

CONFIDENTIAL

TO: City of Alpharetta
FROM: Randolph G. Rich
RE: In the Matter of Former Judge Barry Zimmerman
DATE: September 12, 2022

In early July 2022, I was contacted by the City of Alpharetta to investigate circumstances surrounding former Alpharetta Municipal Court Judge Barry Zimmerman's recent resignation. A few days following Judge Zimmerman's resignation, the City became aware of a Judicial Qualifications Commission (hereinafter "JQC") investigation into Judge Zimmerman. The resignation was part of a Consent Order entered into by Judge Zimmerman and the JQC, which Consent Order was later entered as an Order of the Georgia Supreme Court.

Specifically, the City requested I determine:

- 1) What events led to the JQC investigation of Judge Zimmerman and his ultimate resignation;
- 2) Whether parties other than Judge Zimmerman were involved in any wrongful activity;
- 3) Whether the City can access the content Judge Zimmerman deleted from his City-issued I-Pad and laptop; and
- 4) Whether there was any criminal conduct.

JQC Investigation

The Consent Order is vague on details, but addresses the following allegations against Judge Zimmerman:

- 1) That he improperly acted as a defense attorney in several cases in the Municipal Court of Alpharetta while he also served as a Judge on the same court;
- 2) That he improperly took judicial action in several cases in the Municipal Court of Alpharetta; and
- 3) That he represented the Municipal Court Solicitor in legal matters unrelated to the Municipal Court.

Because the activities of the JQC are confidential, I submitted a request to Deputy Director Courtney Veal to review the file pertaining to Judge Zimmerman. The JQC Investigative Panel that conducted the investigation held a meeting and voted on whether and what to disclose in response to my request. As a result, the JQC produced a digital file that contained court documents from six Municipal Court of Alpharetta cases and a Witness Statement from attorney Keith F. Brandon. The JQC specifically withheld their conclusions, work product, and any documents that contained impressions of the Investigative Panel members.

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Consent Order Allegations 1 and 2

Allegations 1 and 2 of the Consent Order are related. The JQC theory appears to be as follows: Judge Zimmerman, who was, at all times relevant hereto, also a practicing attorney, would represent criminal defendants appearing before the Municipal Court of Alpharetta. Instead of removing the case from the Municipal Court of Alpharetta to the State Court of Fulton County, Judge Zimmerman would negotiate the case with Solicitor Fran McQueen (formerly Solicitor Fran Shoenthal), use attorney Keith F. Brandon as a “straw man” defense attorney on a Plea in Abstentia, and then have another Judge for the Municipal Court of Alpharetta sign the Orders. In a case disposed of via a Plea in Abstentia, neither the criminal defendant nor his lawyer is required to appear in person; the matter is resolved and closed on the written pleadings. At all times relevant hereto, attorney Keith F. Brandon shared office space with Judge Zimmerman and was a tenant of Judge Zimmerman.

Review of the redacted JQC file reveals that the Investigative Panel suspected Judge Zimmerman of representing Municipal Court of Alpharetta defendants in his capacity as a defense lawyer as early as 2008. In court documents from a 2008 case produced in the JQC file, the name and bar number of the defense lawyer are scratched out, and the name and bar number of defense lawyer Keith F. Brandon are added. There are also written recommendations from Solicitor Shoenthal in this file.

The JQC file contains Pleas in Abstentia from five other Municipal Court of Alpharetta cases. Judge Zimmerman’s name does not appear on any court records in these cases. However, each case contains an Order signed by another City of Alpharetta Court Judge and contains a Plea in Absentia with attorney Keith F. Brandon as the counsel of record. The signatures of Keith F. Brandon on these Pleas in Abstentia appear to be made by the same person, and Keith F. Brandon denies in his JQC statement that it was his signature.

In one of the JQC produced case files, I located a Post-It note signed by “Barry” and dated December 11, 2018 in which Judge Zimmerman requests the Municipal Court of Alpharetta Clerk (“Rita”) have another Judge “sign off on this, finalize it, and leave me the receipt.” (See, Exhibit “A” attached). Attorney Keith F. Brandon’s name is signed on the Plea in Abstentia as the counsel of record *and* as the Notary Public, but the document does not contain a Notary Public seal.

I am not a handwriting expert, but in my lay opinion, the “Dec” on the Post-It note and on the Plea in Abstentia appear to be written in the same handwriting. There are also similarities in the “B” and “a” in the Post It note signed by “Barry” and in the “Keith F. Brandon” signature on the Plea in Abstentia. (See Exhibit “A” attached)(Post-It note and accompanying Plea in Abstentia).

In the Witness Statement he provided the JQC, Keith F. Brandon states that the attorney signatures on these five Pleas in Abstentia are not his, but that he has, in the past, given persons in his office permission to sign his name, as an attorney, to pleadings. He further states that he has never given anyone permission to sign his name as a Notary Public, however, and that it must have been a mistake when this occurred.

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The Municipal Court records produced by the JQC contained phone numbers for defendants in two of the five cases. I attempted to call both, but neither would speak with me. However, one of them did text with me and stated that he hired Judge Zimmerman as his defense attorney in a City of Alpharetta case (See, Exhibit "B" attached)(screen shot of text).

Consent Order Allegation 3

My investigation revealed that Judge Zimmerman did, in fact, represent Solicitor Fran Shoenthal (McQueen) in a personal legal matter unrelated to the Municipal Court of Alpharetta. In 2016, during which time the former Judge Zimmerman was a Judge for the Municipal Court of Alpharetta and Solicitor Shoenthal was the Solicitor for the Municipal Court of Alpharetta, Judge Zimmerman was also the counsel of record for Solicitor Shoenthal in an appellate decision, as reported in Shoenthal v. Shoenthal, 337 Ga. App. 515 (2016)(dispute involved payments from a pension benefit from the Municipal Court Solicitor's ex-husband).

Other Parties' Involvement

I found that in each of the Municipal Court of Alpharetta cases produced by the JQC, two other parties were involved: Solicitor McQueen (Shoenthal) and criminal defense attorney Keith F. Brandon. I did not attempt to interview the former Solicitor Shoenthal due to her involvement in another ongoing legal dispute with the City where she is represented by counsel. I did not attempt to interview attorney Keith Brandon because I was supplied with the Witness Statement he sent to the JQC.

I-Pad and Dell Computer Contents

The City maintains an I-Pad, which was assigned to Judge Zimmerman while he was still employed by the City. Judge Zimmerman erased the I-Pad before he returned it. I investigated whether the information previously contained on the I-Pad could be retrieved and determined this would likely be expensive and a protracted legal battle to pursue.

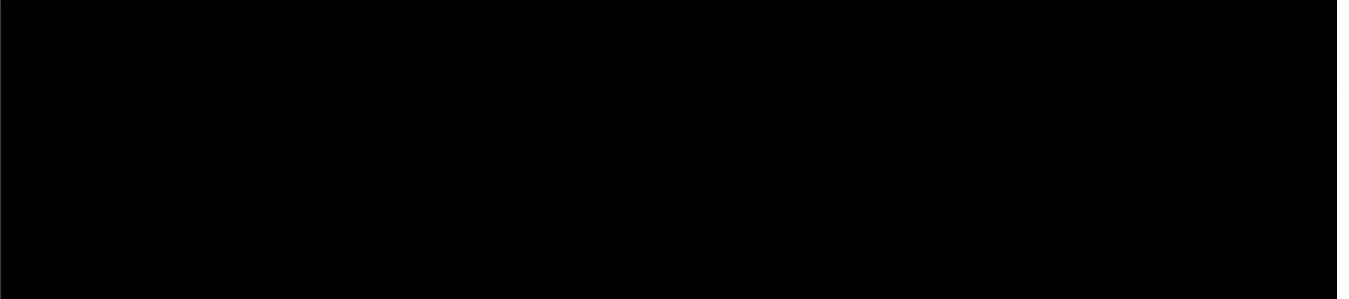
As owner of the I-Pad device, the City could file a complaint against Apple Inc., who would still likely maintain the data under Judge Zimmerman's Apple ID, which he used on the device. Judge Zimmerman would be notified and would likely contest the request to make the I-Pad data available to the City.

[REDACTED] The privacy issues are more complicated because Judge Zimmerman stated to the former Alpharetta City Manager Bob Regus that he kept personal and confidential information on the I-Pad related to clients in his private law practice.

I was provided and reviewed information on the Dell laptop issued to Judge Zimmerman. There was nothing on that laptop, however, likely due to the fact it had been issued to the Judge only one day before his resignation.

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Criminal Activity



Conclusion

In the event the City wants further investigation, it is possible to investigate how widespread this activity had become by searching for all Municipal Court cases where attorney Keith F. Brandon was counsel of record, and, for an even more widespread search, for all cases that were disposed of via a Plea in Abstentia. I am advised by the Municipal Court Clerk's office that, for one calendar year of such a search, it would take 266 hours to generate a list of suspected cases based on the lack of search ability with the current software.

This 12th day of September, 2022

/s/ Randolph G. Rich

Randolph G. Rich

990 Peachtree Industrial Boulevard, No. 663
Suwanee, Georgia 30024
Telephone 404-406-4636
Facsimile 770-904-1921



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COPY

11 Dec 18

Rita -

Can you please
have Lee sign off
on this, finalize it,
and leave me the
receipt?

Thanks,
Barry

EXHIBIT

tabbies®

A

IN THE CITY OF ALPHARETTA MUNICIPAL COURT
STATE OF GEORGIA

STATE OF GEORGIA)
v.)
AUSTIN J. BUBBINGTON,)
Defendant.)
CASE NO. ~~SCR040613~~

PLEA IN ABSENTIA

I, the above-named Defendant, hereby certify that it would be expensive and burdensome for me to travel to dispose of this case. It is my understanding that I have been charged with the above offenses and that my case is scheduled for disposition.

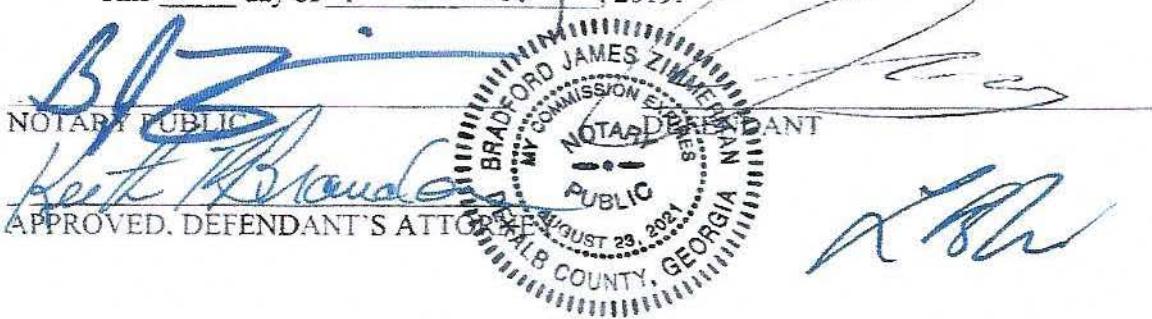
It is my understanding, through my attorney, Keith F. Brandon, that as to the Reckless Driving Charge, the Solicitor will recommend a fine of \$1300.00 (inclusive of all applicable surcharges), 40 hours of community service, completion of a Risk Reduction Course, completion of an Alcohol & Drug Evaluation, and treatment, if necessary, 24 hours to serve CTS/RTS, and a sentence of 11 months 29 days probation, to terminate once the fine is paid and the other conditions have been completed. While it is necessary for me to report to probation, I will be allowed to report by phone or mail. I understand this recommendation is not binding upon the trial judge. I understand that upon conviction of DUI or Reckless Driving, the court can impose a sentence of up to 12 months in jail and a fine of \$1,000.00, or both.

I hereby authorize my attorney to enter a plea of Guilty to the Reckless Driving Charge on my behalf and in my absence to Case No. 18CR040613. I hereby request and consent that my case be disposed of in my absence, and I hereby waive my presence at such trial.

My attorney has fully explained to me the following rights which I understand and which I waive:

1. The right to a trial with or without a jury.
2. The right to confront and cross-examine any witness against me.
3. The right to present witnesses and evidence in my behalf.
4. The right to examine all physical and documentary evidence against me.
5. The right to remain silent.
6. The right to have free counsel appointed to represent me if I am indigent.
7. The right to appeal to a higher court except in certain limited circumstances.
8. The right to require the state to prove its case against me beyond a reasonable doubt.

This 21st day of February, 2019.



Judge Not Bound: I understand that the Judge is not bound by any negotiated or recommended sentence that may have made by the Solicitor. If the Judge does not accept any agreement I may have made with the Solicitor, I will have the right to withdraw my plea and have a trial, either by Judge or Jury.

Probation: I understand that if I am placed on reporting or non-reporting Probation, I cannot violate ANY criminal laws of any governmental unit or ANY conditions of my probation. If I do, I risk having my Probation Revoked and being put in Jail until the end of my Sentence (up to 12 months).

Alien Status: I understand that if I am not a Citizen of the United States of America that a Plea or finding of Nolo Contendere or Guilty may result in deportation, the denial of admission to this country, or the denial of naturalization under Federal Law. There have been no promises made to me by my Defense Attorney, the Prosecutor/Solicitor or the Judge concerning my Right to remain in the United States.

I Swear or Affirm ~ under penalty of Perjury (a Felony Offense) ~ that all of the information contained herein is true and correct.

Signed:  _____

Defendant's Signature

Date: July 29 2008

Defendant's Attorney

Bar Number

Defendant's Parent

Court-Appointed Retained

Solicitor:  _____

Interpreter: _____
Language interpreted: _____

Judge's Findings: As the Judge presiding over this matter, I am satisfied that this Accused person's Plea is freely and voluntarily given; that s/he is sober; appears to be in possession of his/her normal faculties; and is able to understand the nature and consequences of his/her plea.

I have also determined that this Accused understands that s/he has the right to the assistance of an Attorney at this proceeding. Further, s/he now knowingly, voluntarily, and intelligently Waives: (a) all his/her Constitutional Rights enumerated hereinabove, (b) the Right to the Services of an Attorney (unless indicated immediately above), and (c) the Right to a Jury Trial, if indicated. The Court is satisfied that the Accused understands the possible consequences of his/her Plea and based on the record or a knowing Waiver thereof, there has been a Sufficient Factual Basis shown for the acceptance of this Plea.

 _____, Judge

Alpharetta Municipal Court, Fulton County

Revised: 3-29-07

Sentence

Alpharetta Municipal Court
12624 Broadwell Rd.
Alpharetta, GA 30004

Phone #678-297-6250
Fax #678-297-6251
www.alpharetta.ga.us

reckless
Driving

Judges Name: John Boling Case #: 98CL50263
Findings:

Sentence: 12 Days / Months Probation upon the following conditions
Hold / 1 Year Clear

Probation: \$59 ~ \$44 ~ \$29 Reporting fee (circle one)
 Probation unsupervised when all conditions met
 Probation non-reporting when all conditions met
 Probation for the Full 12 Months

Jail Sentence: 83 Hours / Days Jail sentence
to report with _____ Hours / Days to begin immediately
and

Contact Fulton Annex / Alpharetta Jail: 770-410-3429

Conditions: 1000 Fine + s/c for reckless driving Charge = \$ 1300 be released on
merge Fine + s/c for improper lane Charge = \$ or 7/28/08
merge Fine + s/c for Roadway lane traffic Charge = \$ or at 12:00 AM
Fine + s/c for _____ Charge = \$ _____
Fine + s/c for _____ Charge = \$ _____
Time Payments

Defensive Driving - to be completed by:
\$4.00 Hrs / Days Community Service to be completed by
 Drug & Alcohol Risk Reduction Class
 Random Testing
 Counseling for Anger / Drug & Alcohol Abuse / Cognitive Skills
Bar from _____ (Store)
Attend AA Meetings: Weeks / Months
 Evaluation & Treatment (as needed) (done)
 No Alcohol and/or Drugs during Probation
 No other major tickets during Probation
 Interlock Device
 D/L Suspension
 1st Conviction Affidavit
Completion Date

Judge's Signature: John Boling (left column)

Solicitor's Signature: Jan Shaeffer (right column)

Date: 7/24/08 Defendant's Signature: Chris Gray

Attala County Attorney, attorney
Keith Brandon

IN THE CITY OF ALPHARETTA MUNICIPAL COURT
STATE OF GEORGIA

STATE OF GEORGIA)
v.)
ERICA SAMANTHA NGUYEN,)
Defendant.)
CASE NO.: 18CR040119

PLEA IN ABSENTIA

I, the above-named Defendant, hereby certify that it would be expensive and burdensome for me to travel to dispose of this case. It is my understanding that I have been charged with the above offenses and that my case is scheduled for disposition.

It is my understanding, through my attorney, Keith F. Brandon, that as to the Reckless Driving Charge, the Solicitor will recommend a fine of \$1300.00 (inclusive of all applicable surcharges), 40 hours of community service, completion of a Risk Reduction Course, completion of an Alcohol & Drug Evaluation, and treatment, if necessary, 24 hours to serve CTS/RTS, and a sentence of 11 months 29 days probation, to terminate once the fine is paid and the other conditions have been completed. While it is necessary for me to report to probation, I will be allowed to report by phone or mail. I understand this recommendation is not binding upon the trial judge. I understand that upon conviction of DUI or Reckless Driving, the court can impose a sentence of up to 12 months in jail and a fine of \$1,000.00, or both.

I hereby authorize my attorney to enter a plea of Guilty to the Reckless Driving Charge on my behalf and in my absence to Case No. 18CR040119. I hereby request and consent that my case be disposed of in my absence, and I hereby waive my presence at such trial.

My attorney has fully explained to me the following rights which I understand and which I waive:

1. The right to a trial with or without a jury.
2. The right to confront and cross-examine any witness against me.
3. The right to present witnesses and evidence in my behalf.
4. The right to examine all physical and documentary evidence against me.
5. The right to remain silent.
6. The right to have free counsel appointed to represent me if I am indigent.
7. The right to appeal to a higher court except in certain limited circumstances.
8. The right to require the state to prove its case against me beyond a reasonable doubt.

This 6 day of Aug., 2018.

Keith S
NOTARY PUBLIC


DEFENDANT

Keith F. Bruder
APPROVED DEFENDANT'S ATTORNEY

IN THE CITY OF ALPHARETTA MUNICIPAL COURT
STATE OF GEORGIA

STATE OF GEORGIA)

) v.)

) CASE NO.: 18CR020221

, JONAH M. HUFF,)

Defendant.)

PLEA IN ABSENTIA

I, the above-named Defendant, hereby certify that it would be expensive and burdensome for me to travel to dispose of this case. It is my understanding that I have been charged with the above offenses and that my case is scheduled for disposition.

It is my understanding, through my attorney, Keith F. Brandon, that as to the Reckless Driving Charge, the Solicitor will recommend a fine of \$1300.00 (inclusive of all applicable surcharges), 40 hours of community service, completion of a Risk Reduction Course, completion of an Alcohol & Drug Evaluation, and treatment, if necessary, 24 hours to serve CTS/RTS, and a sentence of 11 months 29 days probation, to terminate once the fine is paid and the other conditions have been completed. While it is necessary for me to report to probation, I will be allowed to report by phone or mail. I understand this recommendation is not binding upon the trial judge. I understand that upon conviction of DUI or Reckless Driving, the court can impose a sentence of up to 12 months in jail and a fine of \$1,000.00, or both.

I hereby authorize my attorney to enter a plea of Guilty to the Reckless Driving Charge on my behalf and in my absence to Case No. 18CR020221. I hereby request and consent that my case be disposed of in my absence, and I hereby waive my presence at such trial.

My attorney has fully explained to me the following rights which I understand and which I waive:

1. The right to a trial with or without a jury.
2. The right to confront and cross-examine any witness against me.
3. The right to present witnesses and evidence in my behalf.
4. The right to examine all physical and documentary evidence against me.
5. The right to remain silent.
6. The right to have free counsel appointed to represent me if I am indigent.
7. The right to appeal to a higher court except in certain limited circumstances.
8. The right to require the state to prove its case against me beyond a reasonable doubt.

This 3rd day of APRIL, 2018.

Keith F. Brandon

NOTARY PUBLIC

DEFENDANT

Keith F. Brandon
APPROVED, DEFENDANT'S ATTORNEY

IN THE MUNICIPAL COURT OF ALPHARETTA
STATE OF GEORGIA

STATE OF GEORGIA)
)
 v.) CASE NO.: 18CR090128
)
 JAN P. MCDONALD,)
)
 Defendant.)

PLEA IN ABSENTIA

I, the above-named Defendant, hereby certify that it would be expensive and burdensome for me to travel to dispose of this case. It is my understanding that I have been charged with the above offenses and that my case is scheduled for disposition.

It is my understanding, through my attorney, Keith F. Brandon, that as to the Possession of Marijuana charge, the Solicitor will recommend a Dismissal, with record restriction authorized, upon payment of court fees of \$655.00, and completion of the following: 25 hours of community service, 2 clean drug screens, and an alcohol and drug evaluation. I understand this recommendation is not binding upon the trial judge. I understand that upon conviction of Possession of Marijuana, the court can impose a sentence of up to 12 months in jail and a fine of \$1000.00, or both.

I hereby authorize my attorney to handle Case No. 18CR090128 on my behalf and in my absence. I hereby request and consent that my case be disposed of in my absence, and I hereby waive my presence at such trial.

My attorney has fully explained to me the following rights which I understand and which I waive:

1. The right to a trial with or without a jury.
2. The right to confront and cross-examine any witness against me.
3. The right to present witnesses and evidence in my behalf.
4. The right to examine all physical and documentary evidence against me.
5. The right to remain silent.
6. The right to have free counsel appointed to represent me if I am indigent.
7. The right to appeal to a higher court except in certain limited circumstances.
8. The right to require the state to prove its case against me beyond a reasonable doubt.

This 7 day of Dec., 2018.

Keith F. Brandon
NOTARY PUBLIC

JAN P. MCDONALD
DEFENDANT

Keith F. Brandon
APPROVED, DEFENDANT'S ATTORNEY

I only hired him as a lawyer, I don't know anything about him being a judge

That is why I need to talk to you. It will only take about 5 minutes.

You can feel free to look up any public information about me that you'd like, the rest is protected by attorney-client privilege

EXHIBIT

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