

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:04-CR-165

v.

Hon. Robert Holmes Bell, Chief Judge

JANET MAVIS MARCUSSE, ET AL.,

Defendants.

MEMORANDUM IN SUPPORT OF
MOTION TO WITHDRAW AS COUNSEL

Ray Kent counsel for Defendant Janet Mavis Marcusse submits this Memorandum in Support of his motion to withdraw as counsel.

DISCUSSION

On July 23, 2004, Ray Kent was appointed as stand-by counsel for Janet Marcusse. Ms. Marcusse is the lead defendant in an 83-count indictment alleging fraud, money laundering and conspiracy. Defendant David Albrecht is the second of eight defendants named in the indictment. Mr. Albrecht is represented by the Office of the Federal Public Defender. The case is presently set for trial beginning February 7, 2005.

Since Mr. Kent's appointment as standby counsel for Ms. Marcusse, he has been designated as the new Federal Public Defender in this district. Mr. Kent is expected to take office in the near future.

The Sixth Amendment guarantees a criminal defendant the right to “ the Assistance of counsel for his defence.” *U.S. Const. Amend. VI*. That right includes the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441 (1970). A presumption of ineffective assistance arises where a defendant’s attorney actively represents conflicting interests. Mickens v. Taylor, 535 U.S. 162, 122 S. Ct. 1237 (2002).

Rule 44 [c] of the Federal Rules of Criminal Procedure requires the Court to actively inquire about the propriety of joint representation:

Court’s Responsibilities in Cases of Joint Representation. The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant’s right to counsel.

Fed. Rul Crim. Proc. 44 [c]. Once Mr. Kent joins the Federal Public Defender, his continued representation of Ms. Marcusse would create a potential conflict of interest in light of that office’s representation of Mr. Albrecht. For that reason, he is seeking leave to withdraw.

Mr. Kent has met and discussed this matter with Ms. Marcusse. Mr. Kent explained the potential conflict of interest and Ms. Marcusse does not oppose this motion to withdraw. Mr. Kent has also discussed this matter with Assistant United States Attorney, Thomas J. Gezon who has represented that the Government also does not oppose the motion.

CONCLUSION

For the reasons set forth above, Ray Kent respectfully requests that he be allowed to withdraw as counsel for Janet Mavis Marcusse and that the Court appoint new standby counsel to represent Ms. Marcusse.

THE LAW OFFICES OF RAY KENT, P.C.
Counsel for Defendant Marcusse

Dated: December 13, 2004

By: /s/ Ray Kent
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