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Trump Bid To Avoid Ga. Indictment Goes To Retired Judge

By **Rosie Manins**

Law360 (July 24, 2023, 2:33 PM EDT) -- A retired trial court judge from Georgia's Cobb County was appointed Monday to oversee Donald Trump's latest effort to avoid indictment in the Peach State.

Cobb County Superior Court Senior Judge J. Stephen Schuster was appointed by the administrative judge of Georgia's Seventh Judicial Administrative District, Judge D. Scott Smith.

Judge Smith told Law360 he understands that Judge Schuster will hear Trump's case in Fulton County Superior Court in Atlanta, where it was filed.

All superior court judges in Fulton County were **recused** from the case, which seeks to end the investigation of Trump's possible criminal interference in Georgia's 2020 general election.

Trump brought his case against Fulton County District Attorney Fani T. Willis, who **launched** the investigation in early 2021, and Fulton County Superior Court Judge Robert C.I. McBurney, who oversaw an associated special purpose grand jury proceeding that produced **a report** and recommended indictment.

Trump wants Willis disqualified and the report quashed. He also doesn't want any evidence obtained through the special purpose grand jury proceeding to be presented to a regular grand jury.

Willis revealed in April that she expected to make **"charging decisions"** during the Fulton County Superior Court's term between July 11 and Sept. 1.

Legal experts following Trump's petition against Willis and Judge McBurney told Law360 it has no chance of succeeding.

"Procedurally flawed is a kind way to put it," Georgia State University College of Law professor Clark D. Cunningham said Monday. "It has zero legal merit."

Former Assistant U.S. Attorney Kevin J. O'Brien, a New York-based partner at Ford O'Brien Landy LLP who specializes in white collar defense, said Trump's case "sounds frivolous."

O'Brien, who is not involved in the case, said the former president has undertaken a "useless motion practice" associated with Willis' investigation.

"It's just an attempt to throw a roadblock," O'Brien said Monday. "Defense lawyers do this. It's part of the job, frankly. You often don't have much to work with so you just throw up a bunch of stuff and hope that something sticks."

Trump first filed a motion before Judge McBurney in March, asking that Willis be **disqualified** from the election investigation and that the special purpose grand jury's report be thrown out. He attacked Judge McBurney's participation and asked for another judge of the Fulton County Superior Court to decide the motion.

The motion remains **pending** before Judge McBurney.

In mid-July, days after a regular grand jury convened in Atlanta as part of Willis' investigation, Trump

filed almost **identical petitions** in the Georgia Supreme Court and the Fulton County Superior Court. He again asked for Willis' disqualification and for the report to be scrapped, and that no evidence obtained through the special purpose grand jury proceedings be presented to a regular grand jury.

On July 17, the Georgia Supreme Court **rejected** Trump's petition, suggesting in a footnote that the appropriate way for him to get Judge McBurney to rule on his March motion would be to file a separate petition seeking that relief against Judge McBurney in the Fulton County Superior Court.

Instead, Trump's counsel — Drew Findling and Marissa Goldberg of Findling Law Firm and Jennifer L. Little of Jennifer Little Law LLC — filed an **amended petition** in the Fulton County Superior Court on July 20.

The 650-page petition, of which all but 10 pages are exhibits, alleged new information about Willis' campaign to stay in office, based on a possible Trump indictment, but otherwise sought the same relief.

Cunningham, who is also not involved in the case, said the fact that Trump's lawyers didn't take the advice of the Georgia Supreme Court and ask Judge McBurney to rule on his March motion "just takes your breath away."

"Mr. Findling, for someone who brands himself as the 'billion-dollar lawyer,' so far has not shown that he is a master of Georgia court procedure," he said. "It's just astonishing how much these pleadings fail to comply with the proper procedures in Georgia."

O'Brien said it might not be good form for Willis to seek reelection funds by bragging about her investigation, but such conduct is unlikely to get her disqualified.

"So what?" he said. "She's an elected official and she's allowed to do that. [Trump] made the same claim in New York against the New York attorney general."

Cunningham said Trump's lawyers may have done the former president a disservice by seeking the Georgia Supreme Court's early intervention. He said the court "went out of its way" after ruling on the procedural issues to shoot down Trump's arguments against the special purpose grand jury proceeding and resulting report.

"The Georgia Supreme Court has already spoken as to whether he's entitled to suppress the special grand jury report, and whether he's entitled to prevent a regular grand jury from considering it," Cunningham said.

The law professor said all of Trump's arguments against the Georgia election probe can be raised "if and when he's indicted," noting that Trump can only speculate that he will be indicted in Georgia.

O'Brien said Willis seemed to be dragging out the indictment process, risking a spanner in the works.

"To paraphrase what a wise lawyer I once worked with said, criminal investigations — unlike wine — don't get better with age, so strike while the iron is hot," he said.

Trump's counsel, Judge McBurney and Willis' office did not immediately respond Monday to questions about the case.

Trump is represented by Drew Findling and Marissa Goldberg of Findling Law Firm and Jennifer L. Little of Jennifer Little Law LLC.

Counsel information for Willis and Judge McBurney was not immediately available.

The case is Trump v. Willis et al., case number 2023CV382670, in the Superior Court of Fulton County, Georgia.

--Additional reporting by Madeline Lyskawa, Hailey Konnath and Kelcey Caulder. Editing by Adam LoBelia.

Update: This story has been updated with commentary from legal experts.

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