AlaFile E-Notice

58-CV-2021-900032.00

Judge: PATRICK E. KENNEDY

To: FLICKINGER DANIEL STEPHEN
dflick@gmail.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

DANIEL FLICKINGER V. LAWRENCE TRACY KING ET AL
58-CV-2021-900032.00

The following matter was FILED on 4/5/2021 2:43:42 PM

D001 KING LAWRENCE TRACY

D002 KING SIMMONS FORD & SPREE, P.C.

MOTION FOR CHANGE OF VENUE/TRANSFER

[Filer: STOTT JOSEPH ELLIOTT]

Notice Date: 4/5/2021 2:43:42 PM

MARY HARRIS
CIRCUIT COURT CLERK
SHELBY COUNTY, ALABAMA
POST OFFICE BOX 1810
112 NORTH MAIN STREET
COLUMBIANA, AL, 35051

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STATE OF ALABAMA Revised 3/5/08
Unified Judicial System
58-SHELBY ☐ **District Court** ☑ **Circuit Court**

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CV2(

DANIEL FLICKINGER V. LAWRENCE TRACY KING ET AL

CIVIL MOTION COVER SHEET

Name of Filing Party: D001 - KING LAWRENCE TRACY
D002 - KING SIMMONS FORD & SPREE, P.C.

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.
JOSEPH ELLIOTT STOTT
2637 VALLEYDALE ROAD, SUITE 100
BIRMINGHAM, AL 35244
Attorney Bar No.: STO041

☐ Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

- ☐ Default Judgment ($50.00)
- ☐ Joinder in Other Party's Dispositive Motion (i.e.Summary Judgment, Judgment on the Pleadings, orother Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
- ☐ Judgment on the Pleadings ($50.00)
- ☐ Motion to Dismiss, or in the Alternative SummaryJudgment($50.00)
- ☐ Renewed Dispositive Motion(Summary Judgment,Judgment on the Pleadings, or other DispositiveMotion not pursuant to Rule 12(b)) ($50.00)
- ☐ Summary Judgment pursuant to Rule 56($50.00)
- ☐ Motion to Intervene ($297.00)
- ☐ Other _____
  pursuant to Rule _____ ($50.00)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Costs $ 0

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☑ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other _____
  pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐

Date: 4/5/2021 2:43:28 PM

Signature of Attorney or Party
/s/ JOSEPH ELLIOTT STOTT

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

ELECTRONICALLY FILED
4/5/2021 2:45 PM
58-CV-2021-900032.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

DANIEL S. FLICKINGER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No.: CV-2021-900032**
	)	
LAWRENCE TRACY KING; KING SIMMONS FORD & SPREE, P.C.	)	
	)	
Defendants.	)	

MOTION TO TRANSFER VENUE

Come the Defendants, through counsel, and hereby move this Court to transfer this action to the Circuit Court for Jefferson County, Alabama, on the doctrine of *forum non conveniens*, as prescribed by Alabama Code §6-3-21.1, and show unto the Court the following:

ARGUMENT

Plaintiff is a lawyer in the state of Alabama, appearing pro se. Plaintiff alleges, in essence, that the corporate Defendant, King Simmons Ford & Spree, P.C. ("KSFS"), through its employee, Defendant Lawrence T. King ("King"), communicated social media posts posted by or including the Plaintiff to the Plaintiff's former employer, which made the decision to offer the Plaintiff the opportunity to resign; Plaintiff accepted. Plaintiff claims that he was defamed or portrayed in a false light by the Defendants' communication to the former employer.

Alabama Code §6-3-21.1 provides: "With respect to civil actions filed in an appropriate venue, any court of general jurisdiction **shall, for the convenience of parties**

and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally filed therein." (Emphasis added.) Defendants concede that venue is technically proper in Shelby County (because one defendant resides there), but that both convenience and the interest of justice require a transfer to Jefferson County.

In this case, Plaintiff recites that he is a Jefferson County resident, and that a Jefferson County law firm, acting through an employee who is a Shelby County resident, committed various torts.[1] As a result, he says in his Complaint, his employment ended; that employment was with a Jefferson County, Alabama, law firm which has three partners. (Affidavit of Lawrence T. King). A Jefferson County plaintiff claiming harm inflicted by a Jefferson County business (acting through an employee who lives in Shelby County but works in Jefferson County), resulting in the loss of employment in Jefferson County based on decisions made by the three partners of a Jefferson County law firm – all of that shows that the interest of justice in this matter far more properly lies in Jefferson County than in Shelby County. The mere presence of a defendant in the forum chosen by the plaintiff only makes venue proper – and of itself does nothing to answer the questions of "interest of justice" or "convenience of parties and witnesses."

[1] As such, the matter could have been filed in Jefferson County. Per §6-3-21.1, then, Jefferson County is an appropriate transferee forum.

The question of the propriety of venue is measured as of the filing of the Complaint. *E.g.*, Elmore County Comm'n v. Ragona, 540 So.2d 720 (Ala.1989). And whereas the plaintiff's choice of forum may be considered, of course, decisions by trial courts on venue-transfer-motions " 'must be considered in light of the fact that the Legislature used the word "shall" instead of the word "may" in **§6-3-21.1**." 718 So.2d at 660 (emphasis added). **This statute, we have subsequently noted, is 'compulsory,' *Ex parte Sawyer*, 892 So.2d 898, 905 n. 9 (Ala.2004), and the use of the word 'shall' is 'imperative and mandatory**.' *Ex parte Prudential Ins. Co. of America*, 721 So.2d 1135, 1138 (Ala.1998) (comparing the use of the word 'shall' in Alabama's interstate forum non conveniens statute, Ala.Code 1975, § 6-5-430, with its use in § 6-3-21.1)." *Ex Parte Indiana Mills & Mfg., Inc.*, 10 So.3d 536, 542 (Ala. 2008)(bold emphasis added).

In this case, the Defendants hereby move to have this case transferred on either or both grounds of §6-3-21.1 – to-wit: "convenience of parties and witnesses," and "in the interest of justice."

I. Convenience of the Parties and Witnesses.

With regard to "convenience of parties and witnesses," two of the three parties are residents of Jefferson County, and the other party works his daytime hours in Jefferson County.[2] Further, all known witnesses to the activities made the basis of this lawsuit

[2] Where witnesses work, not merely where they happen to sleep regularly, is also extremely important in determining whether venue should be changed. *E.g.*, *Ex parte McKenzie Oil Co., Inc.*, 13 So.3d 346 (Ala.2008) (employees of convenience store which sold alcohol, health care providers which rendered treatment, and law enforcement personnel who investigated all worked in proposed transferee county where trial court errantly refused to transfer case); *Ex*

have offered testimony that Jefferson County is a more convenient forum. The allegations of this case claim that communications from the Defendants to the Jefferson County, Alabama law firm of Wainwright, Pope & McMeekin, LLP resulted in the Jefferson County Plaintiff's termination from his Jefferson County employment. The three decision makers who will testify in this case as to the basis of the decision to terminate the Plaintiff's employment all live and work in Jefferson County. Further, the decision makers, Lonnie Wainwright, Linda Pope, and Steven McMeekin have all testified by Affidavit that Jefferson County is a substantially more convenient forum. Finally, both Defendants have testified that Jefferson County is substantially more convenient – and the Plaintiff himself lives in Jefferson County! (See Affidavits of Lawrence T. King, Lonnie Wainwright, Linda Pope and Steven McMeekin).

The *forum non conveniens* statute, §6-3-21.1(a), Ala. Code (1975), sets forth the conditions that trigger mandatory transfer:

> With respect to civil actions filed in an appropriate venue, any Court of general **jurisdiction shall, for the convenience of parties and witnesses, or in the interest of justice**, transfer any civil action or claim in any civil action to any Court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally filed therein.

(Emphasis added). §6-3-21.1(a), Ala. Code (1975); *See* Ex parte Smith's Water &

Parte Indiana Mills & Mfg., Inc., 10 So.3d 536 (Ala. 2008)(employees of police and fire departments, as well as coroner, all worked in proposed transferee county where trial court errantly refused to transfer case).

Sewer Auth., 982 So. 2d 484 (Ala. 2007) (noting that the Legislature's use of the imperative "shall" in the *forum non conveniens* statute requires that cases be transferred when *forum non conveniens* applies). The Defendants contend that the interest of justice requires transfer to Jefferson County.

Here there is no question that the convenience of the parties and witnesses requires mandatory transfer to Jefferson County, Alabama. There is not a single party or witness with regard to whom Shelby County is more convenient. It cannot be overstated that virtually all of the activity at issue in this case occurred in Jefferson County. The Plaintiff himself is a Jefferson County resident. The Plaintiff's former firm (the firm that terminated his employment) is a Jefferson County law firm. Each of the decision makers involved in the decision to ask for the Plaintiff's resignation live in Jefferson County. The decision by the Plaintiff's former firm to part ways with the Plaintiff was made in Jefferson County. Any witness to those discussions witnessed the discussions in Jefferson County and lives in Jefferson County. All witnesses that the Defendants anticipate testifying in this case live in Jefferson County. The only witness that resides in Shelby County resides at the northern edge of the county and has testified by Affidavit that Jefferson County is more convenient for him as well. There can be no legitimate debate that Jefferson County is substantially more convenient to the parties and the witnesses which thus requires transfer of this case to Jefferson County.

II. Interests of Justice.

Under Alabama's *forum non conveniens* statute, a case must be transferred from a venue with little connection to the case to a forum with a strong connection to the case in order in ensure that jurisdictions with no real connection to a claim do not bear the burden of adjudicating it, thereby preserving the interests of justice. *See* Ex parte First Tenn. Bank Nat'l Ass'n, 994 So. 2d 906 (Ala. 2008) (noting the connection between the original forum and the Plaintiff's claim must be strong enough to warrant burdening the original jurisdiction with that claim); Ex parte National Sec. Ins. Co., 727 So.2d 788, 790 (Ala.1998) (internal quotations omitted) ("the interest of justice require[s] the transfer of an action from a county with little, if any, connection to the action, to the county with a strong connection to the action"); Ex parte Independent Life & Accident Ins. Co., 725 So.2d 955, 957 (Ala. 1998) (the case had to be transferred *forum non conveniens* because it had "no nexus with Lowndes County that would justify burdening that county with a trial of [that] case").

While the trial court should give deference to a plaintiff's choice of forum, where the defendant has shown that the plaintiff's forum has little, if any, connection to the case, Alabama's *forum non conveniens* statute requires the trial court to transfer the case to a county with a strong connection. See Ex parte First Tenn. Bank Nat'l Ass'n, 994 So.2d at 911 (Ala. 2008); see also, Ex parte Fuller, 955 So.2d 414, 418 (Ala.2006) (requiring a case to be transferred from Macon County to Lee County because Macon County had little connection to the case).

The Alabama Supreme Court has explained the operation of this mandatory standard for transfer under *forum non conveniens* in cases where the connection to the forum state is the residence of a single party. *See,* Ex parte Kane, 989 So. 2d 509 (Ala. 2008). In Ex parte Kane, an automobile accident occurred in Lee County. Id. at 510. The plaintiff filed the case in Clay County because she resided there and one of the defendants did business there. Id. The defendants moved to transfer the case from Clay County to Lee County based on *forum non conveniens.* Id. The trial court denied the motion, and the defendants petitioned the Supreme Court for a writ of mandamus. Id. at 511.

The Alabama Supreme Court granted the writ and noted that "litigation should be handled in the forum where the injury occurred." Id. at 512. The high court also held the interest of justice required that the case be transferred because while venue was technically proper in Clay County, there was no real connection with Clay County. In transferring the case, the Alabama Supreme Court focused on the lawsuit's strong connection to Lee County when compared to Clay County:

> The alleged acts, omissions, and injuries in this case occurred in Lee County, and there is a related action involving the same incident and the same witnesses pending there. The only connection with this case and Clay County, however, is that Odom resides there and that State Farm does business there.

Id. at 513.

Likewise, in Ex parte First Tennessee, the Alabama Supreme Court reinforced what it referred to as "nexus" standard's application to a Motion to Transfer Venue under the interest of justice prong of §6-3-21.1(a). In that case, First Tennessee filed an action seeking a declaration of rights with regard to payments related to an estate that was probated in Tallapoosa Court. First Tennessee brought its action in Jefferson County because three residual beneficiaries resided there. Several defendants moved the Jefferson County Circuit Court to transfer the case to Tallapoosa County because it had a strong connection to the case. The estate was situated in Tallapoosa County and had been probated there. The Jefferson County Circuit Court granted the motion. First Tennessee petitioned the Alabama Supreme Court for a writ of mandamus ordering the case transferred back to Jefferson County, arguing that the interest of justice prong was only implicated in so-called forum shopping situations and that the trial court had otherwise exceeded its discretion in ordering the transfer.

The Alabama Supreme Court held that the transfer was proper and denied the petition. According to the high court, the test must "focus on whether the 'nexus' or 'connection' between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action." It need not be limited in its application to forum shopping cases. Ex parte First Tenn. Bank Nat'l Ass'n, 994 So. 2d 906, 911 (Ala. 2008).

In applying this nexus standard, the trial court held that the interest of justice would be served by a transfer because the estate was situated in Tallapoosa County and

had been probated in Tallapoosa. Jefferson County, by comparison, was only tangentially related to the case because three defendants happen to reside there. Id. at 910-11. The Alabama Supreme Court held that the trial court correctly applied the test to the facts of the case. Id. at 911. The Alabama Supreme Court then held that, once a trial court makes this nexus determination, "§6-3-21.1 Ala. Code (1975), compels the trial court to transfer the action to the alternative forum." Id. at 912.

It is important to note that the nexus test focuses on the comparative strength of connection of the two venues. In Ex parte First Tennessee, the court explained:

> First Tennessee appears to take issue with the Jefferson Circuit Court's transfer of this action because that court determined that Tallapoosa County had the "greatest connection" to this action, rather than that Jefferson County lacked a connection with this action and that Tallapoosa County had a strong connection to this case. Although it may be true that Jefferson Circuit Court noted that it "performed [a] nexus analysis and has found venue to be proper in the County with the greatest connection to the case," Petition at Exhibit F, p. 9, it is clear that the court transferred this action "from a county with little, if any, connection to the action, to the county with a strong connection to the action."

Id. at 911 (internal quotation omitted). In other words, Alabama law holds that where the original venue has no more than a passing or nominal connection to a case-as compared to an equally proper venue with a strong relationship to the case §6-3-21.1(a) requires that the case be transferred in the interest of justice.

In Ex parte McKenzie Oil Company, Inc., 13 So. 3d 346 (Ala. 2008), plaintiff filed suit against McKenzie Oil Company and Gary Dewayne Heathcock in Barbour

County related to a motor vehicle accident. The accident occurred in Escambia County. McKenzie Oil Company operated a convenience store in Escambia County from which Heathcock allegedly purchased alcoholic beverages. Heathcock was a resident of Clarke County. Plaintiff received medical treatment in Escambia County. Barbour County's only connection with the accident was that McKenzie Oil Company maintained its corporate headquarters there.

The Alabama Supreme Court observed the general rule under Ala. Code (1975), §6-3-21.1, which provides that an action must be transferred if "justified based either on the convenience of the parties and witnesses or in the 'interests of justice.'" (Emphasis in original). Ex parte McKenzie Oil Company, Inc., 13 So. 3d at 348 (citations omitted).

Tellingly, the Alabama Supreme Court stated the following:

> "This Court has held that litigation should be handled in the forum where the injury occurred." Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006), citing Ex parte Sawyer, 892 So. 2d 898, 904 (Ala. 2004). Furthermore, the "interest of justice" prong of §6-3-21.1 requires "the transfer of the action from a county with little, if any, connection to the action, to the county with a strong connection to the action." Ex parte National Sec. Ins. Co., 727 So.2d 790. Thus, "in analyzing the interest-of-justice prong of §6-3-21.1, this Court focuses on whether the 'nexus' or 'connection' between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action." Ex parte First Tennessee Bank Nat'l Ass'n, [Ms. 1061392, April 11, 2008] ___ So.2d___ (Ala.2008). McKenzie therefore had the burden of demonstrating "'that having the case heard in [Escambia] County would more serve the interests of justice.....'" Ex parte First Tennessee Bank, ___So.2d _____ (quoting Ex parte Fuller, 955 So.2d 416).

. . . . . .

> We agree that McKenzie has "a connection" with Barbour County by virtue of the location of its corporate headquarters. However, we find this connection to Barbour County to be "little" and the connection with Escambia County to "strong." Ex parte National Sec. Ins. Co., supra.
>
> . . .
>
> Additionally, we note that virtually none of the events or circumstances involved in this case occurred in or relate to Barbour County. Specifically, the accident given rise to Franklin's claims and the alleged tortious conduct by both Heathcock and McKenzie took place in Escambia County. Law-enforcement personnel and medical personnel in Escambia County investigated the accident and treated Franklin's injuries. ..... For all that appears, all material events in this case, including the accident, occurred in Escambia County.
>
> Given this small nexus and little connection with the facts of this case to Barbour County and the strong connection with Escambia County, we hold that hearing the case in Escambia County "would more serve the interest of justice." Ex parte First Tennessee Bank, supra.

Ex parte McKenzie Oil Company, Inc., 13 So.2d at 349.

Even more recently, the Alabama Supreme Court reaffirmed its commitment to the "interests of justice" prong. In Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371 (Ala. 2012), a motorist brought an action against a logging company and truck driver to recover for injuries sustained when she collided with timber that fell from the log truck. Id. at 372. The accident took place in Lee County. Id. Plaintiff filed suit in Chambers County because the logging company maintained its principal office

there. Id. Defendants moved for transfer based on the convenience of the parties and the interests of justice prongs of the *forum non conveniens* statute. Id. at 373. The trial court denied the motion and defendants filed a writ of mandamus. Id.

The Alabama Supreme Court granted the writ and ordered the case to be transferred. Id. at 377. The Court relied solely upon the interests of justice prong. Id. at 373, 377. The Court found compelling that "Although it is not a talisman, the fact that the injury occurred in the proposed transferee county is often assigned considerable weight in an interest-of-justice analysis." Id. at 375 (quoting Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 573-74 (Ala. 2011)). The Court also found noteworthy that the "emergency personnel who responded to the accident . . . work in the county to which [defendants] seek to have the action transferred." Id. at 375. *See also* Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536 (Ala. 2008) (transferring case to county where none of the parties resided but where motor vehicle accident occurred because local emergency personnel responded to the scene and investigated the accident despite connection to the original county based on the fact that one defendant lived and another did business there).

In fact, the Alabama Supreme Court recently reiterated the rule espoused in each of the cases above. In the case of Ex parte Manning, 170 So.3d 638 (Ala. 2014) , the Supreme Court mandated the transfer of venue in a personal case from Macon County to Montgomery County, Alabama despite the fact that the defendant was a resident of Macon County. As for the cases above, the court explained that the "interest of justice" prong of §6-3-21.1 requires a transfer of an action from a county with little if any

connection to the action to the county with the strong connection to the action. Thus, in this case, transfer from Shelby County, which has very little interest in the outcome of this action to Jefferson County, which has a great deal of interest, is mandated.

The cases cited above clearly stand for the proposition that transfer of this case to Shelby County to Jefferson County is not only appropriate but in fact mandated. In Ex parte Manning, supra, Ex parte Southeast Alabama Timber Harvesting, supra, and Ex parte McKenzie Oil Company, Inc., supra the court transferred venue from the county in which the defendant resided. In each of those cases, the court determined that the mere residence of a defendant was insufficient to outweigh the interest of justice when the damage at issue occurred in another county. Here, we have the exact same scenario except that only one single Defendant resides in Shelby County with the other Defendant being a law firm which is located in Jefferson County, making venue even more tenuous than it was in the cases cited above. In each of those cases, the Alabama Supreme Court determined that venue was not only appropriate, but in fact mandated to be in the county where the damage occurred not in the county where a single defendant resided. Thus, under the strength of those cases and the clear mandates by the Alabama Supreme Court, this case must be transferred to Jefferson County, Alabama.

Transfer is not discretionary. The Alabama Supreme Court stated in Ex parte McKenzie Oil Company, Inc. the following:

> "Alabama's forum non conveniens statute is compulsory. *See* Ex parte Prudential Ins. Co. of America, 721 So.2d 1135, 1138 (Ala. 1998) ('The word "shall" is clear and

> unambiguous and is imperative and mandatory.')." Ex parte Sawyer, 892 So.2d 898, 905 n.9. (Ala.2004). The language of §6-3-21.1(a) requires that the trial court "shall" transfer an action when the statute so requires.

Ex parte McKenzie Oil Company, Inc., 13 So.2d at 350.

A focus on the nexus of this case as it involves Shelby County and the nexus as it involves Jefferson County leads to only one possible outcome. Jefferson County has a strong interest in the outcome of this case, whereas Shelby County has, at most, a passing or tangential interest. The case involves allegations that a lawyer, whose practice is in Jefferson County, made communications with another set of lawyers who live and work in Jefferson County which, according to the Plaintiff's Complaint, resulted in the termination of employment of the Plaintiff, a Jefferson County resident, from his Jefferson County law firm. There is absolutely zero connection between the allegations of this case, and the damages and injuries complained of, and Shelby County. This is a Jefferson County case. Shelby County is technically the proper venue for the tangential reason that a single Defendant happens to reside in Shelby County (though closer to the Jefferson County Courthouse than the Shelby County Courthouse). As shown in the cases above, that single tangential passing interest of Shelby County is far from sufficient to require the Defendants to appear and defend what is clearly a Jefferson County case in Shelby County. It is a Jefferson County jury rather than a Shelby County jury that should determine whether a Jefferson County attorney who allegedly published the social media posts at issue in Jefferson County from his Jefferson County social media accounts

can be disciplined by his Jefferson County employer, all of whom are Jefferson County lawyers and Jefferson County residents and whether a Defendant Jefferson County law firm can be held liable for communicating with another Jefferson County law firm with regard to those Jefferson County social media posts. Clearly, when weighing the interest of the two forums, as required by the Alabama Supreme Court, Jefferson County has a strong interest in the case and Shelby County has a mere tangential or passing interest if any interest at all.

WHEREFORE, for the reasons presented above, the Defendants respectfully request that this Court enter an Order transferring venue of this action from Shelby County, Alabama to Jefferson County, Alabama.

Respectfully submitted,

s/Joseph E. Stott
JOSEPH E. STOTT - STO041 (ASB-4163-T71J)
Attorney for Defendants Lawrence Tracy King and King Simmons Ford & Spree, P.C.

OF COUNSEL:

Stott & Harrington, P.C.
2637 Valleydale Road, Suite 100
Birmingham, AL 35244
(205) 573-0500
(205) 637-5131 Fax#
joe@stottharrington.com

CERTIFICATE OF SERVICE

I hereby certify that I have on April 5, 2021 served a copy of the foregoing on the following attorneys of record via Alafile Efile and/or by placing a copy of same in the U.S. Mail:

Daniel S. Flickinger, Esq.
P.O. Box 36956
Hoover, Alabama 35236
dflick@gmail.com

s/Joseph E. Stott
OF COUNSEL

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

AFFIDAVIT OF LAWRENCE T. KING

Personally appeared before me the affiant, known to me, who after being duly sworn deposed and said as follows:

1. My name is Lawrence T. King. I am over the age of 19 years, have personal knowledge of these facts, and am competent to testify. I also am a lawyer licensed to practice law in the State of Alabama, and have been for many years.

2. A lawsuit has been filed in Shelby County, Alabama, styled Daniel Flickinger v. Lawrence T. King, Case No. CV-2021-900032.

3. I am a Defendant in that case, and I am Senior Partner of the law firm named as a Defendant.

4. I am a founding partner of the law firm Defendant, and it is located in Jefferson County, Alabama. Although I personally reside in Shelby County, Alabama, I spend the majority of my week-day waking hours at or working for the Jefferson County law firm. Given the nature of my work, the distances involved, the requirements of time, the need I have in running the operations of my law practice, and the inability I will have to tend to the business of my clients while serving as a witness, Jefferson County is a substantially more convenient forum for me than Shelby County. Indeed, from both the law firm and my home, it is virtually always a more time-consuming drive to the Shelby County courthouse than to the Jefferson County courthouse. It is my desire, individually and on behalf of the law firm, that the Court transfer this lawsuit from Shelby County to Jefferson County as matter of significant convenience.

5. Further, given that the Plaintiff in the lawsuit referenced above and the law-firm-Defendant both are located in Jefferson County, which also is where I work, and which also is where the alleged wrong is alleged to have

evidenced itself, and also where the alleged damages were suffered, the public interest in this litigation is most heavily substantial in Jefferson County, Alabama. The employment described by the Plaintiff as having ended as part of his claimed damages existed in Jefferson County. The majority of the witnesses that I know of who might reasonably be expected to testify live and/or work in Jefferson County, Alabama. On the basis set forth above, the far greater public interest in this case is in Jefferson County, Alabama.

Further affiant sayeth naught.

Signed: _____
Name: Lawrence T. King

Sworn to and subscribed before me this the 19 day of March, 2021.

Notary Public: _____
My commission expires: 8/16/2024

KELSIE SNIPES YEAGER
MY COMMISSION EXPIRES
AUGUST 6, 2024
NOTARY PUBLIC
STATE OF ALABAMA

DOCUMENT 24

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

AFFIDAVIT OF LONNIE D. WAINWRIGHT, JR.

Personally appeared before me the affiant, known to me, who after being duly sworn deposed and said as follows:

1. My name is Lonnie D. Wainwright, Jr. I am over the age of 19 years, have personal knowledge of these facts, and am competent to testify. I also am a lawyer licensed to practice law in the State of Alabama, and have been for over 32 years.

2. A lawsuit has been filed in Shelby County, Alabama, styled Daniel Flickinger v. Lawrence T. King, Case No. CV-2021-900032.

3. It is my understanding that I may be called to testify as a witness in that case.

4. My law practice is based in Jefferson County, Alabama, where I conduct the business of my profession. Given the nature of my work, the need for managing the operations of my law practice, the distances involved, the requirements of time, and the inability I will have to tend to the business of my clients while serving as a witness, Jefferson County, Alabama is a substantially more convenient forum for me than Shelby County, Alabama. It is my desire that the court transfer this lawsuit from Shelby County, Alabama to Jefferson County, Alabama as matter of significant convenience.

5. Furthermore, the employment described as ending by the Plaintiff as part of his claimed damages existed in Jefferson County, Alabama at the law firm that I founded. Our law firm has always been located in Jefferson County, Alabama. The meeting with the Plaintiff that resulted in his resignation occurred at our office in Jefferson County, Alabama. During the entire course of the Plaintiff's employment with our firm the Plaintiff resided in Jefferson County, Alabama.

6. I was one of the decision-makers who made the personnel decisions involving the Plaintiff and the end to his employment. He was offered the opportunity to resign his employment as a matter of his choice, and he did resign of his choice. To be very clear, the personnel decision that was unanimously made by the three partners to offer him the opportunity to resign was *not* based on any information other than our personal review with our own eyes of various open public social media posts that were made by the Plaintiff; the decision was *not* made, or suggested, recommended, approved, solicited, or ratified by the named Defendants or anyone else.

7. Our law firm takes its reputation seriously, and has for over 25 years. We have to, as a matter of maintaining client relations and as a competitor for business. Our primary area of practice is defending workers' compensation lawsuits. Several insurance companies retain our firm to represent a wide variety of businesses throughout Alabama, and that work requires us to work with claims personnel and other professionals in Alabama and in other states.

8. Social media posts by lawyers our firm employs that are made on open public forums such as Facebook or Twitter, and that are – or which might be considered – as incendiary or offensive or intolerant, are dangerous to the integrity of our law firm's reputation. The review of the Plaintiff's social media postings on open public forums led to the conclusion of my law firm's decision-makers that our law firm's reputation was jeopardized, and in such a way that might reasonably threaten long-standing business relationships in a manner dangerous to our business; the conclusion of the decision-makers at our firm that Plaintiff's open public social media posts entirely unacceptable led to our decision to offer the Plaintiff the opportunity to resign.

9. When our law firm's three decision-makers reviewed the Plaintiff's social media posts, we decided upon the personnel decision to offer the Plaintiff the opportunity to resign. The unanimous decision was made solely and exclusively by the firm's three decision-makers. Mr. King and the other Defendants had no input or involvement whatsoever in the employment decision of our firm.

10. Mr. King, a Defendant in the referenced lawsuit, made very clear that he advocated absolutely no course of personnel decision-making at all, or that

any decision-making even occur; to the contrary, he expressed only that he would want to know if one of his lawyers had made similar such posts.

11. Once the three decision-makers at our law firm decided upon the course which led to the Plaintiff choosing to resign, we shared neither our decision nor the Plaintiff's choice to resign with Mr. King for several weeks after the fact. Mr. King never once asked whether we had done anything or not, or what consequences there had been, if any. I told him of the resignation in casual conversation several weeks later, and did so only because Mr. King and other lawyers in his firm often had several cases at any given time wherein their clients were bringing workers' compensation claims against our clients – and it would be apparent to them that the Plaintiff was no longer working with our firm. Only then was Mr. King told that the Plaintiff had opted to resign.

12. During the entire time that the Plaintiff was employed here, neither he nor Mr. King ever made a single comment to me suggesting that there was any animus or malice either way, one toward the other, nor do I have any reason to think there was any. Based upon years of personal observation and discussion and interaction with the Plaintiff and with Mr. King, it was always my assessment that the Plaintiff and Mr. King had a cordial, civil, healthy, and professional working relationship. Specifically, there most certainly was never any hint at all of personal or professional malice or ill-will that existed between them.

Further affiant sayeth naught.

Signed: _____
Name: Lonnie D. Wainwright, Jr.

Sworn to and subscribed before me this the 24th day of March, 2021.

Notary Public: _____
My commission expires: _____

JENNIFER BONNER
NOTARY PUBLIC
ALABAMA STATE AT LARGE
My Commission Expires
05/15/2021

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

AFFIDAVIT OF LINDA POPE

Personally appeared before me the affiant, known to me, who after being duly sworn deposed and said as follows:

1. My name is Linda Pope. I am over the age of 19 years, have personal knowledge of these facts, and am competent to testify. I also am a lawyer licensed to practice law in the State of Alabama, and have been for over 30 years.

2. A lawsuit has been filed in Shelby County, Alabama, styled Daniel Flickinger v. Lawrence T. King, Case No. CV-2021-900032.

3. I understand I may be called as a witness in that case.

4. My residence is in and my law practice is based in Jefferson County, Alabama, where I conduct the business of my profession. Given the nature of my work, the need for managing the operations of my law practice, the distances involved, the requirements of time, and the inability I will have to tend to the business of my clients while serving as a witness, Jefferson County is a substantially more convenient forum for me than Shelby County. It is my desire that the court transfer this lawsuit from Shelby County to Jefferson County as matter of significant convenience.

5. Furthermore, the employment described as ending by the Plaintiff as part of his claimed damages existed in Jefferson County at the law firm that I founded. Our law firm has always been located in Jefferson County. The meeting with the plaintiff that resulted in his resignation took place at our office in Jefferson County. During the entire course of the plaintiff's employment with our firm, the plaintiff resided in Jefferson County.

6. Lonnie Wainwright, Jr., Steven McMeekin, and I were the decision-makers who made the personnel decisions involving the Plaintiff and the end to his employment. He was offered the opportunity to resign his employment as a matter of his choice, and he did resign of his choice. To be very clear, the personnel decision that was unanimously made by the three of us to offer him the opportunity to resign was *not* based on any information other than our personal review with our own eyes of various open public social media posts that were made by the Plaintiff; the decision was *not* made, or suggested, recommended, approved, solicited, or ratified by the named Defendants or anyone else.

7. Our law firm takes its reputation seriously, and has for over 25 years. We have to, as a matter of maintaining client relations and as a competitor for business. Our primary area of practice is defending workers' compensation lawsuits. Several insurance companies retain our firm to represent a wide variety of businesses throughout Alabama, and that work requires us to work with claims personnel and other professionals in Alabama and in other states.

8. Social media posts by lawyers our firm employs that are made on open public forums such as Facebook or Twitter, and that are – or which might be considered – as incendiary or offensive or intolerant, are dangerous to the integrity of our law firm's reputation. The review of the Plaintiff's social media postings on open public forums led to the conclusion of my law firm's decision-makers that our law firm's reputation was jeopardized, and in such a way that might reasonably threaten long-standing business relationships in a manner dangerous to our business; the conclusion of the decision-makers at our firm that the plaintiff's open public social media posts were entirely unacceptable led to our decision to offer the Plaintiff the opportunity to resign.

9. When our law firm's three decision-makers reviewed the Plaintiff's social media posts, we decided upon the personnel decision to offer the Plaintiff the opportunity to resign. The unanimous decision was made solely and exclusively by the firm's three decision-makers. The defendants had no input nor involvement in the employment decision in our firm whatsoever.

10. Mr. King, a Defendant in the referenced lawsuit, never advocated any course of personnel decision-making at all, or that any decision-making

even occur; to the contrary, he expressed only that he would want to know if one of his lawyers had made similar such posts.

11. Once the three decision-makers at our law firm decided upon the course which led to the Plaintiff choosing to resign, we shared neither our decision nor the Plaintiff's choice to resign with Mr. King for several weeks. Mr. King never once asked whether we had done anything or not, or what consequences there had been if any.

12. During the entire time that the Plaintiff was employed with our law firm, neither he nor Mr. King ever made a single comment to me suggesting that there was any animus or malice either way, one toward the other, nor do I have any reason to think there was any. Based upon years of personal observation and discussion and interaction with the Plaintiff and with Mr. King, it was always my assessment that the Plaintiff and Mr. King had a cordial, civil, healthy, and professional working relationship. Specifically, there most certainly was never any hint at all of personal or professional malice or ill-will that existed between them.

Further affiant sayeth naught.

Signed: Linda W. Pope
Name: Linda Pope

Sworn to and subscribed before me this the 24th day of March, 2021.

Notary Public: [signature]
My commission expires: 5-15-21

JENNIFER BONNER
My Commission Expires
NOTARY PUBLIC
05/15/2021
ALABAMA STATE AT LARGE

DOCUMENT 26

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

AFFIDAVIT OF STEVEN MCMEEKIN

Personally appeared before me the affiant, known to me, who after being duly sworn deposed and said as follows:

1. My name is Steven McMeekin. I am over the age of 19 years, have personal knowledge of these facts, and am competent to testify. I also am a lawyer licensed to practice law in the State of Alabama, and have been for over 30 years.

2. A lawsuit has been filed in Shelby County, Alabama, styled Daniel Flickinger v. Lawrence T. King, Case No. CV-2021-900032.

3. I understand I may be called as a witness in that case.

4. My residence is in and my law practice is based in Jefferson County, Alabama, where I conduct the business of my profession. Given the nature of my work, the need for managing the operations of my law practice, the distances involved, the requirements of time, and the inability I will have to tend to the business of my clients while serving as a witness, Jefferson County is a substantially more convenient forum for me than Shelby County. It is my desire that the court transfer this lawsuit from Shelby County to Jefferson County as matter of significant convenience.

5. Furthermore, the employment described as ending by the Plaintiff as part of his claimed damages existed in Jefferson County at the law firm at which I am a shareholder. Our Lawfirm has always been located in Jefferson County. The meeting with the Plaintiff which resulted in his resignation occurred at our office in Jefferson County. During the entire course of the Plaintiff's employment with our firm, the Plaintiff resided in Jefferson County..

6. Lonnie Wainwright, Jr., Linda Pope, and I were the decision-makers who made the personnel decisions involving the Plaintiff and his decision to end

his employment. He was offered the opportunity to resign his employment as a matter of his choice, and he did resign of his choice. To be very clear, the personnel decision that was unanimously made by the three of us to offer him the opportunity to resign was *not* based on any information other than our personal review with our own eyes of various open public social media posts that were made by the Plaintiff; the decision was *not* made, or suggested, approved, recommended, solicited, or ratified by the named Defendants or anyone else.

7. Our law firm takes its reputation seriously. We have to, as a matter of maintaining client relations and as a competitor for business. Our primary area of practice is defending workers' compensation lawsuits. Several insurance companies retain our firm to represent a wide variety of businesses throughout Alabama, and that requires us to work with claims personnel and other professionals in Alabama and in other states.

8. Social media posts by lawyers our firm employs that are made on open public forums such as Facebook or Twitter, and that are – or which might be considered – as incendiary or offensive or intolerant, are dangerous to the integrity of our law firm's reputation. The review of the Plaintiff's social media postings on open public forums led to the conclusion of my law firm's decision-makers that our law firm's reputation was jeopardized, and in such a way that might reasonably threaten long-standing business relationships in a manner dangerous to our business; the conclusion of the decision-makers at our firm that the Plaintiff's open public social media posts were entirely unacceptable led to our decision to offer the Plaintiff the opportunity to resign.

9. When our law firm's three decision-makers reviewed the Plaintiff's social media posts, we decided upon the personnel decision to offer the Plaintiff the opportunity to resign. The unanimous decision was made solely and exclusively by the firm's three decision-makers. The Defendants had no input nor involvement whatsoever in the employment decision of our firm.

10. Mr. King, a Defendant in the referenced lawsuit, never advocated any course of personnel decision-making at all, or that any decision-making even occur. Once the three decision-makers at our law firm decided upon the course which led to the Plaintiff choosing to resign, I shared neither our decision, nor the Plaintiff's choice to resign, with Mr. King. Mr. King

never once asked me whether we had done anything or not, or what consequences there had been if any.

11. During the entire time that the Plaintiff was employed with our law firm, neither he nor Mr. King ever made a single comment to me suggesting that there was any animus or malice either way, one toward the other, nor do I have any reason to think there was any. Based upon years of personal observation and discussion and interaction with the Plaintiff and with Mr. King, it was always my assessment that the Plaintiff and Mr. King had a cordial, civil, healthy, and professional working relationship. Specifically, there most certainly was never any hint at all of personal or professional malice or ill-will that existed between them.

Further affiant sayeth naught.

Signed: _____
Name: Steven McMeekin

Sworn to and subscribed before me this the 24th day of March, 2021.

Notary Public _____
My commission expires: _____

JENNIFER BONNER
My Commission Expires
NOTARY PUBLIC
05/15/2021
ALABAMA STATE AT LARGE

DOCUMENT 27