

No. 142, Original

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In the  
SUPREME COURT OF THE UNITED STATES

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STATE OF FLORIDA,

*Plaintiff*

v.

STATE OF GEORGIA,

*Defendant.*

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BEFORE THE SPECIAL MASTER

HON. PAUL J. KELLY, JR.

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MOTION FOR ALLOWANCE OF FEES AND DISBURSEMENTS  
TO THE SPECIAL MASTER'S ASSISTANT

December 5, 2019

**MOTION FOR ALLOWANCE OF FEES AND DISBURSEMENTS  
TO THE SPECIAL MASTER’S ASSISTANT**

MAY IT PLEASE THE COURT:

Pursuant to the Court’s authorization, Special Master Kelly appointed me as special legal assistant in the above-captioned original jurisdiction action on November 6, 2018. Having rendered the assistance requested by the Special Master, I submit herewith my Motion for Allowance of Fees and Disbursements with the approval of the Special Master.<sup>1</sup>

**Summary of Prior Proceedings**

This action involves a dispute between the States of Florida and Georgia regarding the use of water in the Apalachicola-Chattahoochee-Flint River Basin (“ACF River Basin”). Florida complains that increased consumption of water by Georgia in the ACF River Basin has reduced flows in the Apalachicola River, and alleges that the reduced flows in the River have caused harm to the ecosystem and economy in Florida’s Apalachicola region. Georgia denies that it has consumed an excessive amount of water, and denies that it has caused Florida any harm.

Although the dispute over the use of waters in the ACF River Basin long pre-dated this original jurisdiction proceeding, Florida initiated the present phase of the dispute in 2013 by filing a motion for leave to file a complaint with the Supreme Court, seeking an equitable apportionment of the waters of the ACF River Basin. The Court granted the motion on November 3, 2014. *Florida v. Georgia*, 135 S. Ct. 471 (2014). Shortly thereafter, on November 19, 2014, the Court appointed Ralph I. Lancaster, Jr. as Special Master. *Florida v. Georgia*, 135 S. Ct. 701 (2014). As previously detailed for the Court, Special Master Lancaster managed extensive proceedings over the course of the next 27 months. He resolved motions practice,

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<sup>1</sup> I do not anticipate submitting any further motions addressing fees and costs, unless the Court remands the proceeding to Special Master Kelly for additional proceedings and Special Master Kelly requests further assistance from the undersigned.

provided oversight regarding the parties' extensive discovery efforts, presided over a month-long evidentiary hearing, and reviewed the parties' voluminous evidence and written submissions. *See Florida v. Georgia*, 2017 WL 656655, Report of the Special Master, at \*17-23 (Feb. 14, 2017). On February 14, 2017, Special Master Lancaster issued a Report recommending that Florida's request for relief be denied. *Id.* at \*69-70.

The undersigned, Joshua D. Dunlap, Esq., acted as Special Master Lancaster's law clerk and case management assistant throughout the entirety of this first phase of the equitable apportionment proceeding between Florida and Georgia. Special Master Lancaster appointed me as law clerk pursuant to the Court's authorization. *See Florida*, 135 S. Ct. at 701. I am a partner in the litigation group at Pierce Atwood LLP, the law firm at which Special Master Lancaster was a long-time member (until he passed away in January 2019). I graduated *summa cum laude* from Notre Dame Law School in 2008, where I served as Note Editor of the Notre Dame Law Review. I then clerked for the Honorable Paul J. Kelly, Jr., of the U.S. Court of Appeals for the Tenth Circuit from 2008-2009. I have been an associate and now partner at Pierce Atwood since 2009. Prior to assisting Special Master Lancaster in the present original jurisdiction proceeding, I had also served as the law clerk to Special Master William J. Kayatta, Jr. in *Kansas v. Nebraska and Colorado*, No. 126 Original. In my role as assistant to Special Master Lancaster, I managed logistics and communications with the parties, conducted research, reviewed briefing, prepared draft orders, attended the evidentiary hearing, reviewed the testimony and evidence submitted by the parties, and assisted in preparing the Report.

### **Summary of Remand Proceedings**

On June 27, 2018, after hearing oral argument regarding Florida's exceptions to Special Master Lancaster's report, the Supreme Court remanded the case for further proceedings. *See*

*Florida v. Georgia*, 138 S. Ct. 2502 (2018). On August 9, 2018, the Court discharged Special Master Lancaster with thanks, and appointed the Honorable Paul J. Kelly, Jr. as Special Master. *Florida v. Georgia*, \_\_\_ S. Ct. \_\_\_, 2018 WL 3765303 (Sep. 25, 2018). The Court subsequently amended that order to allow for Special Master Kelly to retain a legal assistant. *Florida v. Georgia*, 139 S. Ct. 51 (2018). Pursuant to that authority, Special Master Kelly appointed me as legal assistant to the Special Master on November 6, 2018. Case Management Order (“CMO”) 25, at 6 (Nov. 6, 2018).<sup>2</sup>

Following his appointment to oversee proceedings on remand, Special Master Kelly has conducted significant work in resolving this equitable apportionment proceeding. He has requested the parties’ input on the scope and nature of the proceedings upon remand, issued multiple Case Management Orders to facilitate this proceeding, reviewed the parties’ post-remand briefs as well as proposed findings of fact and conclusions of law, reviewed the voluminous record from prior proceedings, heard oral argument, and prepared a report.

During the course of these remand proceedings, I provided assistance to Special Master Kelly as he requested. I reviewed the Court’s opinion; attended to inquiries from the Special Master and his clerks regarding the trial record and prior proceedings; reviewed the parties’ briefing and proposed findings of fact and conclusions of law; listened to the parties’ oral arguments held on November 7, 2019; and reviewed a draft of the report and recommendation prepared by Special Master Kelly. Finally, I provided assistance to the Special Master regarding logistics relating to the filing of the Report.

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<sup>2</sup> All filings made with Special Master Lancaster or Special Master Kelly, transcripts of all proceedings, and the Special Masters’ orders can be found at <https://www.ca10.uscourts.gov/special-master-142>.

**Request for Fees and Disbursements**

As described above, I have provided Special Master Kelly with assistance in handling the remand of this original jurisdiction proceeding. I detail the substance of my services performed at the request of Special Master Kelly in Appendix A, attached hereto.

The time records of my firm show that a total of 38.10 hours of my time were devoted to enabling me to fulfill my responsibilities as special assistant to the Special Master from November 6, 2018 through the date of this motion. Although my standard hourly rate was \$325 at the outset of this proceeding (and is currently \$345), I informed Special Master Kelly that I would charge an hourly rate of \$275 for my work on this matter, and would cap my fees at \$10,000 because my assistance has been provided as a public service. Accordingly, although the hourly fee for my services in this matter would come to \$10,477.50, I have further reduced my fee request to \$10,000. In my judgment, this professional fee represents a fully appropriate fee in this action for the services rendered during proceedings on remand. Disbursements detailed in Appendix B to this Motion equal \$36.43, a total that is also reasonable, in my judgment.

At least for the time being, and without prejudice to the parties' respective positions on ultimate allocation at the end of the case, the interim fees and disbursements should be allocated between them as follows:

Florida	50%
Georgia	50%

Accordingly, as assistant to the Special Master, I respectfully request that the Court award fees and disbursements in the amount of \$10,036.43, to be paid to Pierce Atwood LLP, and that that amount be divided between the States in shares as follows:

Florida	\$5,018.21
Georgia	\$5,018.21

I prepared this Motion for Allowance of Fees and Disbursements with the approval of the Special Master, and I have forwarded a copy of this Motion to the parties. I have invited the parties to submit any comments on the Motion directly to the Court and have specifically asked that they do not copy me or the Special Master on any comments.

Dated: December 5, 2019

Respectfully submitted,

/s/ Joshua D. Dunlap

Joshua D. Dunlap, Esq.

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*Assistant to Special Master Paul J. Kelly, Jr.*

**APPENDIX A**  
**TO FINAL MOTION OF THE SPECIAL MASTER'S ASSISTANT**  
**FOR ALLOWANCE OF FEES AND DISBURSEMENTS**  
**No. 142, Original**

1. Communication with Special Master Kelly regarding appointment as legal assistant and attention to Supreme Court's order dated Sep. 25, 2018, regarding same
2. Review and revise CMO No. 25
3. Attention to briefing related to CMO No. 25
4. Review CMO No. 26
5. Review CMO No. 27
6. Provide assistance to Special Master Kelly regarding trial record and prior proceedings
7. Review Supreme Court opinion dated June 27, 2018
8. Review Florida's and Georgia's opening post-remand supplemental briefs and proposed findings of fact and conclusions of law
9. Review Florida's and Georgia's reply briefs
10. Review portions of pre-filed direct testimony and exhibits submitted by the States of Florida and Georgia
11. Review portions of transcripts from evidentiary hearing
12. Conduct research regarding legal issues and review relevant statutes and case law
13. Attention to motions and orders regarding scheduling of oral argument
14. Listen to oral arguments held on November 7, 2019
15. Review report and recommendation prepared by Special Master Kelly
16. Provide assistance regarding logistics relating to filing of report

**APPENDIX B  
TO FINAL MOTION OF THE SPECIAL MASTER'S ASSISTANT  
FOR ALLOWANCE OF FEES AND DISBURSEMENTS  
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Westlaw	36.43
<b>Total for Disbursements</b>	<b><u>\$36.43</u></b>