

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

Filed 8-7-07  
Clerk, U. S. District Court  
Western District of Texas  
By AC  
Deputy  
Deputy

IN THE MATTER OF THE  
REPRESENTATION OF MULTIPLE  
TARGETS:

CHARLES ROARK, MILTON  
"MICKEY" DUNTLEY, AND ERNIE  
LOPEZ.

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§ EP-06-CR-1369-FM  
§ EP-07-CR-1761-FM  
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**MEMORANDUM OPINION AND ORDER**  
**REGARDING ATTORNEY STILLINGER'S MOTION REQUESTING**  
**CLARIFICATION AND FOR MISCELLANEOUS RELIEF**

Before the Court is attorney Mary Stillinger's ("Stillinger") "Motion Requesting Clarification and for Miscellaneous Relief" ("Motion") [Rec. No. 25], filed in cause number EP-06-CR-1369-FM on July 27, 2007. Therein, Stillinger asks the Court clarify several issues discussed in the Court's "Memorandum Opinion and Order Regarding Attorney Stillinger's Motion to Strike and the Government's Motion to Disqualify" [Rec. No. 24] ("Disqualification Order") entered on July 26, 2007. Stillinger also seeks an order requiring the Clerk of this Court to consolidate all pleadings related to the Motion to Strike into the new cause number EP-07-CR-1761-FM. Stillinger further seeks an order prohibiting the Government or its agents from contacting Charles Roark ("Roark"), Milton "Mickey" Duntley ("Duntley"), and Ernie Lopez ("Lopez") (collectively, "Clients") regarding the investigation at issue in cause number EP-06-CR-1369-FM while these individuals seek new counsel. After due consideration and as discussed below, the Court will grant Stillinger's Motion in part and deny it in part.

The Court first addresses Stillinger's requests for clarification.<sup>1</sup> Through its

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<sup>1</sup> In footnote number three of her Motion, Stillinger poses several rhetorical questions for the Court. In footnote number four of her Motion, Stillinger asserts, without any discernable foundation, that

Disqualification Order, the Court granted the Government's motion to disqualify Stillinger from simultaneously or serially representing Roark, Duntley, and Lopez regarding the cause number EP-06-CR-1369-FM or any substantially related matter. In her instant Motion, Stillinger asks the Court to clarify whether she may meet with Roark, Duntley, and Lopez "to advise them of the content and consequences of the Court's order, and advise them of their options with respect to retaining new counsel or appealing the Court's order."<sup>2</sup> *The Court hereby ADVISES Stillinger that she may meet with and counsel Roark, Duntley, and Lopez regarding the content and consequences of the Court's Disqualification Order. Additionally, Stillinger may inform Roark, Duntley, and Lopez of their options with respect to retaining new counsel or appealing the Disqualification Order.*

Stillinger next asks the Court to clarify whether she may represent Clients on appeal "if one or more of Ms. Stillinger's clients wishes to appeal the Court's order (and can afford to take this course of action)."<sup>3</sup> *The Court ADVISES Stillinger that she may represent one or more of the Clients on appeal. However, if Stillinger does in fact appeal this cause for one or more of her Clients, those Clients must engage separate counsel to represent them regarding the ongoing criminal investigation associated with cause number EP-06-CR-1369-FM.*

The Court now turns to Stillinger's requests for miscellaneous relief. Due to the Court's earlier ruling, Stillinger may no longer represent Roark, Duntley, and Lopez regarding the

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the Court has presumed Lopez's involvement in a fraudulent charitable plan. The Court chooses to consider the contents of these footnotes as mere irrelevant surplusage and will accordingly disregard them.

<sup>2</sup> Mot. Requesting Clarification and for Miscellaneous Relief (hereafter, "Mot. for Clarification"), Rec. No. 25, at 1.

<sup>3</sup> Mot. for Clarification, Rec. No. 25, at 2.

Government's ongoing investigation, except as clarified in the Court's present Order. Stillinger asserts that Roark, Duntley, and Lopez are therefore currently without legal counsel to aid them regarding the aforesaid investigation. Stillinger expresses concern that the Government will attempt to take advantage of Roark, Duntley, and Lopez's lack of counsel. She therefore requests "the Court [to] advise the Government not to have its agents attempt to communicate directly with any of these three individuals for a reasonable period of time, allowing them to obtain other counsel..."<sup>4</sup> *Stillinger's request is DENIED.* The Court does not, by its ruling, intend to either encourage or discourage the Government or its agents from contacting Roark, Duntley, or Lopez while they are not represented by counsel. The Court merely notes that there is no Sixth Amendment right to counsel during the investigatory stage of a criminal case.<sup>5</sup> Moreover, the Fifth Circuit Court of Appeals has held that it is not improper for Government prosecutors or agents, before an indictment has issued, to directly contact the target of an investigation, even when the target is represented by counsel.<sup>6</sup>

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<sup>4</sup> Mot. for Clarification, Rec. No. 25, at 2-3.

<sup>5</sup> See *United States v. Williams*, 504 U.S. 36, 49 (1992) (citing *United States v. Mandujano*, 425 U.S. 564, 581 (1976) (plurality op.), and *In Re Groben*, 352 U.S. 330, 333 (1957), for the proposition that "We have twice suggested, though not held, that the Sixth Amendment right to counsel does not attach when an individual is summoned to appear before a grand jury, even if he is the subject of the investigation."); *Mandujano*, 425 U.S. at 581 ("No criminal proceedings had been instituted against respondent, hence the Sixth Amendment had not come into play."); *Kirby v. Illinois*, 406 U.S. 682, 689-90 (1972) (internal citations omitted) ("It is firmly established that a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him . . . by way of formal charge, preliminary hearing, indictment, or arraignment.").

<sup>6</sup> *United States v. Heinz*, 983 F.2d 609, 614 (5th Cir. 1993); see also *United States v. Johnson*, 68 F.3d 899, 902 (5th Cir. 1995) (concluding that professional disciplinary rules prohibiting a prosecutor from directly contacting someone known to be represented by an attorney do not apply to government conduct occurring before indictment).


The dullest imagination can comprehend the devastating effect that such a rule [to the contrary] would have on undercover operations. Any potential defendant with an attorney would be insulated from any undercover operation; any potential defendant without an attorney would hire an attorney (if he could afford to do so) in order to build a wall between himself and the government's investigators. It's [sic] effect would not be limited to undercover operations of course, but would impede, obstruct, and even eliminate many continuing investigations of organized crime, racketeering, and drug dealing. The impact of such a rule would severely alter investigative operations in all criminal cases, except those investigations focused on run-of-the-mill criminals who cannot afford lawyers to serve as a wall between them and law enforcement.<sup>7</sup>

In light of these factors, the Court finds it has no basis on which to prohibit such contact.

Stillinger also urges the Court to enter an order consolidating all pleadings related to her motion to strike the Government's motion to disqualify her. Stillinger argues the Motion to Disqualify and its accompanying filings should be included under the new cause number (i.e., cause number EP-07-CR-1761-FM) "for purposes of keeping the record clear and complete."<sup>8</sup> *Stillinger's latter request is GRANTED. The Court accordingly ORDERS the Clerk of the Court to include docket numbers 5, 9, 10, 19, 21, 22, and 23 in EP-06-CR-1369-FM in new cause number EP-07-CR-1761-FM.*

**SO ORDERED.**

SIGNED this 7<sup>th</sup> day of August, 2007.

  
FRANK MONTALVO  
UNITED STATES DISTRICT JUDGE

<sup>7</sup> *Heinz*, 983 F.2d at 614.

<sup>8</sup> Mot. for Clarification, Rec. No. 25, at 3.