IN THE COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

IN RE:	)	**CASE NO.**
BRIAN STEEL,	)	
Movant.	)	

EMERGENCY MOTION FOR SUPERSEDEAS BOND ON CRIMINAL CONTEMPT

COMES NOW Movant, Brian Steel [hereinafter Mr. Steel], by and through undersigned counsel, and files this Emergency Motion for Supersedeas Bond on Criminal Contempt pursuant to Court of Appeals Rule 40(b).[1] In support of this Emergency Motion, Mr. Steel shows the following:

1.

Mr. Steel is lead counsel of record for Jeffery Williams in State of Georgia v. Jeffery Williams et al., Indictment Number 22SC183572, a sixty-five (65) count RICO indictment charging 28 individuals. The jury trial of multiple defendants commenced in November, 2023 before Fulton County Superior Court Judge Ural Glanville. The trial is expected to last through the end of the 2024 calendar year.

2.

On Monday, June 10, 2024, the trial judge, along with the state prosecutors,

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[1] Pursuant to Rule 40(b)(1), Mr. Steel is setting forth below his explanation for why an order of this Court is necessary and why the action and relief requested are time sensitive.

engaged in an ex parte hearing with a sworn witness (Kenneth Copeland) for whom an Order of Immunity from state prosecution had been issued. No notice of an ex parte meeting involving the state and the sworn, testifying witness was provided to any attorneys for any of the defendants in the case. The witness had previously been called to testify on Friday, June 7, 2024, asserted his fifth amendment privilege in open court at that time, and was held in contempt and summarily incarcerated until such time as he agreed to testify for the state pursuant to the grant of immunity. Judge Glanville and the prosecutors admitted in open court that an ex parte meeting occurred on the morning of June 10, 2024.[2]

3.

When trial reconvened on June 10, 2024, Mr. Steel informed the court that he and others had learned, based upon information and belief, that an ex parte meeting with the sworn witness (Kenneth Copeland) occurred earlier in the day. Mr. Steel proffered his understanding that the witness had made factual admissions to criminal conduct which the state intended to use against Mr. Steel's client in its case in chief and that statements were made to the witness about the amount of time he could be held in custody on the contempt. After the Court acknowledged the fact that the

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[2] A transcript of the relevant proceedings on June 10, 2024 has been ordered from the court reporter. A video recording of the entire June 10, 2024 trial proceedings can be accessed online at https://www.youtube.com/watch?v=86KY3agxE2I.

meeting had occurred, Mr. Steel demanded information regarding the meeting, including the names of everyone who was present, requested a transcript of the proceedings and made a motion for mistrial on the grounds that an improper ex parte hearing[3] was conducted with the sworn witness (Kenneth Copeland), which violated

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[3] Uniform Superior Court Rule 4.1 and Ga. Code of Judicial Conduct 2.9 delineate rules governing ex parte communications.

Uniform Superior Court Rule 4.1 generally prohibits ex parte communications: "Except as authorized by law or by rule, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding." Ex parte hearings are only authorized in the case of extraordinary matters such as temporary restraining orders and temporary injunctions. "In other judicial hearings, both parties should be notified of the hearing with an opportunity of attending and voicing any objection that may be properly registered. "City of Pendergrass v. Skelton, 278 Ga. App. 37, 39, 628 S.E.2d 136 (2006); Anderson v. Fulton Nat'l Bank, 146 Ga. App. 155, 156, 245 SE2d 860 (1978).

Ga. Code of Judicial Conduct 2.9 - Assuring Fair Hearings and Averting Ex Parte Communications provides:

> (A) Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. Judges shall not initiate, permit, or consider ex parte communications, or consider other communications made to them outside the presence of the parties, or their lawyers, concerning a pending proceeding or impending matter, subject to the following exceptions.
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> (1) Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided that:
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> (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
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> (b) the judge makes provision promptly to notify all other parties of the substance of

Mr. Williams' constitutional and statutory rights, including the right to due process and a fair trial.

4.

The trial court rejected Mr. Steel's substantive requests for information about the ex parte meeting and the court denied Mr. Steel's motion for a mistrial, however the court instead demanded to know how Mr. Steel came into possession of the information about the ex parte meeting.

> the ex parte communication, and gives the parties an opportunity to respond.
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> (2) Judges may obtain the advice of a disinterested expert on the law applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.
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> (3) Judges may consult with court staff and court officials whose functions are to aid in carrying out adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.
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> (4) Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle pending proceedings.
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> (5) Judges may initiate, permit, or consider ex parte communications when authorized by law to do so, such as when issuing temporary protective orders, arrest warrants, or search warrants, or when serving on therapeutic, problem-solving, or accountability courts, including drugs courts, mental health courts, and veterans' courts.

5.

Citing State of Georgia Bar Rule 1.6, Confidentiality of Information, Mr. Steel declined to provide that information requested by the Court. Rule 1.6 states, in pertinent part, that:

> (a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the court.

6.

Comment 5 to Rule 1.6 specifically states:

> The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. **The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. Rule 1.6 applies not merely to matters communicated in confidence by the client but also to all information gained in the professional relationship, whatever its source. A lawyer may not disclose such information except as authorized or required by the Georgia Rules of Professional Conduct or other law.** See also Scope. The requirement of maintaining confidentiality of information gained in the professional relationship applies to government lawyers who may disagree

with the client's policy goals. (Emphasis added)

7.

The court repeatedly demanded that Mr. Steel reveal the source of the information, claiming that the way that Mr. Steel obtained that information was "unlawful," and baselessly accused Mr. Steel on the record of potentially acquiring the information through "eavesdropping," In response to the accusations and the demands of the court, Mr. Steel relied on the ethical mandates of Rule 1.6 and the fifth amendment right to remain silent when accused of a crime and declined to provide the source of information which had been proffered.

8.

The court held Mr. Steel in criminal contempt for refusal to provide the source of the information regarding the ex parte meeting and the court ordered that Mr. Steel be taken into custody until such time as he revealed the source of the information about the ex parte meeting. The court did not enter a written order at that time. The court thereafter permitted Mr. Steel to participate in trial for the balance of the day but but indicated that at the close of business it would again address the contempt matter and demand that Mr. Steel reveal the source of the information regarding the ex parte meeting.

9.

At the end of the trial day, the court again took up the issue of the contempt and

demanded that Mr. Steel reveal from whom he learned about the ex parte meeting with the sworn witness (Kenneth Copeland). Mr. Steel again declined to disclose this information, citing the relevant privilege(s). The court reiterated that it was holding Mr. Steel in criminal contempt and that he could only purge himself of the contempt by informing the court from where he obtained "information that he shouldn't have had."

10.

Mr. Steel informed the court that members of the Georgia Association of Criminal Defense Lawyers were outside the courtroom, seeking to represent Mr. Steel. Undersigned counsel, attorneys Merchant and Susor, were ultimately permitted to enter to represent Mr. Steel but only after the court had already recommenced further discussion of the contempt issue with Mr. Steel without his legal representation beside him.

11.

Following argument on the issue of contempt, the court issued a written Order of Contempt and Incarceration for Brian Steel, finding him in direct criminal contempt and imposing a sentence of incarceration for twenty (20) days. (See attached Order of Contempt and Incarceration for Brian Steel). The trial court ordered that Mr. Steel was to begin serving this sentence at 7:00 p.m. this Friday, June 14, 2024, which necessitates the instant emergency motion.

12.

The appeal that will follow will address three issues: First, whether the court abused its authority in presiding over the very contempt hearing that was born of allegations that the court itself had violated the rules governing ex parte communications; Second, whether the court denied Mr. Steel's due process rights during the conduct of that hearing; and Third, whether the court abused its authority in holding Mr. Steel in contempt for refusing to divulge privileged information and for protecting his client's constitutional rights to due process and effective assistance of counsel.

13.

Regarding the first issue, the court had a duty to recuse from presiding over the contempt proceeding. In such proceedings where the announcement of punishment is delayed, and where the contumacious conduct was directed toward the judge or where the judge reacted to the contumacious conduct in such manner as to become involved in the controversy, the judge may give the attorney notice of specific charges, but the hearing, including the attorney's opportunity to be heard, must be conducted by another judge. In re Schoolcraft, 274 Ga. App. 271, 271, 617 S.E.2d 241 (2005) (emphasis added). Here, the court involved itself in these proceedings by conducting the ex parte hearing that violated Mr. Steel's client's rights. This created a conflict of interest for the court because its own ethical conduct was at the

heart of Mr. Steel's request. The court then compounded its abuse of power by presiding over the very contempt hearing where its own rules violations prompted the controversy. The court should have recused and allowed the contempt proceedings to be handled by a separate court.

14.

As to the second issue, referenced above, the court denied Mr. Steel his due process rights as Mr. Steel has a right to adequate notice and to be heard, to call witnesses at a hearing, and to be represented by counsel for the entirety of the contempt proceeding.

15.

As to the third issue, referenced above, an attorney may only be held in contempt for statements made during courtroom proceedings after the court has found (1) that the attorney's statements and attendant conduct either actually interfered with or posed an imminent threat of interfering with the administration of justice; and (2) that the attorney knew or should have known that the statements and attendant conduct exceeded the outermost bounds of permissible advocacy. Because contempt is a crime, the evidence must, of course, support these findings beyond a reasonable doubt. In re Jefferson, 283 Ga. 216, 220 (2008); In re Burton, 271 Ga. 491(3), 521 S.E.2d 568 (1999).

16.

When addressing contempt matters, any doubts must be "resolved in favor of vigorous advocacy." In re Jefferson, 283 Ga. at 220. The Supreme Court has emphasized that "courts must be judicious in their approach to adjudicating contempt" precisely because "vigorous advocacy is essential not only to the preservation of individual rights but also to the integrity of the judicial system whose truth-seeking process is sought to be protected through the exercise of the contempt power." Id. at 221. Accordingly, "the court should always assess whether there are other correctives sufficient to address the problematic conduct in question." Id. Therefore, "trial judges must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice." Id. (quotation omitted).

17.

Mr. Steel's statements and conduct did not interfere with or pose an imminent threat to the preservation of order and decorum in the court or interfere with the orderly processes of the administration of justice, as evidenced by the fact that the Court was able to continue the trial after its initial oral pronouncement holding Mr. Steel in contempt. Further, Mr. Steel's refusal to disclose the name of the individual(s) who informed him of the ex parte meeting, which he argued would constitute a direct violation of his duty of confidentiality imposed by Rule 1.6, in no

way delayed or impacted the underlying trial. Moreover, any doubt must be resolved in favor of Mr. Steel's vigorous advocacy on behalf of his client, especially when he was raising serious concerns about the court's involvement in an ex parte contact with a sworn witness.

18.

A Notice of Appeal and a Motion for a Supersedeas Bond have been filed in the trial court, and the court orally ruled that it would not grant a bond. Pursuant to Rule 40(b)(2) and (3), a stamped "filed" copy of the trial court's order finding Mr. Steel in contempt is attached hereto as Exhibit "A", and a stamped filed copy of Mr. Steel's Notice of Appeal is attached hereto as Exhibit "B". Pursuant to Rule 40(b)(4), Mr. Steel shows that service is being perfected upon the State of Georgia and the trial court contemporaneously with the filing of the instant motion. Finally, pursuant to Rule 40(b)(5), the instant filing is being accompanied by the filing fee, as required under Rule 5.

WHEREFORE, Mr. Steel files this Emergency Motion for Bond and asks that this Court order that a Supersedeas Bond be granted pending the appeal of this contempt finding and that the imposition of the sentence be stayed.