

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

v.

Case No: 1:06CV1080

**STATE FARM FIRE & CASUALTY COMPANY, and
FORENSIC ANALYSIS ENGINEERING CO., and
E. A. RENFROE & COMPANY, INC.**

DEFENDANTS

MOTION FOR CLARIFICATION OF DISQUALIFICATION ORDER

Comes now, Kasie Braswell of the Taylor-Martino firm, pursuant to Uniform Local Rule 7.2(h) and states as follows unto the Court:

1. By Order dated April 4, 2008, this Court granted the motion of State Farm Fire & Casualty Company (“State Farm”) and the motion of E.A. Renfroe & Company (“Renfroe”) to disqualify the attorneys and law firms of the former Scruggs Katrina Group (“SKG”) and the associated firm of Hesse & Butterworth P.L.L.C. “and other attorneys associated as counsel for the plaintiffs by these firms” from representing the plaintiffs in this action.

2. Undersigned Counsel was contacted by a former client of the Katrina Litigation Group (“KLG”) who was seeking representation for his Katrina claim. The Taylor-Martino firm has had some collateral involvement with the KLG and thus seeks clarification of the April 4, 2008, Order of Disqualification as it applies to “associated attorneys” and “subsequent attorneys.” Specifically, counsel seeks to ascertain if the term “associated attorneys” or “subsequent attorneys” would apply to the firm of Taylor-Martino, P.C. located in Mobile, Alabama. Counsel contacted the firm of Hickman, Goza and Spragins on April 8, 2008 and April 9, 2008, to determine if they might have

any objections to the appearance of the Taylor-Martino firm to cases affected by the Court's April 4, 2008 Order; as of the time of the filing of this motion, they have yet to let Taylor-Martino know if they will raise any objections.

3. The Katrina Litigation Group ("KLG"), via Don Barrett, approached the firm of Taylor-Martino in early February, 2008 and asked the firm to provide assistance with several cases that the KLG had against a particular insurance company (not State Farm) (as Taylor-Martino has yet to agree as to what assistance they will provide on cases against this particular insurance company, we will hereinafter refer to the insurance company as "Insurance Company X"). Steve Martino (of Taylor-Martino) agreed to review these cases and provide assistance with same. No oral or written agreement was entered into between the KLG and Taylor-Martino regarding these cases. (See Affidavit of Steve Martino attached as Exhibit "A")

4. Also in early February 2008, Mr. Martino participated in one or two telephone conferences with Don Barrett and other KLG attorneys in which he was asked to assist in some non-State Farm state court actions. In late-February 2008, Mr. Martino participated in one or two telephone conferences with Don Barrett and other KLG attorneys to learn the nature and state of the cases against "Insurance Company X" and non-State Farm state court actions in which he was asked to provide assistance; and in early March 2008, Mr. Martino and Mrs. Braswell attended at meeting in Jackson, Mississippi to discuss these same issues (current state of "Insurance Company X" cases and non-State Farm state court actions).

5. On or about March 5th, 2008, Steve Martino was asked by Don Barrett to appear as local Alabama counsel for a collateral discovery issue that was pending in the United

States District Court for the Northern District of Alabama sitting in Huntsville, Alabama. This discovery issue was related to a Rule 45 subpoena issued in a case pending against State Farm (Shows v. State Farm, et al). Mr. Martino (as a professional courtesy) appeared as local counsel in Huntsville, Alabama and assisted Derek Wyatt in the proceedings in the Alabama court. Also, Mr. Martino traveled to North Carolina to interview a possible witness from Forensic Engineering.

6. On or about March 14, 2008 (Friday), Kasie Braswell (MSB #101210) of the Taylor-Martino firm received a call at approximately 4:30 pm in which David McCarty (of Nutt & McAlister) indicated that his firm had some scheduling issues and asked if she were available to defend two expert depositions that were scheduled to take place the following Monday at 8:30 am. (these depositions were in State Farm cases). Mrs. Braswell agreed to defend these depositions (as a professional courtesy) and was sent a copy of the expert's CV and expert cost estimate for each case. She was not sent a fact summary or given any other information related to these two cases. (See Affidavit of Kasie Braswell attached as Exhibit "B"). Prior to receiving the CV and cost estimate, Mrs. Braswell had not had any contact or association with the cases. (See Exhibit "B"). Mrs. Braswell appeared at the depositions (which both took place on March 17th, 2008). This is the only substantive contact that Mrs. Braswell has had with any KLG/State Farm case. (See Exhibit "B").¹

7. Mr. Martino and Mrs. Braswell have never entered an appearance in any State Farm/KLG case. Other than the three occurrences listed above, Mr. Martino and Mrs.

¹ Mrs. Braswell sat in on two plaintiffs' depositions in early March 2008 in order to view how Katrina clients were deposed by defendants. Meg McAllister defended these depositions. Mrs. Braswell cannot recall the names of the plaintiffs or defendants involved in this case, thus State Farm may have been a defendant in that particular case.

Braswell have not been associated with any State Farm case that was encompassed by the Court's April 4th Order. (See Exhibits "A" and "B"). Further, neither Mr. Martino, Mrs. Braswell or the firm of Taylor-Martino have entered into any type of written or oral agreement regarding any cases in which the KLG is/was involved. More specifically, Taylor-Martino had not entered into a fee agreement with Don Barrett or the KLG, and the specific nature of the assistance that Taylor-Martino was to perform in the "Insurance Company X" cases had not been finalized, as of the Court's April 4th Order. This remains the case to this day.

8. Mr. Martino and Mrs. Braswell did not have any knowledge of any KLG activity as it relates to the Rigsby sisters or Richard "Dicky" Scruggs, outside of general comments in the legal community or reports that may have been in newspapers or on television, and did not acquire any further knowledge from their limited involvement in the Katrina cases. (See attached Exhibits). In fact, Taylor-Martino was not even approached by the KLG (for aid with several "Insurance Company X" cases) until after Defendants had submitted their Motion for Disqualification to this Court (which resulted in the Court's April 4th Order). (See Affidavit of Steve Martino, Exhibit "A", which indicates that he was initially approached by Don Barrett to assist in the "Insurance Company X" cases in early February 2008).

9. The Court cited MRCP 5.1(c) when addressing why "subsequent firms" should be disqualified from any further State Farm/Katrina litigation (encompassed by the Court's April 4th Order). As the Court noted, Miss. R. Prof. Cond. 5.1(c) states that "[a] lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct

involved...or...knows of the conduct at the time when consequences can be avoided or mitigated but fails to take reasonable remedial action.”

10. Under this test it would appear that the Taylor-Martino firm would not constitute an “associated” or “subsequent” firm. Taylor-Martino did not have any specific knowledge of any violation of the Rules of Professional Conduct as addressed in the Court’s April 4th Order – they were not even approached to aid with the “Insurance Company X” cases until approximately two years after the alleged violation occurred. Thus, not only could Taylor-Martino not have had any knowledge of the alleged violation in time to take remedial action, but Taylor-Martino, by virtue of the very limited capacity in which it was engaged with the KLG (through its engagement in the “Insurance Company X” cases to provide assistance of a nature that had not been finalized as of the April 4th Order) did not have the capacity to ratify any alleged violation. Or, stated differently, the Taylor-Martino firm’s role as set out herein was in the nature of a limited-purpose independent contractor, with no knowledge of any violation, and no involvement in the Katrina cases sufficient to notify it in any event.

11. While it appears that Taylor Martino would not be considered “associate” or “subsequent” counsel to the KLG, out of an abundance of caution, we respectfully seek clarification to determine if this firm would be considered “associated” or “subsequent” attorneys under the Court’s April 4th Order.

12. If the Taylor-Martino firm is not encompassed by the Court’s April 4th Order, we respectfully submit that plaintiffs in the Katrina litigation should be permitted to retain this firm, if they choose to do so. The Taylor-Martino firm is composed of competent counsel which would serve these plaintiffs best interests.

WHEREFORE, we respectfully move the Court to clarify its April 4, 2008 Order, by ruling whether the Taylor-Martino law firm constitutes an “associated” or “subsequent” firm within the ambit of the Order.

Respectfully Submitted,

/s/ Kasie M. Braswell
Kasie M. Braswell (MSB# 101210)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of April, 2008, a true and correct copy of the foregoing document was served via Electronic Mail on the following persons:

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