

Canon 3 imposes an objective standard on questions as to a judge's ability to be impartial. A situation in which a judge's "impartiality might reasonable by questioned is one raising a reasonable perception of lack of impartiality by the judge, held by a fair minded and impartial person based upon objective fact or reasonable inference; it is not based upon the perception of either interested parties or their lawyer-advocate. *Wakefield v. State* at 593.

Defendant introduced and the Court admitted, over objection as to lack of authenticity, two recordings of conversations he testified he had with Ms. Moore. See *Kodadek v. Lieberman*, 247 Ga. App. 606 (9) at 610-611 (2001) (hearsay not admissible at a hearing on a Motion for New Trial); O. C.G.A. Section 9-11-43(b) (evidence on motions may be presented by affidavit, oral testimony or depositions).

The Court has listened to those recordings in their entirety. First, the Court will address the issue of whether these recordings should also be excluded from consideration because of a privilege. O.C.G.A. Section 24-5-501 provides that [T] here are certain admissions and communications excluded from evidence on grounds of public policy, *including but not limited* to, the following...." (emphasis added). While the judicial deliberative privilege is not mentioned in this statute and no Georgia cases directly address this privilege, the reasoning contained in *Thomas v. Page*, 361 Ill. App. Ed 484, 837 N.E. 2d 483 (2005) is persuasive. That case recognizes that it is "well settled that a judge may not be asked to testify as to his or her mental impressions or processes in reaching a judicial decision". *Thomas* at 488. The court