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Willis Tryst Claims A 'Big PR Headache' In Trump Prosecution

By **Chris Villani**

Law360 (January 10, 2024, 5:28 PM EST) -- The explosive and unsubstantiated allegations by a Donald Trump co-defendant that Fulton County District Attorney Fani Willis is having a "clandestine" relationship with the special prosecutor in the election interference case in Georgia could lead to Willis' team being booted, experts told Law360, even as they cautioned to wait for all the facts to come out.

Michael Roman, a onetime campaign official for the former president and current Republican frontrunner, **claimed in a Monday filing** that Willis and Nathan Wade, whom she appointed as special prosecutor in the case, have been seeing each other while Wade's divorce plays out under seal in another county.

The motion was replete with allegations, but short on evidence, and said Wade has been paid a six-figure sum for his work on the sprawling election case while having a secret relationship with Willis. Wade has purchased tickets for him and Willis to go on cruises, the filing claimed, and the pair have lived and traveled together.

"I think it could be a big deal, but there seems to be more heat than fire at this point," said R. Michael Cassidy, a prosecutorial ethics expert at Boston College Law School.

"If this is true, it shows poor judgment on her part," Cassidy said of Willis. "She should have hired somebody else as a special prosecutor. But it really depends on whether it's true."

Willis has not denied the allegations and representatives for her office have said they will respond in court. The office did not respond to a comment request Wednesday, but media reports said Willis has been subpoenaed to testify in Wade's divorce case.

The attorney who filed Roman's motion, Ashleigh Merchant of The Merchant Law Firm PC, also did not respond to comment requests Wednesday. She told Law360 on Monday that she wanted to attach more to her filing but could not because Wade's divorce proceedings are under seal.

Merchant argued in her motion that the indictment against her client should be dismissed, but Clark Cunningham, the W. Lee Burge Chair of Law and Ethics at Georgia State University College of Law, said the most favorable outcome to Roman, Trump and the other defendants would be if Fulton County Superior Court Judge Scott McAfee disqualified Willis.

Under Georgia law, Clark said, if the district attorney is disqualified, everyone in the office is disqualified along with her.

"That would put a halt to the forward movement of the case until an acting special prosecutor could be appointed," Clark said.

It is unclear where the case could land, but the task of reassigning the prosecution would fall to the attorney general, Republican Chris Carr. Carr recently signed on to an effort to keep Trump on the Colorado ballot after the Colorado Supreme Court ruled that the insurrection clause of the 14th Amendment precluded his running for office.

Experts have said that slowing down the legal process could be beneficial to Trump, as polls show a significant number of voters, including his own supporters, might be less likely to back him if he is convicted of a crime.

Willis had hoped to put the case before a jury beginning in August and has said publicly that a trial would **likely not wrap up** before the 2024 general election.

Cunningham noted that Willis has been disqualified from investigating one Republican tied to the efforts to flip Georgia to Trump, Georgia Sen. Burt Jones. Willis headlined a fundraiser last November for Jones' Democratic rival in the race to become the state's lieutenant governor.

The case that sets the standard for disqualification in Georgia is the Georgia Supreme Court's 2014 ruling in [McLaughlin v. Payne](#). In that case, the victim was friends with the district attorney's daughter, raising the argument that the district attorney had a personal stake in securing a conviction.

"Arguably, that's why Burt Jones won his motion, but there the facts were not undisputed. Fani Willis had publicly endorsed someone who went on to be the political opponent of Burt Jones," Cunningham said. "How do these allegations, even if they are true, show that DA Willis has a personal interest or stake in Mr. Roman's conviction? The motion doesn't seem to make that very clear to me."

Experts stressed that the allegations must be backed up in some way. Roman's motion lists disqualification for Willis and her team as an alternative remedy and first asks Judge McAfee to dismiss the indictment.

Jan Jacobowitz, a legal ethics expert at the University of Miami School of Law, said the idea of tossing the case is a stretch.

"If they have enough evidence to move forward, then the fact that there's a potential conflict of interest because maybe she should not have picked her boyfriend — if he is her boyfriend — I am struggling to see how that is grounds to get the whole thing dismissed," Jacobowitz said.

"Maybe it's an optics problem, or a problem internally in the district attorney's office," Jacobowitz added. But if Wade is a qualified prosecutor, she said, "there is an argument to be made that looks like, 'so what?'"

Roman's motion argued Wade is unqualified due to the complexity of the racketeering case, which began with 19 defendants, including the former president, and has 15 still fighting the charges. Cunningham noted that it might be hard for Roman to show he has been negatively affected by having to go up against a prosecutor the defendant himself claims is ill-suited to the task.

Boston College's Cassidy speculated that even if Roman cannot fully flesh out his claims, he may have sowed enough doubt in the Legislature or in the mind of the attorney general to take the prosecution away from Willis. Though he said he did not think the motion would ultimately succeed, that may not be necessary for Roman to accomplish his goal in a case that Trump has repeatedly blasted as unfair and partisan.

"This is part of the Trump team's playbook," Cassidy said. "I am not sure that winning this motion is really necessary. They have already cast doubt on the fairness and objectivity of the prosecution in the public's mind."

Peter Joy, a legal ethics expert at Washington University School of Law in St. Louis, said he did not see the alleged relationship between Willis and Wade as having tainted the entire prosecution, but a different prosecutor having to take the reins is not out of the question.

Citing a 1989 ruling from the Seventh Circuit that found the disqualification of a prosecutor is subject to an interlocutory appeal, Joy wondered whether Roman might have a chance to make his case to an appellate panel prior to going before a jury.

"If there is something defective in the special prosecutor's appointment, is it fair to put the defendant through a trial before you give them the right to raise the issue?" Joy said, while noting that it can be a tall order to get a court of appeals to take a case before there is a final disposition.

But the first move will belong to Judge McAfee, Joy said, and Willis' job of prosecuting the former president has not gotten any easier.

"Whether it becomes a headache in terms of the case is going to depend on what the trial judge does," Joy said. "But, until there is a decision from the trial court, this is a big PR headache for the prosecution."

--Editing by Robert Rudinger.

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