

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:

A MATTER UNDER INVESTIGATION BY
GRAND JURY NUMBER 1

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Case No. 3:07-MC- 135-MBS

3:07-me-138-MBS

RULE 44(c) WAIVER OF CONFLICT OF INTEREST
(Read Carefully)

The United States Constitution gives every criminal defendant the right to effective assistance of counsel. When one lawyer represents two or more defendants in any case, the lawyer may not be able to represent all of the defendants to the fullest extent of the law. This may create a conflict of interest which may deny one of the defendants the right to effective assistance of counsel. Each defendant has the right to a lawyer who represents him and only him.

A conflict of interest may be dangerous to a defendant in a number of ways. The government might let a defendant who is not as involved as other defendants plead guilty to lesser charges than the other defendants. After the guilty plea, however, the government may require the defendant to testify. The lawyer who represents more than one defendant might recommend that the first defendant not plead guilty to protect the other defendants that he represents, or the lawyer might recommend that the first defendant plead guilty and testify, which might harm the cases of the other defendants.

Sometimes one of the defendants represented by a lawyer will take the stand to testify in his own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. However he may not be able to do that because he cannot ask the defendant about anything that defendant has told him in confidence.

In a conspiracy case, the best defense for a single defendant often is the argument that while there may be a conspiracy and the other defendants may be guilty, he is not a part of the conspiracy and is not guilty. A lawyer representing two or more defendants may not be able to effectively make such an argument.

Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, he might offer or object to evidence that could help one defendant if it harms the other defendant's case.

If convicted by a jury or by plea of guilty, you will be sentenced under the federal sentencing guidelines. Under Guideline § 1B1.3, the court must consider all relevant acts and omissions of all defendants that occurred during the commission of the offense of conviction. Your lawyer's representation of you in plea negotiations and sentencing may conflict with his representation of co-defendants in the same case. Guideline § 1B1.8 provides in part that if a defendant agrees to cooperate with the government by providing information unknown to the government concerning the unlawful activities of others and the government agrees that self-incriminating information provided will not be used against the defendant, then such information shall not be used in determining that defendant's guideline range except to the extent provided by the agreement. If your lawyer is representing other defendants in the case, he could not be fair to all of them because statements made by one defendant may incriminate other defendants.

Guideline § 5K1.1 provides that the court can depart downward upon motion by the government stating that the defendant has made a good faith effort to provide substantial assistance in the investigation or prosecution of another person who has committed an offense. Of course, the court is not bound by the motion, and you would not be entitled to withdraw a plea of guilty if a departure is not granted under this provision. To best represent your interests your lawyer could not properly represent other defendants, because information submitted by one defendant may incriminate another.

Where more than one defendant is involved, each defendant's sentence could be significantly affected by the role that he played in the commission of the offense. It is common for different defendants to play different roles and thereby have different levels of responsibility in a conspiracy case or any other case involving a concerted activity. It would be practically impossible for a lawyer to make his best argument on behalf of two or more defendants in the same case that all should have the optimum role reduction. There would be cases where he could not present evidence that would help one defendant without hurting another one.

The court advises defendants against representation by a lawyer who also represents other defendants in the same case. The court urges each defendant to retain a lawyer who will represent him and only him. Each defendant has the right to a lawyer of his own. A defendant can also give up that right, if he chooses. A defendant can change his mind about this later, but each defendant is specifically advised that the trial will not be postponed to allow time to get another lawyer.

I have read the above statement and I understand it fully. I know I have a right to an attorney of my own, but I want to give up this right. I want Hampbell R. Pugh as my lawyer, even though (s)he (or his/her associate) represents one or more other defendants in this case and might have a conflict of interest which would not be in my best interest. I sign this agreement freely, voluntarily, and intelligently.

August 31, 2007

Tony B. Pugh
Defendant
Tony B. Pugh

I have advised the defendant of the contents of this document. At this time, I have no knowledge that a conflict exists in this case. If a conflict does arise, I will immediately advise the Court.

Hampbell R. Pugh
Attorney