

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 TROY R. SOLOMON AND DELMON L. JOHNSON'S JOINT
OBJECTION TO, APPEAL FROM, AND REQUEST FOR RECONSIDERATION
OF THE MAGISTRATE JUDGE'S ORDER (DOC. 246)
DISQUALIFYING COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, TROY R. SOLOMON and DELMON L. JOHNSON, Defendants, and file this Joint Objection to, Appeal from, and Request for Reconsideration of the Magistrate Judge's Order disqualifying counsel dated July 13, 2009, (Doc. 246), and in support hereof would respectfully show unto this Court as follows:

1. Defendants SOLOMON and JOHNSON are jointly represented by Anthony L. Bannwart and the law firm of Bannwart & Associates, P.C., located in Houston, Texas.
2. By Magistrate's Order dated July 13, 2009, (Doc. 246), this Court found that Mr. Bannwart's joint representation created a conflict of interest and, therefore, disqualified Mr. Bannwart from representing either Defendant in this case. Said Magistrate's Order (Doc. 246) deprives Defendants SOLOMON and JOHNSON of their Sixth Amendment right to assistance of

counsel in violation of Rule 44 of the Federal Rules of Criminal Procedure and without the due process of law guaranteed by the Constitution of the United States.

3. Pursuant to Rule 44(c)(2) of the Federal Rules of Civil Procedure, the Court must make appropriate inquiry of the defendants and their counsel regarding the possibility of a conflict of interest arising out of joint representation. FED. R. CRIM. P. 44(c)(2); *See also* FED. R. CRIM. P. 44 Advisory Committee Notes (1979 Amendment). Moreover, whenever it is necessary to make a more particularized inquiry into the nature of any contemplated defense, the court should “pursue the inquiry with defendants and their counsel on the record but in chambers” so as “to avoid the possibility of prejudicial disclosures to the prosecution.” FED. R. CRIM. P. 44 Advisory Committee Notes (1979 Amendment)(quoting *United States v. Foster*, 469 F.2d 1, 5 (1st Cir. 1972)). In short, the Court must make a private inquiry, on the record, and outside the presence of the prosecution.

4. During the inquiry provided by Rule 44(c)(2) of the Federal Rules of Criminal Procedure, the Defendants are entitled to present good cause that no conflict of interest or prejudice is likely to arise due to joint representation. FED. R. CRIM. P. 44(c)(2). *United States v. Foster*, 469 F.2d 1, 5 (1st Cir. 1972); *see also* FED. R. CRIM. P. 44 Advisory Committee Notes (1979 Amendment).

5. At the hearing of this matter on June 30, 2009, Defendants SOLOMON and JOHNSON, though present and willing¹, were not questioned about the joint representation undertaken by Mr. Bannwart. Consequently, the Defendants were denied the opportunity to present this Court with “good cause” as contemplated by Rule 44(c)(2), and were thereby deprived of their

¹ Defendants specifically requested/suggested a private conference to address the conflict of interest issue under Rule 44 during a motions hearing on or about April 14, 2009, but were denied. Defendants believe this request/suggestion was re-urged during the hearing on June 30, 2009, but cannot specifically recollect.

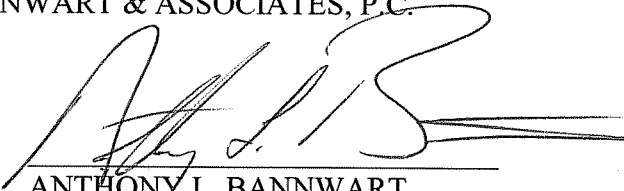
due process rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, as well as their right to counsel under the Sixth Amendment thereto.

WHEREFORE, Defendants TROY R. SOLOMON and DELMON L. JOHNSON submit this objection and appeal, and pray that this Court set aside the Magistrate Judge's Order of July 13, 2009, and reconsider the matter directly. In addition and in the alternative, Defendants TROY R. SOLOMON and DELMON L. JOHNSON pray that this Court conduct a hearing consistent with Rule 44(c)(2) of the Federal Rules of Civil Procedure and the Advisory Committee Notes thereto. Defendants TROY R. SOLOMON and DELMON L. JOHNSON further pray for such other and further relief to which they are justly entitled.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By:



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ATTORNEYS FOR DEFENDANTS
TROY R. SOLOMON and DELMON
L. JOHNSON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Defendants Troy R. Solomon and Delmon L. Johnson's Joint Objections to, Appeal from, and Request for Reconsideration of the Magistrate Judge's Order (Doc. 246) Disqualifying Counsel has this day been sent via electronic filing to all parties of record.

SIGNED this 23rd day of Aug, 2009.

BANNWART & ASSOCIATES, P.C.

By:


ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANTS
TROY R. SOLOMON AND DELMON L.
JOHNSON