

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

IN THE MATTER OF THE)	
REPRESENTATION OF MULTIPLE)	
TARGETS:)	No. EP-06-CR-1369-FM
)	
CHARLES ROARK,)	
MILTON "MICKEY" DUNTLEY, and)	
ERNIE LOPEZ)	

**MOTION REQUESTING CLARIFICATION AND
FOR MISCELLANEOUS RELIEF**

Comes now, Mary Stillinger, attorney¹ for the above-referenced individuals, and makes this request for clarification of the Court’s Memorandum Order and Opinion Regarding Attorney Stillinger’s Motion to Strike and Government’s Motion to Disqualify, and also requests that the Court order the Clerk to consolidate all of the pleadings regarding the Motion to Strike filed in this cause into the new case number with the pleadings regarding the Motion to Disqualify. The clarification the undersigned seeks, specifically, is as follows.

As Ms. Stillinger is ordered to immediately terminate her representation of her clients, Ms. Stillinger does not know whether she may meet with them to advise them of the content and consequences of the Court’s order, and advise them of their options with respect to retaining new counsel or appealing the Court’s order. This consultation is essential to preserve the clients’ rights.² Counsel wishes to precisely observe the order of

¹ Counsel was attorney in these proceedings at least up until the entry of the Court’s order.

² Counsel has been diligent to protect her clients’ interests, despite the allegations of the govt. and conclusion of the Court. Counsel explained to all of her clients what a conflict was, potential situations which could give rise to a conflict, and their right to conflict-free representation. Counsel consulted with

the Court, and not risk contempt. The Court should be advised that Ms. Stillinger has no unearned fees with respect to any of these clients, and would not bill them for this consultation.

Additionally, if one or more of Ms. Stillinger's clients wishes to appeal the Court's order (and can afford to take this course of action), Ms. Stillinger does not know whether she may pursue that appeal for her client(s). The literal implication of the Court's order is that Ms. Stillinger may not represent any of these clients in any fashion in any matters.³ Ms. Stillinger believes, however, that it would be appropriate to allow her to represent one or more of these clients on appeal, if they choose to appeal. If the undersigned handled the appeal, the Court could require separate counsel for the ongoing investigation, if the Court felt it necessary.⁴

Further, Counsel is concerned that the Government in this interim period would take advantage of the lack of counsel for these three individuals. Counsel is requesting that the Court advise the Government not to have its agents attempt to communicate

other attorneys for advice in this matter. In the course of this thorough review, counsel found no suggestion of a potential conflict, and in fact found several other attorneys who represented multiple parties in this "one" investigation.

³ As disqualification orders typically refer to a specific proceeding, counsel is unsure whether there are any limitations as to the time or scope of the Court's order to terminate her representation of these individuals; that is: Could counsel represent one of these clients in an unrelated matter? Could counsel serve as an advisor to other, independent counsel in this matter? Can counsel prepare the appeal for these clients? By asking these questions, counsel does not concede the Court's legal authority to supervise her activities in her office. Counsel seeks clarification, but does not wish to waive any right to appeal the Court's order on behalf of her clients.

⁴ Of course, since there is no actual proceeding, there is no obligation on these individuals to have counsel at all. Conversely, if one of these clients would like counsel but cannot afford retained counsel, it is requested that the Court would appoint counsel (although this is typically not authorized during the course of an investigation), since otherwise that client would be denied any representation. Without waiving any attorney-client privilege, counsel can represent that these individuals retained counsel out of an abundance of caution, not based on any expectation that they would be indicted. Counsel and her clients, of course, are not aware of the alleged "intensity" of the Government's investigation. Counsel, on behalf of Mr. Lopez, specifically denies the Court's presumption (Order at p.14) that Mr. Lopez was involved in a fraudulent charitable plan. The Govt. has not even made such an allegation.

directly with any of these three individuals for a reasonable period of time, allowing them to obtain other counsel to continue protecting their interests from the Government.

Finally, Counsel moves the Court to order the Clerk to consolidate all pleadings related to the Motion to Strike (Docket Nos. 5, 9, 10, 19, 21, 22, and 23). These pleadings are related to the Motion to Disqualify and should be included under the new cause number for purposes of keeping the record clear and complete.

WHEREFORE, it is respectfully requested that the Court grant this motion and enter an order clarifying the questions raised by counsel, advising the Government as requested, and ordering the Clerk to consolidate all of the pleadings related to the Motion to Strike into the new cause number for the Motion to Disqualify pleadings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 27th day of July, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following:

Assistant U.S. Attorney,
Debra P. Kanof
Bill Lewis

By: s/ Mary Stillinger
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ORDER

On this date, came to be considered Counsel's Request to consolidate the pleadings in this matter pertaining to her Motion to Strike, into the new cause number to be given the pleadings relating to the Motion to Disqualify (set out in the Court's Order of July 26, 2007). The Court finds that the Motion should be GRANTED.

It is therefore ORDERED that the Clerk of the Court shall transfer the following pleadings into the new cause number created for the pleadings related to the Motion to Disqualify Counsel: Rec. Nos. 5, 9, 10, 19, 21, 22, and 23.

SIGNED and ENTERED this ____ day of July, 2007.

FRANK MONTALVO
UNITED STATES DISTRICT JUDGE