psychiatrist-patient privilege pursuant to O.C.G.A. § 24-5-501(a), but the trial court ordered the disclosure. Id. The Georgia Supreme Court reversed, holding that the trial court was not authorized under Georgia law “to require the production of privileged communications contrary to O.C.G.A. § 24-5-501(a).” Id. at 432.

The Court found that as “a matter of public policy, Georgia law has long provided for the confidentiality of communications between a psychiatrist and patient.” Id.

(cleaned up). The same can be said for attorney-client privilege, which has been codified in this state for over 150 years. *See* Irwin's Code of the State of Ga., 2d Ed. §3854 (1873) ("No attorney shall be compellable to give evidence for or against his client."). "The primary purpose of the [psychiatrist-patient] privilege is to encourage the patient to talk freely without fear of disclosure and embarrassment, thus enabling the psychiatrist to render effective treatment" *Id.* Again, the same can be said for attorney-client privilege: "The purpose of [attorney-client] privilege is 'to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.'" St. Simons Waterfront, 293 Ga. at 422 (quoting Upjohn, 449 U. S. at 389). "[C]ommunications between psychiatrists and patients, are, therefore, protected from disclosure ... [and the] privilege remains **inviolable**" Cooksey, 295 Ga. at 432 (emphasis added).

Here, where attorney-client privilege and psychiatrist-patient privilege are codified in the same code section, and where the historic application of attorney-client privilege far precedes that of psychiatrist-patient privilege, Cooksey must be read to preclude the Court from compelling Bradley to testify, even *in camera*, about privileged communications between him and Wade, his former client. "O.C.G.A. § 24-5-501(a) is a **positive statutory enactment** specifically precluding" the Court from compelling Bradley to violate attorney-client privilege. Cooksey, 295 Ga. at 435 (emphasis added). As the Court in Cooksey warned, "to allow a trial court, [based on] its own notion of what is right, to require disclosure of privileged communications would bring uncertainty to Georgia's well-defined psychiatrist-patient privilege and **eviscerate its effectiveness.**"

Id. at 436 (emphasis added). The same conclusion must follow for Georgia’s “well-defined” attorney-client privilege. “The interests protected by O.C.G.A. § 24-5-501 are weighty and cannot simply be set aside . . .” Id. (emphasis added).

In Cooksey, the Court remanded the case to the trial court and instructed it to review which of the psychiatrist’s files were in fact privileged “because no findings [had] been made as to what information [was] privileged or whether the privilege may have been waived” by the decedent. Id. at 435. It simultaneously instructed the Court to require disclosure of only non-privileged records and information or records and information where the privilege had been waived. Id. The Court of Appeals of Georgia has explained, “in certain circumstances, [a] trial court may desire to conduct an *in camera* proceeding” to determine whether certain attorney-client communications are protected from disclosure by privilege. S. Guar. Ins. Co. v. Ash, 192 Ga. App. 24, 29 (1989).

But both Cooksey and S. Guar. Ins. Co. are easily distinguished. As the Court in S. Guar. Ins. Co. cautioned, such an *in camera* inspection of privileged documents is only appropriate, for example, “when the underlying facts demonstrating the existence of the privilege may be presented only by revealing the very information [to the court that is] sought to be protected by the privilege.” S. Guar. Ins. Co., 192 Ga. App. at 29 (emphasis added). That is not the case here; in fact, the opposite is true. As set forth above, the Court not only has before it the underlying facts demonstrating the existence of an attorney-client relationship between Wade and Bradley, but it has also *already* made the determination that the statements at issue are protected by attorney-client privilege. Once that determination has been made by the Court – as it has been here – no further inquiry

is appropriate, and neither Wade nor Bradley can be compelled to disclose the protected communications in any setting.

The decisions of multiple other state supreme courts on various privileges are in accord. See Costco Wholesale Corp. v. Superior Court, 47 Cal. 4th 725, 740 (Cal. 2009) (*In camera* review only authorized “after the court has determined that privilege is waived or an exception applies”); People ex rel. J.P., 2023 CO 57, *P22 (Colo. 2023) (*In camera* review only authorized “when a party opposing assertion of the attorney-client privilege makes some showing that an exception to the attorney-client privilege applies or that the privilege has been waived either explicitly or impliedly”); In re: Motion to Compel, 492 Mass. 811, 821 (Mass. 2023) (“[I]n camera review is not by itself sufficient protection for [presumptively privileged] information ... [D]isclosure even to a judge is nevertheless a disclosure, and one that our protocol strictly limits.”); Commonwealth v. Fuller, 423 Mass. 216, 225 (Mass. 1996) (“*In camera* review, while less intrusive than public disclosure ... is nonetheless a substantial invasion of the privacy of a complaining witness. ... [D]isclosure, even in the limited form of an *in camera* inspection, should not become the general exception to the rule of confidentiality.”).

Finally, even if the Court were to seal a record of a compelled *in camera* disclosure of attorney-client privileged communications, sealing is not an appropriate remedy. First, the Court cannot seal a court record *sua sponte* without a hearing. See Unif. Sup. Ct. R. 21. A full separate hearing would be required. Id. Second, even if sealed, the privileged communications would remain in the public record perpetually; this Court’s sealing order could be appealed by any member of the public; and there is a grave risk that the

privileged communications may someday be released. Id. Finally, even if sealed, the compelled disclosure of attorney-client privileged communications remains unlawful for all of the reasons set forth above. Attorney-client privilege is among the most sacred of all legally recognized privileges – so much so that it even survives a client’s death – and the Court must take every possible precaution to preserve it. Spence v. Hamm, 226 Ga. App. 357, 358 (1997); *see also* Ivers, 967 F.3d at 715-16.

Here, the Court has already determined that all of the alleged communications in question between Special Prosecutor Wade and Bradley concerning any alleged “personal relationships” are protected by attorney-client privilege and that neither an exception nor a waiver apply. For the reasons set forth above, Special Prosecutor Wade is therefore compelled to object to any *in camera* examination of Bradley that may unlawfully compel Bradley to disclose those privileged communications to any person.

Respectfully submitted this 22nd day of February 2024,

/s/ Andrew C. Evans

Andrew C. Evans

Georgia Bar Number 251399

Counsel for Special Prosecutor Nathan Wade

Evans Law, LLC

750 Piedmont Avenue Northeast

Atlanta, Georgia 30308

(404) 276-0629

aevans@evanslawpractice.com

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

| | | |
|----------------------------------|---|-------------|
| STATE OF GEORGIA |) | |
| |) | CASE NUMBER |
| v. |) | |
| |) | 23SC188947 |
| DONALD JOHN TRUMP, |) | |
| RUDOLPH WILLIAM LOUIS GIULIANI, |) | |
| JOHN CHARLES EASTMAN, |) | |
| MARK RANDALL MEADOWS, |) | |
| KENNETH JOHN CHESEBRO, |) | |
| JEFFREY BOSSERT CLARK, |) | |
| JENNA LYNN ELLIS, |) | |
| RAY STALLINGS SMITH III, |) | |
| ROBERT DAVID CHEELEY, |) | |
| MICHAEL A. ROMAN, |) | |
| DAVID JAMES SHAFER, |) | |
| SHAWN MICAH TRESHER STILL, |) | |
| STEPHEN CLIFFGARD LEE, |) | |
| HARRISON WILLIAM PRESCOTT FLOYD, |) | |
| TREVIAN C. KUTTL, |) | |
| SIDNEY KATHERINE POWELL, |) | |
| CATHLEEN ALSTON LATHAM, |) | |
| SCOTT GRAHAM HALL, |) | |
| MISTY HAMPTON a/k/a |) | |
| EMILY MISTY HAYES |) | |
| Defendants. |) | |

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing **SPECIAL PROSECUTOR NATHAN WADE'S POST-HEARING BRIEF ON *IN CAMERA* EXAMINATION OF ATTORNEY TERRENCE BRADLEY** upon counsel of record who have entered appearances in this matter via e-filing.

This 22nd day of February 2024,

/s/ Andrew C. Evans

Andrew C. Evans

Georgia Bar Number 251399

Counsel for Special Prosecutor Nathan Wade

Evans Law, LLC
750 Piedmont Avenue Northeast
Atlanta, Georgia 30308
(404) 276-0629
aevans@evanslawpractice.com