

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

UNITED STATES OF AMERICA *ex rel.*  
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;  
EXPONENT, INC.; HAAG ENGINEERING CO.;  
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;  
STRUCTURES GROUP; E. A. RENFROE, INC.;  
JANA RENFROE; GENE RENFROE; and  
ALEXIS KING

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF STATE FARM FIRE  
AND CASUALTY COMPANY'S RESPONSE IN OPPOSITION TO  
RELATORS' MOTION FOR RECONSIDERATION OF DISQUALIFICATION ORDER**

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm"), respectfully submits this Response in Opposition to Relators Cori and Kerri Rigbys' Motion for Reconsideration of this Court's May 19, 2008 Disqualification Order. ([184].) State Farm would show:

1. Reconsideration is reserved for cases in which there is: (1) an intervening change in controlling law; (2) newly obtained evidence that was reasonably unknown; or (3) a need to correct a manifest error of law or fact. This is most assuredly not such a case.

2. Tellingly, the Rigbys' motion does not address Rule 59(e) or the controlling case law *at all*. This glaring omission only highlights the fact that the Rigbys have not established and cannot establish any grounds for reconsideration of this Court's Disqualification Order. They can point to no change in controlling law. Indeed, the handful of cases that they cite are all

from the 1970s, and either were or could have been included in their previous briefs. ([185 at 16-21].)

3. Nor do the Rigsbys proffer any newly discovered evidence, focusing instead on known events that occurred long before disqualified Counsel filed their two opposition briefs to State Farm's disqualification motion. In fact, the only "new" evidence provides additional confirmation that disqualified Counsel's declarations contain false statements. In particular, disqualified Counsel's assertion that they had "no involvement" in the policyholder cases ([141-3 ¶ 35]) is refuted by former Scruggs Katrina Group ("SKG") attorney Derek Wyatt's recent deposition testimony, which reveals that he and other SKG members met with a number of lawyers from Bartimus, Frickleton, Robertson & Gorny, PC ("BFRG") for several hours to discuss "strategy" with regard to the "Hurricane Katrina cases."<sup>1</sup>

4. In a last-ditch effort to manufacture grounds for reconsideration, the Rigsbys present a laundry list of so-called "facts" that they then assert the Court got wrong. But *none* of these "facts" has any bearing on the Court's Disqualification Order. The Order was based on facts that were culled from disqualified Counsel's own declarations, namely, that disqualified Counsel knew that their co-counsel, Richard F. Scruggs ("Scruggs"), was paying the Rigsbys for "consulting services" "either in late Summer or early Fall of 2006," but made no effort "to inquire into the arrangement in sufficient depth to determine its true nature," to stop these payments, or to disassociate themselves from Scruggs, his law firm, or the Rigsbys. ([177 at 4]) (quoting declarations).

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<sup>1</sup> Apr. 21, 2008 Deposition of Derek Wyatt at 81:13-83:7, taken in *E.A. Renfroe & Co. Inc. v. Rigsby*, No. 2:06-cv-1752-WMA (N.D. Ala.). Although Mr. Wyatt's deposition was taken before briefing was closed on State Farm's disqualification motion, the transcript remained under seal for a period of thirty days pursuant to court order in that matter. State Farm has thus only recently come into possession of Mr. Wyatt's transcript. All pertinent excerpts from this deposition are attached to State Farm's Memorandum as Exhibit 1.

5. The Rigsbys also spend many pages ruminating about when State Farm and the Court knew about Scruggs's sham payments to them and arguing that the "duty to inquire . . . and take any remedial action" fell, first and foremost, on State Farm and the Court. ([185 at 1].) However, Mississippi Rule of Professional Conduct ("MRPC") 5.1(c)(2) imposes an ethical obligation on *co-counsel* – not opposing counsel or the Court – "*to take reasonable remedial action*" in the face of an ethical violation by any one member of the team. MRPC 5.1(c)(2) (emphasis added). Moreover, *all* of the arguments that the Rigsbys are now making could have been made in their two previous opposition briefs. As such, their arguments are insufficient to warrant reconsideration as a matter of law.

6. Although the Rigsbys style their motion as one for reconsideration, the Federal Rules of Civil Procedure provide no such mechanism. Instead, such motions (if timely made) must comply with Rule 59(e)'s strict requirement to alter or amend a judgment. The Fifth Circuit has admonished that such a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment. bNor, as this Court has held, is Rule 59 a vehicle for a litigant to ask the Court to reconsider adverse decisions it is simply unwilling to accept. Rather, reconsideration of a judgment after its entry is an extraordinary remedy, serving the narrow purpose of allowing a party to correct *manifest* errors of law or fact or to present *newly discovered* evidence.

7. To meet their heavy burden to alter or amend this Court's Disqualification Order under Rule 59(e), the Rigsbys must establish that: (1) there is a need to correct a manifest error of law or fact; (2) the Rigsbys uncovered new evidence that was reasonably unknown prior to entry of the judgment or order in question; or (3) an intervening change in controlling law

occurred. The Rigsbys have not shown that reconsideration is warranted under any of the three enumerated grounds.

8. The Rigsbys do not and cannot contend that there is either an intervening change in controlling law or newly discovered evidence that could support a motion for reconsideration. Instead, they urge that reconsideration is warranted because the Court “made certain factual assumptions that were neither true [n]or supported by the record.” ([184 at 1].) The Rigsbys are wrong. For the most part, these so-called “factual assumptions” are simply recycled legal arguments -- and the factual “errors” that the Rigsbys claim this Court committed are nonexistent.

9. The Rigsbys’ central contention is that “the Court mistakenly assumed that Relators’ counsel knew about the relationship between the Rigsbys and the attorneys for the [SKG] before [State Farm] did.” ([185 at 1].) This assertion is both incorrect and irrelevant.

10. The Court did not “assume” anything regarding when disqualified Counsel knew that the Rigsbys were paid SKG consultants. Rather, the Court “*accept[ed] the representation of the current attorneys* that they had no actual knowledge concerning the financial arrangement between Scruggs and the Rigsby sisters until ‘the late Summer or early Fall of 2006.’” ([177 at 4]) (emphasis added) (quoting Robertson Decl. ¶ 16).

11. More fundamentally, State Farm’s knowledge of the consulting arrangement between Scruggs and the Rigsbys is irrelevant to this Court’s analysis under MRPC 5.1(c)(2). As the Court correctly found, “once the current attorneys learned that there was a financial arrangement between Scruggs and the Rigsby sisters, they had a duty, in my opinion, to inquire into the arrangement in sufficient depth to determine its true nature, i.e., to determine the particulars of that arrangement.” ([177 at 4].) The Court held that disqualification was warranted because Counsel failed to discharge their duty: “Rather, continuing to act as co-

counsel with Scruggs and taking no other action after learning of this arrangement constitutes a tacit approval, if not an outright ratification of the arrangement.” (*Id.* at 5.) What State Farm – or the Court for that matter – might or might not have known is wholly irrelevant to this analysis.

12. The Rigsbys also argue that the Court “[a]ssumed that Relators’ counsel was aware that the payment arrangement between the Relators and SKG was a sham arrangement in advance of the Court’s determination of that fact.” ([184 at 1].) Once again, the exact opposite is true. In fact, the Court went out of its way to “give the current attorneys the benefit of the doubt” by “assum[ing] without deciding” that the Rigsbys could have had a “legitimate employment arrangement” with Scruggs. ([177 at 4].)

13. The Rigsbys’ argument is all the more incongruous in light of the fact that disqualified Counsel have *already admitted* that they recognized immediately that Scruggs’s payments to the Rigsbys were unethical. In his previous declaration, Anthony L. DeWitt testified:

When I learned of this purported employment relationship [used as a cover for sham payments by the SKG to the Rigsbys] I had a conversation with Edward D. Robertson, Jr., of our firm *where I expressed my belief that we could not participate in providing any remuneration to Relators in advance of any settlement of the case under Missouri Rule 4-1.8 which prohibited payments to clients.*

([141-3 at 5]) (emphasis added). Indeed, Mr. DeWitt has previously and correctly argued that “[t]here is no grey area” regarding the fact that the Rigsbys could not be paid. ([141 at 2].)

14. Notably, the Rigsbys now concede that BFRG was fully aware of all the facts and circumstances surrounding their sham consulting arrangement with Scruggs when BFRG was retained to serve as co-counsel with Scruggs and the SKG on behalf of the McIntoshes in conjunction with State Farm’s mandamus petition. *See In re State Farm Fire & Cas. Co.*, 254 F.

App'x 408 (5th Cir. 2007). They also concede that BFRG made absolutely no effort to stop these payments or to disassociate themselves from Scruggs, his law firm, or the Rigsbys at that time. Rather, BFRG allowed these manifest ethical violations to go unchecked for nearly another six months until Scruggs withdrew following his guilty plea.

15. Recognizing that BFRG's months of admitted inaction mandate disqualification under all of their alternating versions of the "facts," the Rigsbys now attempt to explain away disqualified Counsel's inaction by claiming for the first time that "Relators . . . were provided with an opinion from Geoffrey Hazard . . . [which] satisfied Relator's [sic] counsel." ([185 at 8].) Although Geoffrey Hazard did, in fact, provide the SKG with an "ethics opinion," the report *does not contain a single word regarding the propriety of Scruggs's payments to the Rigsbys.* (*McIntosh* [347-2], Ex. 1 to Mem.) The "ethics opinion" of W. C. Trotter III is similarly silent on the issue. (*McIntosh* [347-2], Ex. 2 to Mem.) Yet, as Mr. DeWitt immediately recognized, "[t]here is no grey area" regarding the fact that the Rigsbys could not be paid. ([141] at 2); *accord* ([141-4 ¶ 16]) ("Missouri law expressly prohibited payment or provision of any financial assistance to a client of a law firm by the law firm"); *see* MRPC 1.8(e) (1987) ("A lawyer shall not provide financial assistance to a client . . .").<sup>2</sup> Thus, the Rigsbys' assertion that disqualified Counsel relied on nonexistent language in an "ethics opinion" to justify conduct that Counsel knew was unethical strains credulity beyond the breaking point.

16. Finally, the Rigsbys attempt to "rehash[] . . . legal theories, or arguments that could have been offered or raised before the entry of judgment," *Templet*, 367 F.3d at 479, by couching them as "factual assumptions." *See* ([184 at 2-5]). For instance, the Rigsbys again

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<sup>2</sup> The rule applies except in very limited circumstances that are not relevant here.

argue that disqualified Counsel were “unfairly” denied due process because the Court ruled on the papers that Counsel submitted to this Court. This argument has already been thoroughly addressed and rebutted in prior motion papers. Deciding motions on the papers submitted is the norm – *see* Miss. Unif. Dist. Ct. R. 7.2(F)(1) – and therefore a hearing or oral argument is the exception. *See id.* As this Court has previously recognized, Rule 59(e) is not a vehicle for a litigant to ask the Court to reconsider adverse decisions it is simply unwilling to accept.

17. The Rigsbys’ motion papers – including the supporting declarations of their disqualified Counsel – are riddled with statements that the Rigsbys know or should know are false. As set forth below, it is nearly impossible to conclude that these papers are a legitimate attempt to properly support reconsideration of this Court’s prior ruling.

18. The Supplemental Declaration of Edward D. Robertson Jr. states:

The Relators in this case, Cori Rigsby and Kerri Rigsby, signed a contract creating the attorney-client relationship with the law firm of [BFRG] to pursue their False Claims Act case. ***The Relators did not enter into a contract with the Scruggs Law Firm or with any firm that was a member of the [SKG] to form an attorney client relationship as regards this [sic] False Claims Act case. Both Graves, Bartle and Marcus and the Scruggs Law Firm were asked to join the case as co-counsel with [BFRG] which was the sole firm with whom the Relators signed an attorney employment contract.***

([185-3 ¶ 5] (emphasis added).)

19. This statement is highly problematic on multiple levels. First, Mr. Robertson’s newly minted assertion that the *Scruggs Law Firm* only became involved in the *qui tam* case after it *was “asked to join* the case as co-counsel *with [BFRG]”* ([185-3 ¶ 5]) is squarely at odds with the prior declaration of his law partner, Anthony L. DeWitt. In Mr. DeWitt’s declaration, he stated unequivocally that *“BFRG was asked by Richard Scruggs to represent Cori and Kerri Rigsby in a False Claims Act case.”* ([141-3 ¶ 6]) (emphasis added). Now, Mr. Robertson is

urging the exact opposite – and mutually exclusive – position to the Court. These two declarations cannot be reconciled.

20. Mr. Robertson’s supplemental declaration also erroneously asserts that the Rigsbys did not enter into a contract with Scruggs in this matter and did not have an attorney-client relationship with him. Putting aside for a moment the obvious fact that a client need not sign a written retention agreement in order “to form an attorney client relationship” as Mr. Robertson suggests, the Rigsbys’ own sworn deposition testimony directly contradicts Mr. Robertson’s declaration on this point. For instance, Kerri Rigsby testified that she did, in fact, retain Scruggs to represent her in the *qui tam* action and that there was a written agreement.

Q. Okay. Did you engage Mr. Scruggs to represent you on a separate matter at that April meeting?

**KERRI RIGSBY:** Yes.

Q. Did you sign an engagement letter or some form of agreement with Mr. Scruggs at that meeting?

A. There was a document. I’m assuming I signed it, but there was some type of agreement, yes.

Q. Did it include a fee agreement?

A. I believe it did.

Q. Do you recall what the fee agreement was?

A. I think it’s 40 percent –

Q. Forty percent?

A. of contingency. Does that make sense? Okay.

Q. Forty percent of any proceeds to Mr. Scruggs?

A. Yes.

(Jan. 26, 2007 Dep. of K. Rigsby at 81:11-82:6.)<sup>3</sup>

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<sup>3</sup> The January 26, 2007 deposition of Kerri Rigsby was taken in *E.A. Renfore v. Rigsbys*. All pertinent excerpts from this deposition are attached to State Farm’s Memorandum as Exhibit 2.

21. In fact, Kerri Rigsby specifically rejected the type of parsing of legal representation on a case-by-case basis that Mr. Robertson is now engaged in. On this point, Kerri Rigsby testified that she considered Scruggs to be her lawyer in *all* legal matters. When asked to define the scope of Scruggs's representation, Kerri Rigsby stated: "Anything dealing with the law, that's the scope of how I see Dick Scruggs as well. . . . But I think of Dick Scruggs as my lawyer. I don't know the different aspects of the law. He's my lawyer. I trust him with my legal issues." (*Id.* at 141:18-142:1.)

22. Cori Rigsby similarly testified quite clearly that she retained Scruggs to represent her in this *qui tam* action and that there was a written agreement:

Q. As I understand it, Mr. Scruggs has been retained to represent you in the second matter, correct?

**CORI RIGSBY:** Correct.

Q. What are the financial terms of his representation of you in this second matter?

A. I believe I don't – [Objection omitted].

Q. Is there a written agreement that captures the retention agreement for the second matter? Is there an engagement letter or any kind of contract for this second representation?

**MR. HAWLEY [the Rigsbys' attorney]:** If there is, you can answer.

A. There is – I know that I remember something in writing.

(Jan. 25, 2007 Dep. of C. Rigsby at 180:10-181:5.)<sup>4</sup> Cori Rigsby's testimony further refutes Mr. Robertson's assertion that the Scruggs Law Firm only became involved in the *qui tam* case after it was "asked to join the case as co-counsel with [BFRG]." [185-3 ¶ 5.] On this point and the prior one, Cori Rigsby testified:

Q. Okay. And when did you reach this agreement to retain Mr. Scruggs to represent you in the second matter?

A. In April.

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<sup>4</sup> The January 25, 2007 deposition of Cori Rigsby was taken in *E.A. Renfore v. Rigsbys*. All pertinent excerpts from this deposition are attached to State Farm's Memorandum as Exhibit 3.

Q. And when did this – when was this second firm retained?

A. April.

Q. The same time; is that correct?

A. That's correct, to my recollection, yes.

Q. Does the second firm also have a contingent fee agreement?

A. My understanding is it's across the board the same agreement fee-wise.

Q. So the two firms will share in the 40 percent; is that what your understanding is?

A. My understanding is 40 percent goes to attorneys, and I don't know how they work it out.

Q. Okay. Is there a written agreement with the second firm?

A. I've seen one written agreement.

Q. And that's the one with Mr. Scruggs?

A. They're all on it.

Q. They're all on it. Okay. So it's a written agreement between you and Mr. Scruggs and the second firm?

A. Yes.

(Jan. 25, 2007 Dep. of C. Rigsby at 182:13-18:13.)

23. The Rigsbys' contention that “[t]he only connection from BFRG to SKG or KLG [Katrina Litigation Group] is attenuated through Scruggs [sic] presence on the initial pleadings” ([185 at 15]) is contradicted by the undisputed evidence. The Rigsbys have already admitted that BFRG served as co-counsel with Scruggs and the SKG in the *McIntosh* mandamus proceeding and the appeal of *Tuepker v. State Farm Fire & Casualty Co.*, 507 F.2d 346 (5th Cir. 2007). Further, Scruggs's presence in this case was not limited to “the initial pleadings[;]” rather, he remained lead counsel *until after his guilty plea*.

24. Moreover, recent deposition testimony obtained from former SKG lawyer Derek Wyatt shows that there was far more coordination between the SKG and disqualified Counsel than they admit in their declarations. Mr. Wyatt testified that he, Scruggs, Don Barrett, and possibly Meg McAlister and others from the SKG met with the BFRG lawyers at former SKG

member firm Nutt & McAlister's offices to discuss overall strategy in the Hurricane Katrina cases:

Q. Who was there at that meeting?

DEREK WYATT: That was a meeting of the Scruggs Katrina Group lawyers.

MR. SHAPLEY [representing Mr. Wyatt]: You can tell them who was there. I have no objections.

A. As I recall, this is based on recollection, Dick Scruggs was there, Chip Robertson was there, Jim – I hope he'll forgive me for this fill, it's either Frickleberg or Frisklestein, I'm sorry, but I don't remember exactly his name, a very nice man, good lawyer, I think Don Barrett was there, probably Meg McAlister was there and that's what I recall. There may have been some other SKG counsel who were there, also.

Q. Was Chip and Jim, the fellows from Jefferson City, were they members of the Scruggs Katrina Group?

A. Not as I understood it, no.

Q. Why were they attending an SKG meeting?

A. Well –

MR. SHAPLEY: If it was a strategy meeting to discuss strategy, you can tell them that, but it – I'm not going to let you talk about what the strategy was. I don't know why they were there, if they were.

A. It was about strategy, it was.

Q. And I'm not, at this point, asking you for any details of what that strategy was, but I want to understand your answer. Strategy with regard to what?

A. Hurricane Katrina cases.

(Apr. 21, 2008 Dep. of D. Wyatt at 81:16-82:20.)<sup>5</sup>

25. The Rigsbys further toss out a series of statements that are so contrary to the evidence before this Court in this and other Katrina-related cases that they refute themselves.

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<sup>5</sup> The Rigsbys' attempt to marginalize Scruggs's participation in this matter is also at odds with Judge Acker's recent Order imposing civil contempt sanctions on the Rigsbys in the *Renfroe* case. See (June 5, 2008 Mem. Op., entered in *E.A. Renfroe & Co., Inc. v. Rigsby*, 06-AR-1752-S, (Ex. 4 to Mem.)). There, Judge Acker found that "Scruggs was the *alter ego* of the Rigsbys, and the Rigsbys were the *alter egos* of Scruggs." *Id.* at 12. The court further explained: "Scruggs and the Rigsbys had an identity of interest from February 2006 until today. The Rigsbys were effectively employed by Scruggs in February 2006. In February 2006, there was a mutual commitment to a joint-venture in which Scruggs was as much the Rigsbys' agent as the Rigsbys were his agents." *Id.* at 13.

For instance, the Rigsbys contend that disqualified Counsel were “not present in Mississippi” ([185 at 3]), ignoring the well-known – and, one would think, undisputed – fact that they attended meetings with Scruggs and the Rigsbys in Mississippi in a trailer. ([141-3 ¶¶ 7-12; 141-4 ¶¶ 10-14].) Mr. Wyatt’s testimony, discussed above, further demonstrates that there was at least one more meeting in Mississippi between disqualified Counsel and the SKG lawyers.

26. The Rigsbys also repeat their false contention that they “were serving as consultants in other cases, not in the *McIntosh* litigation.” ([185 at 20].) But there is no dispute that Scruggs was grooming the Rigsbys to be his “star witnesses” in *McIntosh* and other State Farm cases while paying each of them \$150,000 per year in sham “consulting” fees. In fact, Cori Rigsby admits that she discussed the *McIntosh* litigation with SKG attorneys while she was on the SKG payroll.<sup>6</sup>

27. Furthermore, the Rigsbys erroneously claim – without any supporting evidence – that State Farm “was involved in a joint venture with Renfroe in the Alabama prosecution of the Rigsbys” ([185 at 8]), when the docket in that case makes it crystal clear that State Farm had absolutely no involvement in the *Renfroe* action until *the Rigsbys* served State Farm, a non-party, with third-party discovery under Rule 45.

WHEREFORE, PREMISES CONSIDERED, there is no need to correct a manifest error of law or fact, the Rigsbys have cited no evidence that was reasonably unknown prior to entry of the Order in question, and there has been no intervening change in controlling law. For these and the other reasons discussed above, State Farm respectfully requests that the Court deny Relators’ Motion for Reconsideration.

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<sup>6</sup> (Jan. 14, 2008 Dep. of C. Rigsby at 15:19-16:2 (Ex. 5 to Mem.).)

This the 17<sup>th</sup> day of June, 2008.

Respectfully submitted,  
STATE FARM FIRE AND CASUALTY COMPANY

By: /s/ Jeffrey A. Walker

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*PRO HAC VICE*

**CERTIFICATE OF SERVICE**

I, Jeffrey A. Walker, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System:

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THIS the 17<sup>th</sup> day of June, 2008.

*/s/ Jeffrey A. Walker*  
\_\_\_\_\_  
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