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COURTS, DOJ SHOULD FULLY INVESTIGATE ALLEGED TRIAL LAWYER MISCONDUCT

The Washington Legal Foundation (WLF) today called on the federal courts and the U.S. Department of Justice to fully investigate allegations of serious ethical improprieties lodged against prominent plaintiffs' attorney Richard F. Scruggs. On June 15, 2007, a federal judge in Alabama found that there existed "sufficient evidence to meet the burden of proving that Scruggs willfully violated" an injunction the judge had issued last December; the injunction was issued in litigation arising in connection with Hurricane Katrina-related insurance claims. Based on Scruggs's violation of the injunction, the judge "formally requested" that a federal government attorney prosecute Scruggs for criminal contempt of court. In related litigation, Charles W. Wolfram, a highly respected professor of legal ethics, charged on June 14 that Scruggs has violated numerous ethical rules in connection with his representation of Hurricane Katrina insurance claimants. Wolfram concluded that the proper remedy for those alleged ethical violations is that Scruggs and his affiliated law firms be removed from representing all such claimants.

Scruggs contends that his actions – which included directly communicating with representatives of an opposing party in litigation who he knew to be represented by another lawyer, and accepting and disseminating documents he knew to be stolen – were justified as a means of uncovering allegedly fraudulent conduct by the opposing party, State Farm Fire and Casualty Co. Professor Wolfram disagreed, asserting that a lawyer who suspects that an opponent has engaged in fraud should seek the assistance of a court in obtaining documents that might demonstrate the fraud, rather than adopting surreptitious self-help techniques.

"All attorneys need to realize that they are never above the law, no matter how strongly they believe in the righteousness of their cause," said WLF Chief Counsel Richard Samp in connection with WLF's call for a full investigation. "It is not up to individual lawyers to decide unilaterally that their opponent has engaged in fraud and has thereby forfeited the protection usually afforded to confidential corporate documents that reflect internal decision-making processes. If an attorney believes that a company has forfeited its confidentiality by engaging in fraud, he should follow the normal rules governing civil litigation: he should bring the matter to the attention of the presiding judge and seek an order requiring that the documents be disclosed, rather than inducing agents of the opposing company to steal the documents and deliver them surreptitiously to the attorney," Samp said.

Hurricane Katrina damaged numerous homes and businesses along the Gulf of Mexico in late August 2005. Whether owners are entitled to recover under property insurance policies generally depends on whether the damage is determined to have been caused by flooding (not covered) or high winds (in many cases, covered). Cori and Kerri Rigsby, two sisters who were employed as supervisors in 2005-06 for a company retained by State Farm to investigate Hurricane Katrina insurance coverage claims, came to believe that State Farm was engaging in fraudulent practices in the course of denying some claims. Although the Rigsby sisters were agents of State Farm and thus owed a fiduciary duty to the company, they began to supply Scruggs with thousands of internal company documents that they were not authorized to distribute. Thereafter, Scruggs agreed to serve as the Rigsby sisters' attorney, and he hired each as "litigation consultants" at annual salaries of \$150,000. Although he knew that State Farm had not authorized the Rigsby sisters to disseminate any of the documents they supplied to

him, Scruggs distributed those documents to other attorneys with which his law firm was working on Katrina-related insurance claims.

When the owner of the insurance adjusting firm discovered what had happened, he filed suit in federal court in Alabama against the Rigsby sisters, demanding the return of all stolen documents. On December 8, 2006, Judge William M. Acker, Jr. – the judge hearing the Alabama case – issued an injunction requiring the Rigsby sisters (and their attorneys, including Scruggs) to return all of the documents inappropriately copied and/or removed by the sisters.

Despite his awareness of the injunction, Scruggs did not comply but instead gave his documents to Mississippi Attorney General Jim Hood, with whom Scruggs has a close working relationship. The Rigsby sisters had separately supplied a complete set of the documents to Hood, who was not subject to the injunction. So by supplying documents to Hood, Scruggs was not providing Hood with any new material; rather, the sole purpose of transferring documents to Hood was to keep them out of State Farm's hands. Indeed, after the transfer, Scruggs asked Hood to provide him with a copy of all documents that the sisters had supplied to Hood.

In finding that Scruggs had willfully violated the injunction based on a belief (despite explicit provisions in the injunction) that State Farm would get its hands on any documents he turned over to the Court, Judge Acker charged that Scruggs “was arrogating to himself the right to substitute his judgment for the court’s judgment.” Acker formally requested that a Department of Justice attorney prosecute Scruggs for criminal contempt of court. WLF noted that one way or the other, there will be a prosecution: Acker stated that if the government declines to prosecute, he will appoint his own special prosecutor.

WLF applauded Acker’s action, stating that a prosecution is essential to uncover the full extent of Scruggs’s wrongdoing. WLF stated that the prosecutor should investigate the full range of Scruggs’s activities in Katrina-related litigation. WLF noted that in a major Katrina-related suit in federal district court in Mississippi, the defendants have moved to have Scruggs and law firms to which he is related disqualified from the case based on Scruggs’s relationship with the Rigsby sisters. It is in connection with that suit that Professor Wolfram has charged Scruggs with serious ethical violations. Wolfram charged Scruggs with violating Mississippi Rule of Professional Conduct 4.2 (by communicating with State Farm’s agents outside the normal litigation process), Rule 4.4 (by using improper methods to obtain evidence that violated the rights of third parties), Rule 1.7 (by simultaneously representing clients with conflicting interests -- the Rigsby sisters have interests in clear conflict with those of insurance claimants), and Section 102 of the *Restatement of the Law Governing Lawyers* (by seeking to obtain information from a nonclient that a lawyer knows the nonclient has a duty not to disclose). WLF termed Professor Wolfram’s charges against Scruggs “extremely grave” and called on the Mississippi federal court to give careful consideration both to the charges and to imposition of an appropriate sanction against Scruggs.

Washington Legal Foundation, a national, non-profit public interest law and policy center, has opposed government abuse of the legal system for over 30 years. WLF has played an integral role in explaining the importance of balancing the needs of the litigation discovery process – which generally allows parties to litigation to gain access to documents that are relevant to the issues in dispute – with the needs of parties to maintain the confidentiality of their internal documents. For further information, contact WLF Chief Counsel Richard Samp at (202) 588-0302.