

# [***What to know about judge's ruling allowing Fani Willis to stay on Trump's Georgia election case***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BJN-WWJ1-DYMD-61B5-00000-00&context=1516831)

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**Body**

ATLANTA — Fulton County District Attorney Fani Willis can prosecute [*Donald Trump on charges that he interfered with Georgia's 2020 election*](https://apnews.com/article/trump-georgia-election-investigation-grand-jury-willis-d39562cedfc60d64948708de1b011ed3) now that a special prosecutor with whom she had a [*romantic relationship*](https://apnews.com/article/trump-willis-wade-georgia-election-5d76abb5578308317306e7b2e610ac91) has withdrawn from the case.

But the long-term impacts of allegations of impropriety that have roiled the case for weeks remain to be seen, with Trump and his allies certain to continue to attack the legitimacy of the prosecution against the former president and 18 others.

Fulton County Superior Court Judge Scott McAfee ruled Friday that Willis could stay if special prosecutor Nathan Wade left. That was a partial victory for Willis, whom defense attorneys had pushed to have removed from the case over her relationship Wade.

But the judge also rebuked Willis for her “tremendous” lapse in judgment and questioned the truthfulness of Wade's and her testimony about the timing of their relationship.

It's an extraordinary decision in a case that in recent weeks has taken on a soap opera atmosphere as the prosecutors who pledged to hold Trump accountable had their own personal lives thrust into the spotlight.

Here are some major takeaways from the judge's ruling:

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**THE JUDGE PUT THE BALL IN WILLIS' COURT**

The judge's ruling threw it to Willis to decide whether she — and her entire office — would step aside or whether Wade would withdraw from the case. The judge said the prosecution couldn't move forward until one of those two actions was taken.

Several hours after the ruling came down, Wade offered his resignation and Willis accepted it.

If Willis had instead opted to step aside, the case would have been referred to the Prosecuting Attorneys’ Council — a nonpartisan association of Georgia district attorneys — to be assigned to a different prosecutor.

That could have upended the entire prosecution. Another prosecutor could have continued on the track that Willis has taken, could have chosen to pursue only some charges or could have dropped the case altogether.

**FINANCIAL CONCERNS**

The defense attorney who first revealed the romantic relationship, Ashleigh Merchant, alleged that Willis paid Wade large sums for his work and then improperly benefited from the prosecution of the case when Wade used his earnings to pay for vacations for the two of them.

Willis and Wade argued that the district attorney received no financial benefit from the relationship and that she either paid for things herself or used cash to reimburse Wade for travel expenses.

Judge McAfee called it “concerning” that there were no documents to corroborate Willis' claim that she paid Wade back. But he said Willis' testimony “withstood direct contradiction” and was corroborated by other evidence, including her purchase of a flight for two in 2022. That led the judge to conclude that the claim “was not so incredible as to be inherently unbelievable.”

The judge said there was no way no know for sure that Willis and Wade's expenses were split evenly — and Willis “may well have received a net benefit of several hundred dollars.” But, McAfee said the defendants didn't provide sufficient evidence to prove that Willis financially benefited from hiring Wade.

Furthermore, McAfee concluded that enriching herself through her relationship with Wade was not a motivating factor in Willis' decision to bring the case.

The judge noted that Willis was not “financially destitute throughout this time or in any great need,” but was making more than $200,000 per year. He also said there was no indication she was trying to prolong the case to rake in more money, noting that prosecutors had initially wanted the case to go to trial less than six months after they brought the indictment.

**WILLIS’ PUBLIC STATEMENTS**

Attorneys for Trump and others said Willis’ public statements about the case veered into the realm of misconduct, saying she expressed her belief in the guilt of the defendants.

McAfee noted that he had to consider whether the remarks were “part of a calculated plan” to prejudice the defendants in the minds of future jurors. He said the comments must be “egregiously” improper to justify disqualification.

The judge found that statements Willis made describing the charges in the indictment, her office’s conviction rates and personal anecdotes were not disqualifying. That extended to her “unorthodox decision” to speak on the record to authors of a book about the special grand jury investigation that preceded the indictment, he wrote.

A speech she gave at a historic Black church in Atlanta less than a week after the allegations of her relationship with Wade surfaced was a different matter, the judge wrote. Willis complained in those remarks that people had questioned her decision to hire Wade and questioned his qualifications, seeming to suggest the criticism arose from the fact that she and Wade are Black.

McAfee noted that the speech did not mention any defendant by name and did not address the merits of the charges in the case or disclose any sensitive or confidential evidence. He said he didn’t find that it crossed the line to the point that the defendants couldn’t have a fair trial.

“But it was still legally improper,” he wrote. “Providing this type of public comment creates dangerous waters for the District Attorney to wade further into.”

He noted that it may well be time for an order preventing prosecutors from mentioning a case in public to prevent prejudicial pretrial publicity, but he said that was not the issue currently before him.

McAfee has recently made his own public statements about the case.

He said in an interview on WSB Radio last week that he’d had a rough draft of his ruling ready before he knew that anyone planned to challenge him in a May election and that “the result is not going to change because of ***politics***.” When a WSB-TV reporter snagged him on the sidelines of a Rotary Club lunch Thursday, McAfee said the ruling would be out Friday and that “no ruling of mine is ever going to be based on ***politics***.”

McAfee was appointed to his seat by Georgia's Republican governor and faces two challengers in a May election. The race is nonpartisan, but Fulton County is a Democratic stronghold.

**LACK OF CANDOR**

Wade was questioned on the stand about statements he had made in his divorce case that he hadn’t been romantically involved with anyone other than his wife during their marriage. His “patently unpersuasive explanation” for those inaccuracies “indicates a willingness on his part to wrongly conceal his relationship with the District Attorney,” McAfee wrote.

McAfee also found himself unable to determine the answer to a central question in the evidentiary hearing: whether Willis and Wade began their romantic relationship before she hired him. Neither side provided sufficient evidence to make a conclusive determination, he wrote.

But he said, “an odor of mendacity remains.” He wrote that “reasonable questions” about whether Willis and Wade testified truthfully about that timing “further underpin the finding of an appearance of impropriety and the need to make proportional efforts to cure it.”

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Richer reported from Boston.

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