IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THE MERCHANT LAW FIRM, Plaintiff	)	
v.	)	**CIVIL ACTION**
	)	**FILE NO.: 24CV001325**
FULTON COUNTY DISTRICT ATTORNEY'S OFFICE, FULTON COUNTY, GEORGIA, FANI WILLIS, in her official capacity, and FANI WILLIS in her individual capacity, Defendants	)	

EMERGENCY MOTION TO QUASH SUBPOENA FOR DISTRICT ATTORNEY FANI T. WILLIS

COMES NOW, District Attorney Fani T. Willis (hereinafter "District Attorney Willis") and files this Emergency Motion to Quash Subpoena because (1) as of September 18, 2024, District Attorney Willis has not been served with a subpoena for the September 19, 2024 hearing, (2) she has no direct knowledge regarding the open records request at issue in this case, (3) District Attorney Willis is out of the jurisdiction, and (4) the Records Custodian for the Fulton County Office of the District Attorney has direct knowledge regarding the underlying open records requests and is available to provide testimony.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The Subpoena Is Invalid Because District Attorney Willis Was Not Personally Served With The Subpoenas.

To be valid, a subpoena must be served in accordance with the requirements set forth in O.C.G.A. § 24-13-24, which requires that a subpoena must be either hand delivered to the witness or served by registered or certified mail or statutory overnight delivery. As of September 18, 2024, the subpoena has not been served on District Attorney Willis. As stated in Edenfield v. State, 147 Ga. App. 502, 503 (1978), "[t]he lack of personal service invalidate[s] the legal force and effect of

the subpoena." Plaintiff contends the Subpoena was delivered to District Attorney Willis's front desk, however, according to the staff of the District Attorney, the subpoena was not delivered to the front desk of the District Attorney's Office and was not received by District Attorney Willis personally. (Plaintiff's Motion to Enforce Subpoena of DA p. 3 and Exhibit "G"). Said exhibits also states that it could have been delivered to the mailroom, also there is no address specified in the address portion of the certified mail receipt. (*Id.)* The District Attorney Fani T. Willis was already out of town when the Subpoena was delivered to her office. It should be strongly noted that Subpoenas are very different from lawsuits. Thus, absent express consent, legal counsel for District Attorney Fani T. Willis or a member of her office would not be able to accept a subpoena on District Attorney Fani T. Willis's behalf. Please note that the August 2nd subpoena that was served on District Attorney Fani T. Willis was a subpoena for a production of documents and not a Witness subpoena. (Plaintiff's Motion to Enforce Subpoena, Exhibit "C"). A Business Records Certification was submitted by District Attorney Fani T. Willis. (Fani Willis Business Records Certification). Thus, District Attorney Fani T. Willis should be released from the August 2nd subpoena. Therefore, because the Plaintiff has not properly served District Attorney Fani T. Willis with the September 13th subpoena, Plaintiff's subpoena directed to District Attorney Willis is invalid and must be quashed.

II. The Court Should Quash The Subpoena Because District Attorney Willis Had No Personal Involvement In The Open Records Requests Before This Court And Is Out Of The Jurisdiction.

In addition to the invalid service, the subpoenas should be quashed because District Attorney Willis has no personal information material or documents relevant to the open records matter currently pending before this Court. It is within the inherent authority of this Court to control the proceedings before it. Although O.C.G.A. § 24-13-20 et seq. allows a party to issue

subpoenas for the production of witness and documents, it is axiomatic that the witness to be subpoenaed must have material information relevant to the matter before the Court. District Attorney Willis does not. This Court, in its discretion, can quash or modify any subpoena if it finds that subpoena to be unreasonable and oppressive. Here, the subpoena is unreasonable and oppressive because it seeks information that District Attorney Willis has no direct knowledge of and District Attorney Willis is out of the jurisdiction has not been legally served.

III. The Subpoena Is Harassing And Oppressive And The Records Custodian Can Testify To The Underlying Open Records Request.

The subpoena issued to District Attorney Willis is harassing because it does not set forth the subject matter about which she is expected to testify. Furthermore, because District Attorney Willis has no relevant evidence regarding the underlying issues in these cases, making this subpoena unreasonable and oppressive. This Court should use its discretion to quash or modify subpoenas that are unreasonable and oppressive. Washburn v. Sardi's Restaurants, 191 Ga. App. 307, 310 (1989). This standard is tested by the peculiar facts arising from the subpoena itself and other proper sources. Id., (citing Aycock v. Household Fin. Co., 142 Ga. App. 207, 210 (1977)). Here, the Plaintiff did not present any peculiar facts in the subpoenas. There is in fact another source that can provide the facts the Plaintiff seeks to present regarding the underlying open records requests – the Records Custodian for the Fulton County Office of the Fulton County District Attorney.

Courts have not hesitated to quash a subpoena. As stated in Young v. Jones, 149 Ga. App. 819, 824 (1979):

> The trial court does have a wide discretion in the entering of orders permitting or preventing the use of interrogatories or taking of depositions for discovery which are oppressive, unreasonable, unduly burdensome or expensive, harassing, harsh, insulting, annoying, embarrassing, incriminating or directed to wholly irrelevant and immaterial or privileged matters, or as to matter concerning which full information is already at hand.

"When a motion to quash is filed, the party serving the subpoena has the initial burden of showing the [testimony is] relevant." Bazemore v. The State, 244 Ga. App. 460, 460 (2000); see also O.C.G.A. § 24-4-402. District Attorney Willis does not have any personal information relevant to the underlying facts this open records case as she is not involved in open records matters and has designated a custodian of record that can testify. Therefore, this Court should quash the subpoena, and excuse District Attorney Willis from testifying in this case.

CONCLUSION

The subpoena issued to District Attorney Willis has been issued solely for the purpose of harassment, embarrassment, and intimidation of District Attorney Willis and her staff by the legal counsel for criminal defendants who have an open criminal case in the Atlanta Judicial Circuit. The subpoena issued to District Attorney Willis is not calculated to lead to any evidence material to Plaintiff's underlying open records request; and there are other sources with direct knowledge available to Plaintiff. Accordingly, the subpoena for District Attorney Willis should be quashed.

Respectfully submitted this 18th day of September 2024.

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CERTIFICATE OF SERVICE OF EMERGENCY MOTION TO QUASH SUBPOENA FOR DISTRICT ATTORNEY FANI T. WILLIS

The undersigned counsel certifies that the foregoing pleading was served upon counsel of record by electronic mail with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

This 18th day of September, 2024.

OFFICE OF THE COUNTY ATTORNEY

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