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### C E R T I F I C A T I O N

I, Kelly Stephens, Clerk of the Supreme Court of Kentucky, do hereby certify that the attached order, **ORDER GRANTING MOTION FOR DISQUALIFICATION; JEFFERSON DISTRICT COURT, Case Nos. 20-M-5765, 20-M-5767, 20-M-5769, 20-M-5773, 20-M-5777, 20-M-5778, 20-M-5780, 20-M-5781; 20-M-5783; 20-M-5784; 20-M-5786; 20-M-5789; 20-M-5790; 20-M-5792; 20-M-5793; 20-M-5794; 20-M-5795; 20-M-5796; 20-M-5797; 20-M-5800; 20-M-5802; 20-M-5804; 20-M-5805; 20-M-5806; 20-M-5807; AND 20-M-5811** is a true and correct copy of the original order as it appears on file in my office.

Done this 12th day of July 2022, at Frankfort, Kentucky.

  
KELLY L. STEPHENS, CLERK

**Supreme Court of Kentucky**  
FROM THE 30TH JUDICIAL DISTRICT  
JEFFERSON DISTRICT COURT

IN RE:

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

SHONTAY BIRD, 20-M-5765;  
MYRON MAURICE CHENAULT II, 20-M-5767;  
JUAN ORTIZ ONTIVEROS, 20-M-5769;  
THOMAS GORDON, 20-M-5773;  
JOSHUA BAERWALD, 20-M-5777;  
ZEBULON GREEN, 20-M-5778;  
ETHAN SHEA COONCE, 20-M-5780;  
ARIANNA LYNTON SMITH, 20-M-5781;  
SUZETTE SUMMERS, 20-M-5783;  
CORBIN MCGUIRE, 20-M-5784;  
SONIA WILDE, 20-M-5786;  
RACHEL WILLIAMS, 20-M-5789;  
SUNMEE COBB, 20-M-5790;  
ELIZABETH VEGA, 20-M-5792;  
LIANA IBERSHOFF, 20-M-5793;  
HANNA GUTH, 20-M-5794;  
JORDAN HAUSER, 20-M-5795;  
AALIYAH GANT, 20-M-5796;  
ZOEY MORRIS, 20-M-5797;  
ALEXA BAIANO, 20-M-5800;  
CHANELLE HELM, 20-M-5802;  
CHRISTINE GOSNEY, 20-M-5804;  
DELORA GILKEY, 20-M-5805;  
AMBER DUVALL, 20-M-5806;  
VINCENT GONZALEZ, 20-M-5807; AND  
VALENTINA ASHUROUA, 20-M-5811.

DEFENDANTS

**ORDER GRANTING MOTION FOR DISQUALIFICATION**

This matter is before the Chief Justice upon the certification of the Clerk of the Jefferson Circuit Court of the motion and affidavit filed on behalf of the Commonwealth by Rebecca Schroering, Assistant Jefferson County Attorney, which

seeks to disqualify the Honorable Josephine Buckner, District Judge for the 30th Judicial District, from presiding in the above-styled action.

The present case involves misdemeanor charges against a number of defendants who allegedly blocked an overpass in Louisville while protesting the circumstances surrounding the death of Breonna Taylor.

The Commonwealth contends that Judge Buckner should be disqualified from presiding over these cases for two reasons: first, prior to her appointment to the Jefferson District Court in August 2021, Judge Buckner was employed as an attorney with the law firm of Sam Aguiar Injury Lawyers. During the time of Judge Buckner's employment, Sam Aguiar represented the family of Breonna Taylor, and other members of the firm allegedly represented individuals charged with crimes relating to the protests surrounding Breonna Taylor's death. Although Judge Buckner has not been employed by the Aguiar firm since her appointment to the bench, the Commonwealth further contends that she "is currently listed as an associate in the firm."<sup>1</sup>

Second, the Commonwealth argues Judge Buckner should be disqualified based on social media posts that she either shared or posted on Facebook between August 2020 and June 2021, prior to her appointment to the bench.<sup>2</sup> The posts

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<sup>1</sup> Affidavit of Assistant County Attorney Rebecca Schroering, Seeking Designation of a Special Judge Pursuant to KRS 26A.020, at para. 16.

<sup>2</sup> Included with the Commonwealth's motion were several exhibits documenting the Facebook posts in question:

- Exhibit 2: On August 20, 2020, Judge Buckner shared a post from Sam Aguiar that read: "Today is a great day to arrest the cops who lied in getting a search warrant for Breonna Taylor's home, the cops who killed Breonna Taylor and the cops who covered it all up."
- Exhibit 3: On October 23, 2020, Judge Buckner shared a post from Lonita Baker that read: "Daniel Cameron and whomever else in his office that presented to the

relate to the circumstances surrounding the death of Breonna Taylor. Three of the posts shared by Judge Buckner were originally posted by either Sam Aguiar or Lonita Baker, both of whom represented the family of Breonna Taylor.

In response to the Commonwealth's affidavit, Judge Buckner filed a document titled, "Responding Due to Untrue Statements and Unnecessary Distortion of Facts." In her response, Judge Buckner acknowledges that she worked at the Aguiar firm while Sam Aguiar and Lonita Baker represented the family of Breonna Taylor.<sup>3</sup> She denies, however, that her attorney profile is still listed on the firm's website<sup>4</sup> and further argues that her previous employment with the Jefferson County Attorney's Office, which defended the civil action regarding Ms. Taylor's death, is as relevant to the present case as her previous employment with the Aguiar firm.

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Grand Jury committed a grave error. Once that grand jury asked for additional charges, the AG's office did not have the authority to say 'no.' KY rule of criminal procedure 5.14: "The attorney for the Commonwealth or designated assistant shall also, when requested by them, draft indictments."

- Exhibit 4: On September 28, 2020, Judge Buckner shared a Courier-Journal article about Lonita Baker, who also represented the family of Breonna Taylor, speaking at an event.
- Exhibit 5: On June 5, 2021, Judge Buckner shared Lonita Baker's post regarding the "Praise in the Park" event sponsored by The Breonna Taylor Foundation.

<sup>3</sup> Response of District Court Judge Josephine Layne Buckner to the Affidavit of the Assistant County Attorney Seeking Designation of a Special Judge Pursuant to KRS 26A.020, Responding Due to Untrue Statements and Unnecessary Distortion of Facts, paragraphs 7, 10, and 11, pages 2-3.

<sup>4</sup> The Chief Justice takes judicial notice of the fact that Judge Buckner's attorney profile is not listed under the "Meet Our Team" drop down menu on the Sam Aguiar Injury Lawyer website, located at <https://aguiarinjurylawyers.com/>. However, if one conducts an internet search of the name, "Josephine Buckner," the first option available on Google is Josephine Buckner's attorney profile on the Sam Aguiar Injury Lawyer website: <https://aguiarinjurylawyers.com/josephine-buckner/>. Although the Chief Justice's knowledge of internet search engines and cached data is limited, it is assumed that Judge Buckner's information is somehow stored on the Aguiar firm's site and is still readily available from a public search engine. Judge Buckner is encouraged to contact the Aguiar firm and request that her information be properly deleted from the site to avoid any appearance of an ongoing affiliation with the firm.

With respect to the claims regarding her Facebook posts, Judge Buckner argues she has been on the social media site for more than a decade and that the posts cited by the Commonwealth do not paint an accurate picture of the totality of her social media presence.<sup>5</sup> Judge Buckner further accuses the Commonwealth of including “untrue” and “misleading” statements regarding her social media presence in its affidavit.

KRS<sup>6</sup> 26A.020 authorizes the Chief Justice, when prompted, to “determine whether to designate a regular or retired justice or judge of the Court of Justice as special judge” in a particular case.<sup>7</sup> About the authority given to the Chief Justice when making such a determination, KRS 26A.020 is vague, and a paucity of case law exists to guide the Chief Justice’s decision. However, KRS 26A.015 offers guidance regarding when disqualification is appropriate. That statute provides, among other things, that a judge “shall disqualify himself in any proceeding . . . “[w]here he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.”<sup>8</sup> Similarly, Canon 2, Rule 2.11(A)(1) of the Kentucky Code of Judicial Conduct provides that “a judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned. . . .”

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<sup>5</sup> Response, *supra*, at paragraph 12, page 3-4.

<sup>6</sup> Kentucky Revised Statute.

<sup>7</sup> KRS 26A.020(1).

<sup>8</sup> KRS 26A.015(2)(a),(e).

Having established the standard for disqualification, the question turns to whether the Commonwealth has demonstrated a disqualifying situation that requires the appointment of a special judge.

Based on the statements in both the Commonwealth's affidavit and Judge Buckner's response, the following facts appear to be undisputed:

- The underlying cases for which the Commonwealth seeks Judge Buckner's disqualification relate to misdemeanor charges against individuals who were protesting the circumstances surrounding the death of Breonna Taylor;<sup>9</sup>
- Judge Buckner was employed by the Aguiar law firm for a period of time before her appointment to the Jefferson District Court;
- During the time Judge Buckner was employed by the Aguiar law firm, two members of the firm—Sam Aguiar and Lonita Baker—represented the family of Breonna Taylor in a civil lawsuit; and
- Before she was appointed to the bench and during a time when she was not a judicial candidate, Judge Buckner posted and/or shared at least three posts on Facebook that were related to Breonna Taylor and indicated either her concern with the circumstances surrounding the death of Breonna Taylor or her support for Sam Aguiar and Lonita Baker in their representation of the family of Breonna Taylor.

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<sup>9</sup> In her response, Judge Buckner notes that although she does not dispute this fact, she does not recall any discovery establishing that the defendants were protesting the circumstances surrounding the death of Breonna Taylor. *See Response, supra*, at paragraph 6, page 2.

Arguably, any one of these facts taken on its own may not be sufficient to justify disqualification. But looking at the totality of the circumstances, the Chief Justice finds it is reasonable to conclude that Judge Buckner's impartiality could be questioned.

This conclusion is further solidified by statements in Judge Buckner's own response, which the Chief Justice finds to be indicative of bias against the prosecution in this case. In her response, Judge Buckner implies that statements made in Ms. Schroering's sworn affidavit were either intentionally or negligently untrue or misleading. She also states that the prosecution provided a "skewed synopsis" of the judge's Facebook posts, and that the prosecution's statements "demonstrate[] that the prosecution has a real issue as it relates to events that occurred in 2020" and "a hypersensitivity to a case her office defended. . . ." <sup>10</sup>

In paragraph 20 of her response, Judge Buckner further states:

The remedy to avoid the appearance of impropriety would be to have the prosecution apologize for the statements and inferences made in the affidavit. Having read this and responded, I am unsettled by the notion of what a fact is and is not. The prosecution has an inability to compartmentalize, separate, and scrutinize the facts and circumstances of an issue once the name of Breonna Taylor is invoked, relevant or irrelevant. <sup>11</sup>

It is assumed that Judge Buckner's concerns regarding the prosecution did not manifest until the motion for disqualification was filed. In fact, the Commonwealth's affidavit does not include any allegations of actual bias by Judge Buckner. But Judge Buckner's statements in her response clearly indicate prejudice

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<sup>10</sup> See Response, *supra*, at paragraph 12, pages 3-4.

<sup>11</sup> *Id.* at paragraph 20, pages 11-12.

towards the Commonwealth and concerns regarding the veracity of the Commonwealth's sworn statements. Now that Judge Buckner's statements have been made on the record, they are impossible to ignore. Accordingly, under KRS 26A.015 and Rule 2.11 of the Code of Judicial Conduct, disqualification is required.

Upon careful consideration of Ms. Shroering's affidavit and Judge Buckner's response, the Chief Justice determines the motion for disqualification must be granted.

Accordingly, the Chief Justice orders as follows:

- 1) The request to disqualify the Honorable Josephine Buckner is GRANTED without prejudice to any party to seek appellate review after entry of a final judgment; and
- 2) The Honorable Annette Karem, Chief Regional District Judge for the Metro Region, shall reassign the case to another division of Jefferson District Court for further proceedings; and
- 3) The Jefferson Circuit Clerk shall place a copy of this order in the record of the above-styled case and serve copies of this order on all counsel and parties not represented by counsel.

Entered this 12th day of July 2022.

  
CHIEF JUSTICE

Copies to: Annette Karem, Chief Regional District Judge  
Josephine Buckner, Jefferson District Court, Division 12  
David Nicholson, Jefferson Circuit Court Clerk