

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

Case No.: 3:07CR192-NBB-SAA

RICHARD F. SCRUGGS,
DAVID ZACHARY SCRUGGS,
SIDNEY A. BACKSTROM,
STEVEN A. PATTERSON,
TIMOTHY R. BALDUCCI

**MOTION TO RECONSIDER *ORE TENUS* MOTION FOR KENNETH H. COGHLAN
TO APPEAR AS COUNSEL FOR RICHARD F. SCRUGGS**

COMES NOW Defendant Richard F. Scruggs to move that the Court reconsider its Order denying the *ore tenus* motion for Kenneth H. Coghlan to appear as his attorney in this matter. At the hearing on January 16, 2008, the Court heard argument on whether Mr. Coghlan's representation of Mr. Scruggs after he previously briefly represented co-defendant Steven A. Patterson would present an insurmountable conflict of interest. The Court denied Mr. Scruggs's motion. For the reasons that follow, Scruggs respectfully requests that the Court reconsider this decision.

The Court is granted tremendous discretion in assessing potential conflicts of interest on the part of a defendant's preferred counsel. *See Wheat v. United States*, 486 U.S. 153, 163 (1988); *United States v. Plewniak*, 947 F.2d 1284, 1289 (5th Cir. 1991); *United States v. DeCay*, 406 F.Supp.2d 679, 683 (E.D. La. 2005). Indeed, the government acknowledged at the January 16th hearing that "the Court is granted wide latitude in these matters." Jan. 16, 2008 Hrng Tr. at 7:3-5.

There are sound reasons for the Court to exercise its discretion to permit Mr. Coghlan to appear on behalf of Mr. Scruggs in this matter, notwithstanding his prior representation of

Mr. Patterson. Mr. Patterson and Mr. Scruggs, both of whom are sophisticated clients familiar with the law, have each executed knowing and voluntary waivers of any possible conflict after consultation with independent counsel. *See* Hrng. Tr. at 4:8-20. Further, Mr. Scruggs submits that the Court's valid concern regarding Mr. Coghlan's participation in the possible cross-examination of Mr. Patterson can be resolved through the use of appropriate screening measures. To wit, Mr. Coghlan will be excluded from discussions regarding Mr. Patterson, he will neither participate in the cross-examination of Mr. Patterson nor the preparation for such cross-examination, and he will not be present in the courtroom during such cross-examination.

Finally, while the Court is certainly correct that Mr. Coghlan is "not the only attorney in this local area ... that would be available to assist Mr. Scruggs[]," Mr. Scruggs believes that Mr. Coghlan is the very best attorney to assist his lead counsel in this matter and respectfully requests that the Court give due weight to his constitutional right to counsel of his own choosing. *See Wheat*, 486 U.S. at 159; *see also Powell v. Alabama*, 287 U.S. 45, 53 (1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice.")

In the event that the Court does not permit Mr. Coghlan to enter an appearance on behalf of Mr. Scruggs, the undersigned counsel wishes to notify the Court that counsel intends to consult with Mr. Coghlan on issues related to local custom and practice, jurisdiction, jury selection and other strictly legal and procedural (i.e., non-evidentiary issues) that may be pertinent to the defense of the case but which do not implicate any attorney-client privileged communications or information. Mr. Coghlan will have no role in the trial of this matter and will not render any legal advice or consultation to Mr. Scruggs. Furthermore, Mr. Coghlan will not be consulted regarding the specifics of either Mr. Scruggs's or Mr. Patterson's alleged involvement in the conduct at issue in the Indictment.

The undersigned counsel is not aware of any legal or ethical rule that prohibits discussion of such non-privileged legal matters. However, out of an abundance of caution, counsel notifies

the Court of counsel's intention to consult with Mr. Coghlan on these matters. If the Court objects to this consulting relationship, of course, counsel will follow the Court's direction.

Dated: January 25, 2008

By: /s/ John W. Kecker

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Counsel for Defendant
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CERTIFICATE OF SERVICE

I, Brook Dooley, do hereby certify that I have electronically filed the foregoing **Motion to Reconsider *Ore Tenus* Motion for Kenneth H. Coghlan to Appear as Counsel for Richard F. Scruggs** with the Clerk of the Court using the ECF system, which sent notification for such filing to Thomas W. Dawson, Assistant United States Attorney, Robert H. Norman, Assistant United States Attorney, David Anthony Sanders, Assistant United States Attorney, Anthony L. Farese, Frank W. Trapp, J. Rhea Tannehill, Jr., Timothy R. Balducci, Hiram Eastland, Jr., and David Zachary Scruggs.

This, the 25th day of January, 2008.

/s/ Brook Dooley
Brook Dooley