

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

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THOMAS C. and PAMELA McINTOSH,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 1:06-CV-
	:	1080-LTS-RHW
- against -	:	
	:	
STATE FARM FIRE & CASUALTY CO. and :	:	
FORENSIC ANALYSIS & ENGINEERING	:	
CO., et al.,	:	
	:	
Defendants.	:	
	:	
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**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY’S
MOTION TO DISQUALIFY ATTORNEY RICHARD F. SCRUGGS,
THE SCRUGGS LAW FIRM, P.A., AND THE SCRUGGS KATRINA GROUP**

Comes now Defendant State Farm Fire and Casualty Company (“State Farm”), and hereby moves this Honorable Court for an order to disqualify Plaintiffs Thomas C. and Pamela McIntoshes’ attorney, Mr. Richard F. Scruggs, his law firm, the Scruggs Law Firm, P.A., and the Scruggs Katrina Group. As grounds for this motion, State Farm states as follows:

1. The unvarnished facts of this case make plain that, in conjunction with his representation of the McIntoshes, attorney Richard F. Scruggs (“Scruggs”) committed clear violations of several state and national ethical rules and should, at a minimum, be disqualified from this case. In particular, Scruggs’ s own testimony establishes conclusively that: (i) since at least February 2006, Scruggs has had regular, unauthorized *ex parte* contact with two State Farm “insiders,” Cori and Kerri Rigsby (the “Rigsby Sisters” or “Sisters”); (ii) the Rigsby Sisters stole thousands of State Farm’s confidential documents and gave them to Scruggs for use in his litigation against the company; and (iii) the Rigsby Sisters are now being generously

compensated by Scruggs to serve as “trial consultants” in his litigation against State Farm and other insurance companies. This conduct violates Rules 4.2, 4.4, and 8.4 of the Mississippi Rules of Professional Conduct.

2. Cori and Kerri Rigsby are former employees of E.A. Renfroe and Co., Inc. (“Renfroe”), a firm that provides insurance adjusters to insurance companies following a catastrophic event. The Rigsby Sisters were both employed by Renfroe to adjust and mediate claims by State Farm’s policyholders in the aftermath of Hurricane Katrina, and had virtually plenary access to State Farm confidential policyholder information and claim files. Kerri Rigsby was the Renfroe manager who accompanied and supervised the Renfroe adjuster who inspected and adjusted the McIntoshes’ claim that is the subject of this lawsuit.

3. By their own account, the Sisters surreptitiously began copying State Farm’s confidential documents and funneling them to Scruggs for use in his civil litigations against State Farm as early as February 2006. In fact, one of the first documents they gave to Scruggs was an original engineering report prepared in conjunction with the McIntoshes’ claim. The Rigsby Sisters’ clandestine activities went on for several months, culminating in what they have referred to as a “data dump” – a weekend event in which the Sisters enlisted the help of several friends and printed out or copied a total of some 15,000 pages of State Farm documents and claim files, which they then handed over to Scruggs. Scruggs, in turn, rewarded the Sisters for their cooperation by paying them an annual salary of \$150,000 each to serve as “litigation consultants” for him and his associates at the Scruggs Katrina Group (the “SKG”).

4. Notably, in a separate lawsuit brought against the Sisters by Renfroe, captioned *E.A. Renfroe & Co., Inc. v. Moran*, No. 2:06-cv-01752-WMA, 2006 WL 4458009 (N.D. Ala.

Sept. 1, 2006), a federal court in Alabama has already found this conduct improper. *See id.* at *1. There, Judge William M. Acker Jr. found that “[t]here can be no doubt that Moran¹ and Rigsby violated important and critical terms of their contracts with Renfroe when they copied State Farm’s records and turned them over to Scruggs.” Mem. Opinion and Preliminary Injunction, dated Dec. 8, 2006 (“12/8/06 *Renfroe* Order,” attached as Exhibit 2 to Mem.), at 10 (footnote added). The court issued a preliminary injunction, which required Scruggs and the Sisters “to deliver forthwith” to Renfroe’s counsel all of the pilfered documents and to stop using them. *Id.* at 13-14. Judge Acker further found that the Rigsbys acted “upon advice of counsel [presumably Scruggs],” *id.* at 8 (alterations in the original), and that “it is apparent that they are all three now engaged in a cooperative effort,” *id.* at 9.

5. On June 15, 2007, Judge Acker found that there was ample evidence that Scruggs willfully violated the court’s preliminary injunction and formally requested that the United States Attorney for the Northern District of Alabama prosecute Scruggs and his law firm for criminal contempt. *See* Mem. Opinion dated June 15, 2007 (“6/15/07 *Renfroe* Order,” attached as Exhibit 3 to Mem.) at 1-2, 25-26. The court explained that “[Scruggs’s] brazen disregard of the court’s preliminary injunction is precisely the type of conduct that criminal contempt sanctions were designed to address.” *Id.* at 20.²

¹ Cori Rigsby was formerly known by her married name, Cori Rigsby Moran. She is now divorced and goes by her maiden name. *See* Deposition of Cori Rigsby (“C. Rigsby Dep.”) at 12:21-25. All pertinent portions of C. Rigsby Dep. are attached as Exhibit 1 to State Farm’s Memorandum of Law in Support of Defendant’s Motion to Disqualify Mr. Richard F. Scruggs, the Scruggs Law Firm, P.A., and the Scruggs Katrina Group (“Memorandum” or “Mem.”).

² *See also* June 15, 2007 Order issued in *Renfroe*, attached hereto as Exhibit 4; January 19, 2007 Order issued in *Renfroe* (finding sufficient evidence “to suggest that Scruggs, as defendants’ agent or attorney, knowingly violated and/or permitted or helped defendants to violate this court’s [injunction]”), attached to Memorandum as Exhibit 5.

6. Scruggs's conduct violated several local and national ethical rules and standards. First, Mississippi Rule of Professional Conduct 4.2 prohibits attorneys from *ex parte* communications with represented parties. As managers and adjusters for Renfroe working exclusively on State Farm matters, the Rigsby Sisters had the authority to speak for State Farm in their claims handling and mediation/litigation duties, and thus clearly fall under the definition of "represented parties." Scruggs admits that he had many unauthorized *ex parte* conversations with them over the course of several months.

7. Second, Scruggs's conduct violates Mississippi Rule of Professional Conduct 4.4, which prohibits a lawyer from using methods of obtaining evidence that violate the legal rights of a third party, and Mississippi Rule of Professional Conduct 8.4, which prohibits an attorney from engaging in conduct involving dishonesty or deceit or that is prejudicial to the administration of justice. The *Renfroe* court has already found that Scruggs and the Sisters clearly violated the legal rights of a third party – Renfroe – by "engag[ing] in a cooperative effort" to misuse confidential information. See 12/8/06 *Renfroe* Order at 9. And Scruggs's blatant use of stolen State Farm documents in lawsuits where he represents plaintiffs against State Farm – including this one – has grossly violated State Farm's legal rights as well.

8. Third, hiring the Rigsby Sisters – whom Scruggs has repeatedly described as material witnesses whose testimony he intends to offer against State Farm – as "litigation consultants" violates Rules 4.2, 4.4, and 8.4, and most assuredly creates the appearance of impropriety in derogation of Canon 9 of the Model Code of Professional Responsibility.

9. Fourth, Scruggs's concurrent representation of the Rigsby Sisters and the Plaintiffs violates Mississippi Rule of Professional Conduct 1.7, which prohibits lawyers from

representing clients when doing so would be adverse to, or would materially limit, their representation of another client.

10. Fifth, Scruggs must be disqualified under Mississippi Rule of Professional Conduct 3.7, which prevents a lawyer from representing a party in a proceeding in which the lawyer is likely to be a necessary witness. Here, Scruggs has unique firsthand knowledge regarding crucial, potentially exculpatory facts that bear directly on the McIntoshes' claims against State Farm.

11. Finally, it is important to underscore that this motion is *not* about preventing Plaintiffs from "obtain[ing] discovery regarding any matter, not privileged, that is relevant to the[ir] claims." Fed. R. Civ. P. 26(b)(1). The Federal Rules of Civil Procedure provide Scruggs with ample tools to obtain relevant documents and question witnesses regarding Plaintiffs' claims. Scruggs chose to ignore the Federal Rules, opting instead to chart a path that is clearly proscribed by the Mississippi Rules of Professional Conduct. As one court observed granting disqualification under analogous facts, "[t]he integrity of the justice system is at risk unless a stand is taken against conduct of the sort that occurred here."³

12. This is also not a motion that State Farm makes lightly. However, in the course of this litigation, deposition testimony, public statements, and other evidence make it abundantly clear that Scruggs has committed serious and repeated ethical violations and traduced the Federal

³ *Camden v. Maryland*, 910 F. Supp. 1115, 1123 (D. Md. 1996).

Rules. Given these flagrant violations, State Farm's counsel is duty-bound to bring these issues to the attention of the Court.⁴

13. To assist the Court in evaluating Scruggs's conduct in this matter, State Farm has retained Professor Charles W. Wolfram, who is a nationally-recognized expert in the field of professional responsibility and ethics. Among his many other writings in the field, Professor Wolfram is the author of the treatise MODERN LEGAL ETHICS. He also served as Chief Reporter for the American Law Institute's RESTATEMENT OF THE LAW GOVERNING LAWYERS. After reviewing the record evidence, Professor Wolfram concluded:

In summary, it is my considered expert opinion that Mr. Scruggs blatantly, seriously, and repeatedly departed from the standard of conduct that would be followed by a lawyer of ordinary care and prudence in dealing with clearly confidential and privileged information possessed by the Rigsby Sisters as former confidential agents of State Farm. Mr. Scruggs' course of conduct warrants his disqualification from further participation in this matter. Moreover, Mr. Scruggs' extensive sharing of State Farm confidential documents and other information obtained from the Rigsby Sisters with all other members of the SKG requires that those other lawyers and their law firms also be disqualified.

Decl. of Charles W. Wolfram ¶ 3.

14. In short, Scruggs admits that he: (i) engaged in unauthorized *ex parte* communications with the Rigsby Sisters; (ii) hired the Rigsby Sisters as "litigation consultants"; (iii) received stolen confidential documents from them; (iv) continues to represent claimants against State Farm and the Sisters simultaneously; and (v) has firsthand knowledge regarding material facts in this case. Based on these admissions, disqualification of Scruggs, his law firm, and the SKG is more than warranted in this case.

⁴ See Mississippi Rule of Professional Conduct 8.3 (1987) ("A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.").

WHEREFORE, for these reasons and the reasons set forth in State Farm's Memorandum, State Farm respectfully moves this Honorable Court to enter an order to disqualify Mr. Richard F. Scruggs; his law firm, the Scruggs Law Firm, P.A.; and the Scruggs Katrina Group, and to prohibit Plaintiffs from using any information or documents obtained through the *ex parte* communication with the Rigsby Sisters.

Dated: June 19, 2007

Respectfully submitted,

/s/ John A. Banahan

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*Attorneys for State Farm Fire and
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CERTIFICATE OF SERVICE

I, **JOHN A. BANAHAN**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing Motion to Disqualify Attorney Richard F. Scruggs, The Scruggs Law Firm, P.A. and the Scruggs Katrina Group with the Clerk of Court using the ECF system which sent notification of such filing to the following and further that I this day mailed, postage prepaid, a true and correct copy of the foregoing to:

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THIS the 19th day of June, 2007.

s/John A. Banahan
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