

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

MARY LYNN ROSTIE,
CYNTHIA S. MARTIN,
TROY R. SOLOMON,
CHRISTOPHER J. ELDER, and
DELMON L. JOHNSON

Defendants

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NO. 08-00026-01/05-CR-W-FJG

**DEFENDANTS SOLOMON AND JOHNSON'S JOINT RESPONSE TO THE
UNITED STATES' MOTION FOR DETERMINATIONS CONCERNING THE
REPRESENTATION OF DEFENDANTS SOLOMON AND JOHNSON
WITH SUGGESTIONS IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, TROY R. SOLOMON and DELMON JOHNSON, Defendants, and file this Joint Response to the United States' Motion for Determinations Concerning the Representation of Defendants Solomon and Johnson, and would respectfully show unto this Court as follows:

I.
FACTUAL BACKGROUND

The Indictment

Defendants SOLOMON and JOHNSON have been charged with distributing and conspiring to distribute controlled substances in violation of the Controlled Substances Act, and conspiring to promote and conceal the laundering of money.

Solomon and Johnson Made Knowing, Voluntary and Intelligent Waiver

A defendant in a criminal proceeding may validly waive the right to the assistance of conflict free counsel so long as the waiver is knowing, voluntary and intelligent. *United States v. Lashley*,

251 F.3d 706, 711 (8th Cir. 2001); *United States v. Brekke*, 152 F.3d 1042, 1045, (8th Cir 1998); *See also Halloway v. Arkansas*, 435 U.S. 475, 483 (1978).

After conferring with counsel, and having been advised of their right to separate representation, Defendant SOLOMON and Defendant JOHNSON knowingly, voluntarily and intelligently waived any conflict that may arise resulting from their joint representation by Mr. Anthony Bannwart. First, following submission of independent Affidavits acknowledging their waiver, Defendants SOLOMON and JOHNSON appeared before this Court on April 2, 2008, and individually expressed their desire to waive their right to separate counsel. At that time, the Court had an opportunity to inquire as to any possible conflict of interest that may have disqualified Mr. Bannwart from representing both Solomon and Johnson, and found none. On April 7, 2009, Defendants SOLOMON and JOHNSON each individually submitted to this Court a Second Waiver of Right to Separate Counsel further indicating their intention to continue being represented by Mr. Bannwart.

II.

GOVERNMENT HAS FAILED TO IDENTIFY ANY REAL CONFLICT OF INTEREST

Addition of Counsel for Solomon Does not Create Conflict

The addition of counsel for Defendant SOLOMON does not create a conflict of interest for Mr. Bannwart. As noted above, both Defendant SOLOMON and JOHNSON have submitted affidavits to the Court waiving any conflict of interest *both before and after* the appearance of Chip Lewis and Mary Grace Ruden on behalf of Defendant SOLOMON. The government has failed to identify any reason why the addition of counsel creates a new conflict not previously addressed by this Court.

Government's Argument Regarding Potential Plea Offer to Johnson is Not Ripe

The United States' hypothesizes that a potential for conflict may arise as to the individual defenses of Defendant SOLOMON and JOHNSON based upon their determination that Defendant JOHNSON is more favorably positioned to receive a plea offer, and that should such an offer be made it would create a conflict of interest for Mr. Bannwart. The fact remains, however, that the United States has made no overtures to Defendant JOHNSON regarding any plea arrangement. Unless and until such an offer is made, no conflict exists and the government's argument is not ripe for consideration at this time. To permit otherwise would allow the government to disqualify counsel in every joint representation case with the mere suggestion that a plea agreement may be offered.

III.

**COUNSEL IS NOT A FACT WITNESS AND GOVERNMENT
BLATANTLY ABUSING PROCESS**

Bannwart's Prior Representation not Relevant to Present Parties

The government argues that Mr. Bannwart's prior representation of Defendant SOLOMON could necessitate his appearance as a fact witness at trial, thereby disqualifying him from representation. However, the facts concerning the negotiations between Defendant SOLOMON and the Johnsons are the subject of witness statements before this Court and are not the subject of any dispute. Nor has the government demonstrated how such information might be relevant to any charge in the indictment since neither Ada Johnson nor Pleshette Johnson nor any other person at South Texas Wellness has been indicted as part of a conspiracy. Defendant Solomon has admitted his involvement in South Texas Wellness. Mr. Bannwart has no knowledge which is not protected by attorney/client privilege or which cannot be obtained through multiple other witnesses.

The government has not presented any evidence that Mr. Bannwart's prior legal representation of Defendant SOLOMON involved nothing remotely related to the charges contained in the indictment. Moreover, any advice presented by Mr. Bannwart regarding Ascencia Nutritional Pharmacy or South Texas Wellness would be protected by attorney client privilege and Defendant SOLOMON has no intention of urging an "advice of counsel" defense at trial.

Bannwart is not "The Judge" and has Never Spoken to Witnesses

Lastly, the government suggests that Mr. Bannwart has had conversations with co-defendants and other potential trial witnesses, identifying himself as "The Judge," and attempted to influence their testimony. The government is fabricating connections based upon hearsay allegations in written summaries of interviews of potential witnesses who admittedly cannot accurately identify with any degree of certainty the person participating in the alleged telephone conversations. Moreover, this issue is not ripe unless and until a witness actually testifies about this information AND the Court determines that it is relevant to the charges in the indictment. Mr. Bannwart has never knowingly had any conversation with Cynthia Martin or Lillian Zapata. Nor is it clear how these allegations bear any relevance to the charges against Defendants SOLOMON and JOHNSON.


IV.

PRAYER

Wherefore, Defendants SOLOMON AND JOHNSON pray that the Court, upon hearing and consideration of the UNITED STATE's motion for determinations, finds that there is no conflict of interest in Mr. Bannwart's joint representation of Defendant's SOLOMON and JOHNSON.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By: 

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Defendants Solomon and Johnson's Joint Response to the United States' Motion for Determinations Concerning the Representation of Defendants Solomon and Johnson with Suggestions in Support has this day been sent via electronic filing to counsel for all parties of record.

SIGNED this 10th day of April, 2009

BANNWART & ASSOCIATES, P.C.

By:



ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANTS

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