

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	No. 10-CR-117-BDB
)	
vs.)	
JEFF HENDERSON, and)	
WILLIAM YELTON,)	
<i>Defendants.</i>)	

MOTION FOR HEARING ON CONFLICT OF INTEREST OF THE GOVERNMENT

Tulsa attorney Kevin Adams has told Mr. Allen (counsel for Officer Yelton), among others, that he gave some 30 pages of information to the FBI (hereafter the “Documents”). The Documents contain very material attorney-client and work product privileged materials which were gathered in Officer Henderson’s defense. Mr. Adams has offered the Documents to persons in addition to the FBI (at least three of whom refused to receive the documents because it would have been unethical to do so because of the privileged nature of the Documents).

On June 7, 2010 Officer Henderson’s attorney Chad Greer, upon learning that Mr. Adams was disseminating the Documents against specific instructions not to do so, (and against his being subject to the attorney-client privilege and work product doctrine) sent an email to the Special Attorney, attached as Exhibit A. In that email, Mr. Greer advised the Special Attorney that the Documents had been unlawfully obtained and that if she or any agencies of the Government had received copies, such copies should be destroyed immediately and notice provided to Mr. Greer. Mr. Greer never received a response to this email.

On August 19, 2010 Mr. Seymour sent an email to the Special Attorney asking her to

confirm if the Documents had been received by the FBI and to state whether law enforcement or prosecutor personnel involved in the investigation of the case against Officers Henderson and Yelton had seen the contents of the Documents. A copy of that email is attached as Exhibit B. On August 20, 2010, having received no reply to his August 19, 2010 email which dealt with the receipt and usage of the Documents, Mr. Seymour sent a “second request” email to the Special Attorney, advising that if no response was received that day concerning the issues in respect of the Documents, that would be taken as an affirmative response to the matters raised in Exhibit B concerning the Documents. The “second request” email is attached as Exhibit C. On August 20, 2010, the Special Attorney sent a response email, attached as Exhibit D. The Court will draw its own conclusions about the propriety or impropriety of the Special Attorney’s response, particularly under these circumstances.

Accordingly, because of the Special Attorney’s recalcitrance in refusing to confirm or deny receipt of the Documents by the FBI and any examination thereof by federal law enforcement or federal prosecutors connected with this case, all Officer Henderson and Officer Yelton can do at this point is ask the Court to conduct a hearing to (1) determine if the Documents have been reviewed by anyone on the prosecutorial team¹, and if so, (2) the extent of the material damage done to the defense of Officers Henderson and Yelton, and (3) the proper remedy (as to which, Officers Henderson and Yelton respectfully request the opportunity to make appropriate motions at the hearing, if the matter proceeds to remedy) (which motions could include, but not be limited to, a motion to dismiss for prosecutorial misconduct on this basis, which is, on a prima facie basis, separate and independent of the Motion to Dismiss for Prosecutorial Misconduct already on

¹ Given the extraordinary importance of this matter, the Court is asked to address this matter with the oath having been administered, and not to make a decision simply on whatever papers may be filed.

file----although depending on the facts there could certainly be more than a little synergy between this situation and the facts supporting the Motion to Dismiss for Prosecutorial Misconduct already on file.

The hearing requested as to this matter is requested to be set immediately following the hearing on the Motion to Dismiss for Prosecutorial Misconduct.

Respectfully submitted,

s/ R. Thomas Seymour

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Attorneys for Defendant Jeff Henderson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument was submitted to the CM/ECF filing system for electronic filing and distribution to the following CM/ECF registrants appearing in this case on the 25th day of August 2010:

Jane W. Duke, U.S. Attorney
Patrick C. Harris, AUSA
Patricia Harris, AUSA
Attorneys for the United States

s/ R. Thomas Seymour