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

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-00026-04-CR-W-FJG
	)	
CHRISTOPHER L. ELDER,	)	
	)	
Defendant.	)	

DEFENDANT ELDER'S MOTION FOR SEVERANCE PURSUANT TO RULE 8(b) AND RULE 14, FEDERAL RULES OF CRIMINAL PROCEDURE WITH SUGGESTIONS IN SUPPORT

Defendant is charged in count one of the indictment with conspiring with the other four defendants to distribute controlled substances in violation of 21 USC 841. Count two of the indictment charges the remaining four defendants with conspiracy to commit money laundering in violation of 18 USC 1956. The remaining substantive counts in the indictment individually relate back to one or the other of the two conspiracy counts.

The indictment is fatally flawed with respect to Doctor Elder in that fully 50% of the charges involve a conspiracy to which he is not connected based on a full and fair reading of the indictment. While Count two does incorporate some of the facts of Count one by reference, the incorporated paragraphs are merely factual background and do not allege any criminal conduct or criminal connection between the count one conspiracy and the

count two conspiracy.

The rule as to what constitutes misjoinder in this Circuit is clear. United States v. Bledsoe, 674 F.2d 647 (8th Cir. 1982) holds:

> [22] Under Fed.R.Crim.P. 8(b), the district court has no discretion to deny severance of misjoined defendants; we have held misjoinder of defendants is inherently prejudicial. Haggard v. United States, 369 F.2d 968, 972-73 (8th Cir. 1966), cert. denied, 386 U.S. 1023, 87 S.Ct. 1379, 18 L.Ed.2d 461 (1967); United States v. Sanders, 563 F.2d 379, 382 (8th Cir. 1977), cert. denied, 434 U.S. 1020, 98 S.Ct. 744, 54 L.Ed.2d 767 (1978); see United States v. Marionneaux, 514 F.2d 1244, 1248 (5th Cir. 1975); 8 Moore's Federal Practice ¶ 8.04[2], at 14 (2d ed. 1981).[fn3] Additionally, it is a well settled rule in this circuit that the propriety of joinder must appear on the face of the indictment. Sanders, 563 F.2d at 382; Chubet v. United States, 414 F.2d 1018, 1020 (8th Cir. 1969); cf. 8 Moore's Federal Practice ¶ 8.06(3), at 39 (2d ed. 1981) (discussing retroactive misjoinder).

United States v. Wadena, 152 F.3d 831 (8th Cir. 1998, citing Bledsoe holds:

> [55] Federal Rule of Criminal Procedure 8 establishes the requirements for joinder of offenses or defendants in the same indictment.[fn24] Under Rule 8(b), defendants are properly joined "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Fed.R.Crim.P. 8(b). Generally, the "same series of acts or transactions" means acts or transactions that are pursuant to a common plan or a common scheme. See United States v. Jones, 880 F.2d 55, 61 (8th Cir. 1989). "[T]he defendants need not be charged in each count." Fed.R.Crim.P. 8(b). An indictment must reveal on its face a proper basis for joinder. See United States v. Bledsoe, 674 F.2d 647, 655 (8th Cir. 1982).

In addition to the clear defect in the pleading, defendant would further assert that there is real prejudice from subjecting him to a lengthy trial in which a substantial portion of the evidence focuses on the more sinister crime of money laundering. The charge itself implies lying and deception and serious devious acts designed to convert ill gotten gain into a more legitimate form so that the perpetrators can put the illegal funds into the normal and legal stream of commerce. Doctor Elder is charged with abusing his power as a physician to write prescriptions that he knew or should have known were excessive. The indictment alleges no connection between this alleged offense committed by he and the other four and their separate crime of money laundering for which he had no knowledge and did not participate in. The prejudice resulting from a joint trial will be substantial. Thus, Rule 14 implications are also present.

In United States v. Wadena, supra, the court also observed:

> [65] Federal Rule of Criminal Procedure 14 allows the trial court to order severance even if joinder was proper under Rule 8(b).[fn28] The decision to sever is within the sound discretion of the trial judge. See Jones, 880 F.2d at 61 (citing United States v. Adkins, 842 F.2d 210, 212 (8th Cir. 1988)). "We reverse a denial of a motion to sever only when the defendant shows an abuse of discretion that resulted in severe prejudice." United States v. Crouch, 46 F.3d 871, 875 (8th Cir. 1995). "Severe prejudice occurs when a defendant is deprived of an appreciable chance for an acquittal, a chance that [the defendant] would have had in a severed trial." United States v. Koskela, 86 F.3d 122, 126 (8th Cir. 1996).

Defendant believes that a joint trial will result in reversible error if he is tried in a case where a substantial focus of the proceedings are directed to money laundering inasmuch as the prejudice will be overwhelming and cannot be cured by any type of instructions from the court.

WHEREFORE, defendant moves the court to sever his case from that of his co-defendants and grant him a separate charge on the offense dealing with distribution of controlled substances.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System on Sunday, March 23,

/s/
JOHN R. OSGOOD