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OCT 05 2015

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FILED
OCT 05 2015

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY
Deborah Nichols

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA** ✓
9 **COUNTY OF STANISLAUS**

10 -----o0o-----

11 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO.: 1490969

12 Plaintiff,)

13 vs.)

**NOTICE OF MOTION AND
MOTION FOR DETERMINATION
OF ATTORNEY-CLIENT
CONFLICT OF INTEREST**

14 FRANK CLIFFORD CARSON,
BALJIT ATWAL,
15 DALJIT ATWAL,
WALTER WESTLEY WELLS,
16 GEORGIA DEFILIPPO,
EDUARDO QUINTANAR
17 CHRISTINA DEFILIPPO, AND
SCOTT MCFARLANE.

18 Defendants.)

Date: October 13, 2015
Time: *
Dept: 26
The Honorable Barbara Zufiga

19 -----o0o-----

20 TO THE COURT, DEFENDANTS AND THEIR RESPECTIVE COUNSEL:

21 The People move for determination of attorney-client conflict of interest. The Court and
22 People were notified on October 1, 2015 that Attorney Forkner would represent defendant C. De
23 Filippo. In addition, the People have discovered Attorney Carlton-Magana previously represented
24 defendant Robert Lee Woody, a main prosecution witness in this case. This motion is based on
25 this notice of motion and the accompanying supporting memorandum.

26 Dated: October 5th, 2015

Respectfully submitted,

BIRGIT FLADAGER
District Attorney

Marlisa A. Ferreira
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Chief Deputy District Attorney

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19 Defendants.
20 -----o0o-----

21 Pursuant to *People v. Harris* (2005) 37 Cal.4th 310, the People ask this court to determine
22 if a conflict of interest exists that prevents attorneys Martha Carlton-Magana and Robert Lee
23 Forkner from representing defendants B. Atwal and C. DeFilippo, respectively. In addition, the
24 People were also noticed on October 1, 2015 that attorney Mary Lynn Belsher, former counsel
25 for defendant C. DeFilippo, would be substituting in for G. DeFilippo.

26 ///

27 ///

1 **I. WHEN THE TRIAL COURT KNOWS OF THE POSSIBILITY OF A**
2 **CONFLICT OF INTEREST ON THE PART OF DEFENSE COUNSEL, IT**
3 **IS OBLIGATED TO MAKE AN INQUIRY AND ACT IN RESPONSE,**
4 **IF NECESSARY**

5 In order to safeguard a criminal defendant's constitutional right to the assistance of
6 conflict-free counsel and thereby keep criminal proceedings untainted by conflicted
7 representation, the United States Supreme Court has set forth certain essentially prophylactic rules
8 in this area.

9 When the trial court knows, or reasonably should know, of the possibility of a conflict of
10 interest on the part of defense counsel, it is required to make an inquiry into the matter, whether
11 the issue is raised by the prosecution or the defense. (*Wood v. Georgia* (1981) 450 U.S. 261, 272-
12 273 ["Any doubt as to whether the court should have been aware of the problem is dispelled by
13 the fact that the State raised the conflict problem explicitly and requested that the court look into
14 it."].)

15 The trial court is obligated not merely to inquire but also to act in response to the results
16 of its inquiry. (*Holloway v. Arkansas* (1978) 435 U.S. 475, 484.) In fulfilling its obligation, the
17 court may, of course, make arrangements for representation by conflict-free counsel. (*Ibid.*)
18 Conversely, the court may decline to take any action if it finds that the risk of a conflict is too
19 remote. (*Ibid.*; [judge failed either to appoint separate counsel or take adequate steps to ascertain
20 whether risk of a conflict of interest was too remote to warrant separate counsel].)

21 The trial court's power to disqualify an attorney derives from Code of Civil Procedure
22 section 128, subdivision (a)(5), which authorizes a trial court to "control in furtherance of justice,
23 the conduct of its ministerial officers, and of all other persons in any manner connected with a
24 judicial proceeding before it[.]" (*Jones, supra*, at p. 244, fn. 2.) Section 128 applies in criminal
25 cases, and the trial court's decision is reviewed for abuse of discretion. (*Ibid.*)

26 When a trial court removes a defense attorney because of a potential conflict of interest,
27 the court is seeking to protect the defendant's right to competent counsel. In such circumstances,
28 there is no violation of the right to counsel guaranteed by article I, section 15 of the state
29 Constitution, notwithstanding the defendant's willingness to waive the potential conflict. (*People*

1 v. *Jones* (2004) 33 Cal.4th 234, citing *People v. McDermott* (2002) 28 Cal.4th 946, 990 [a trial
2 court may refuse to accept a waiver of the right to be represented by conflict-free counsel].)

3 The People submit defendants' counsel, as previously noted, pose conflicts given their
4 previous representations and request the Court review the matter.

5
6 **II. THE PROSECUTION MAY LEGITIMATELY BE CONCERNED THAT
7 UNEXAMINED CONFLICTS MAY RESULT IN REVERSAL ON APPEAL**

8 In *People v. Harris, supra*, 37 Cal.4th 310, the California Supreme Court explained that
9 the prosecution has a right to protect itself against the existence of a possible conflict of interest
10 between an attorney and his client:

11 Whether a conflict of interest exists such that a defendant should have a different
12 attorney is a very sensitive matter. **The prosecution could legitimately be
13 concerned that if the court had not examined the question, any conviction it
14 received might have been doomed to reversal on appeal even before the trial
15 began.**

16 (*Id.* at p. 342; boldface added.) The court found no impropriety in the People's filing of a "Motion
17 for Hearing to Determine Conflict of Interest." "We see no impropriety in the prosecution's
18 cautiously seeking a determination before trial whether a conflict existed rather than waiting for
19 a defense challenge to a conviction after trial." (*Ibid.*)

20 **III. COUNSEL MUST HAVE A WRITTEN WAIVER TO PROCEED
21 WHERE A POTENTIAL CONFLICT MAY EXIST**

22 Cal. Professional Rules of Conduce, Rule 3-310, provides,

23 (B) A member shall not accept or continue representation of a client without
24 providing written disclosure to the client where:

- 25 (1) The member has a legal, business, financial, professional, or **personal**
26 **relationship** with a party or witness in the same matter; or
27 (2) The member knows or reasonably should know that:
28 (a) the member previously had a legal, business, financial,
professional, or personal relationship with a party or witness in the
same matter; and
(b) the previous relationship would substantially affect the
member's representation; or

1 (3) The member has or had a legal, business, financial, professional, or
2 personal relationship with another person or entity the member knows or
3 reasonably should know would be affected substantially by resolution of
4 the matter; or

(4) The member has or had a legal, business, financial, or professional
interest in the subject matter of the representation.

5 (C) A member shall not, without the informed written consent of **each** client:

6 (1) Accept representation of more than one client in a matter in which the
7 interests of the clients **potentially conflict**; or

8 (2) Accept or continue representation of more than one client in a matter in
9 which the interests of the clients actually conflict; or

10 (3) Represent a client in a matter and at the same time in a separate matter
11 accept as a client a person or entity whose interest in the first matter is
12 adverse to the client in the first matter.

(Emphasis added.)

13 As indicated above, Attorney Martha Carlton-Magana has previously represented a
14 prosecution's witness, Robert Lee Woody; Attorney Robert Lee Forkner previously represented
15 T.J. Singh aka Naveet Samara Singh; and Attorney Mary Lynn Belsher has previously represented
16 co-defendant C. DeFilippo in this matter, daughter of G. DeFilippo, the party whom she is electing
17 to represent currently. Herein the conflicts exist as described in Rule 3-310(b), requiring counsel
18 to obtain **written** consent of their former and current clients.

19 **IV. THE COURT MAY REMOVE AN ATTORNEY WHO POSES A 20 POTENTIAL CONFLICT OF INTEREST**

21 In *People v. Noriega* (2010) 48 Cal.4th 517, 524, the Supreme Court found the trial court's
22 holding was within the Court's earlier holding in *People v. Jones* (2004) 33 Cal.4th 234, 244 and
23 stated,

24 Over defendant's objection, the trial court relieved the public defender from further
25 representation of defendant because of the court's concern that the public
26 defender's **duty of loyalty to defendant** might conflict with the public defender's
27 duty of loyalty to former client Tran, a potential prosecution witness in this case.
28 Because the trial court removed the public defender before trial to forestall the risk
that during trial this potential conflict would ripen into an actual conflict that would
preclude the public defender from providing defendant with effective
representation, the order did not deny defendant his right to counsel under our state

1 Constitution.

2 In *People v. Baylis* (2006) 139 Cal.App.4th 1054, 1070, the Court of Appeal held,

3 The “essential aim” of the Sixth Amendment to the United States Constitution “is
4 to guarantee an effective advocate for each criminal defendant rather than to ensure
5 that a defendant will inexorably be represented by the lawyer whom he prefers.”
6 (*Wheat v. United States* (1988) 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed.2d
7 140 (*Wheat*).) Under the federal Constitution, trial courts are allowed “substantial
8 latitude” in refusing a defendant’s waiver of a conflict of interest. (*Wheat*, at p. 163,
9 108 S.Ct. 1692.)

10 ...
11 If the state Constitution is more protective, then the applicable standard, set forth
12 in *People v. Crovedi* (1966) 65 Cal.2d 199, 208, is that defendant’s right to counsel
13 of choice **may be forced to yield only** where it would result in a “disruption of
14 the orderly processes of justice unreasonable under the circumstances of the
15 particular case.” (See [*People v.*] *Jones*, [2013] *supra*, 33 Cal.4th [234] at p. 251–
16 252, [Werdegar, J., concurring; stating that the rule under the more expansive
17 reading of the California Constitution is set forth in *Crovedi*, quoted in *People v.*
18 *McKenzie* (1983) 34 Cal.3d 616].)

19 (Emphasis added.)

20 In *People v. Peoples* (1997) 51 Cal.App.4th 1592, the appellate court explained that trial
21 courts have broad discretion to recuse an attorney facing a conflict regardless of a defendant’s
22 desire to waive his right to conflict-free counsel:

23 [T]rial courts must recognize a presumption in favor of [defendant’s] counsel of
24 choice, but that presumption may be overcome not only by a demonstration of
25 actual conflict but by a showing of a serious potential conflict. The evaluation of
26 the facts and circumstances of each case under this standard must be left primarily
27 to the informed judgment of the trial court.

28 (*Peoples, supra*, at p. 1597, citing *Wheat v. United States* (1988) 486 U.S. 153, 164.)

The Court has upheld a trial court’s removal of appointed counsel wherein counsel’s
representation posed a *potential conflict of interest*. (*People v. Jones* (2004) 33 Cal.4th
234[removal of defense counsel who had previously represented a party who defendant alleged
may have been the real murder and where defendant agreed to waive the conflict]. A Second
Circuit Federal Court has also held a knowing and intelligent waiver made by defendant after
hearing by the trial court and advisement by independent counsel of the conflict was sufficient.
(*U.S. v. Balzano* (1990) 916 F.2d 1273 [defense counsel under investigation on criminal tax

1 matters preceding defendant's trial]. The Court has also refused to allow defense counsel to
2 represent her defendant-brother where the injured victim was the counsel's ex-husband and
3 potential witnesses included defense counsel's own children. (*People v. Peoples* (1997) 51
4 CalApp.4th 1592.) Citing *Wheat v. United States* (1988) 486 U.S. 153,159, the Court in *Peoples*
5 stated, " the essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each
6 criminal defendant *rather than to ensure that a defendant will inexorably be represented by the*
7 *lawyer whom he prefers.*"

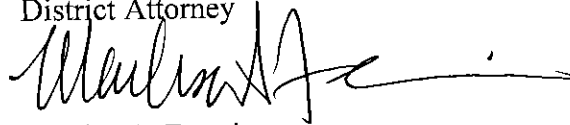
8
9 **CONCLUSION**

10 For the reasons stated herein, the People request that the court make an inquiry to
11 determine whether there may be a conflict between defense counsel and his client and take further
12 action as warranted.

13 Dated this 5th day of October, 2015, at Modesto, California.

14 Respectfully submitted,

15 BIRGIT FLADAGER
16 District Attorney

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18 Marlisa A. Ferreira
19 Deputy District Attorney

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EXHIBIT A

Conflicts

CONFLICTS:

1458763 (TJ) NAVEET SAMARA SINGH ✓
FORKNER - 06/27/13, 08/06/13, 09/10/13, 11/05/13, 12/0/13, 01/16/14, 03/03/14, 04/14/14,
06/16/04, 09/04/14, 10/06/14

366832 (TJ) NAVEET SAMARA SINGH ✓
FORKNER - 09/05/01, 07/26/01, 12/14/99, 11/18/99, 10/29/99, 09/10/99, 08/26/99

1471029 EULA KEYES
ROTH 06/01/15 (CONFLICTED OFF)
P. MARTINEZ - 03/25/15, 05/11/15, 05/15/15

1456076 EULA KEYES
ROTH 05/15/15, 05/11/15, 03/25/15

1017941 RONALD COOPER ✓
CARLTON 07/30/02

1981 - 2000

1017927 RONALD COOPER ✓
CARLTON 07/30/02

1019012 BRIAN WOODY
CARLTON 05/23/01, 05/25/01, 08/31/01, 05/15/03, 05/19/03 (CONFLICTED OFF) ✓

Brother

my have met.

1020259 BRIAN WOODY
CARLTON 05/23/01, 05/25/01, 08/31/01, 05/15/03, 05/19/03 (CONFLICTED OFF) ✓

358651 RONALD COOPER ✓
CARLTON 02/25/99

291737 RONALD COOPER ✓
CARLTON 01/24/95, 12/23/94, 12/22/94

313665 ROBERT WOODY ✓
CARLTON 04/29/96

313179 ROBERT WOODY ✓
CARLTON 04/26/96 (TOOK PLEA)

ROBERT WOODY

1403502 PATRICK HAMPTON ✓
CARSON 11/17/11, 11/03/11, 09/20/11, 08/24/11, 08/05/11, 05/26/11, 05/23/11, 03/08/11

258713

PATRICK HAMPTON ✓

CARLTON 08/03/93, 06/23/93, 06/07/93

260752

PATRICK HAMPTON ✓

CARLTON 11/16/90, 11/15/90

259590

PATRICK HAMPTON ✓

CARLTON 10/03/90

103321

BRIAN WOODY ✓

CARLTON 05/19/03, 05/16/03

PROOF OF SERVICE BY ELECTRONIC MAIL

1
2 STATE OF CALIFORNIA)
3 COUNTY OF STANISLAUS)

4 I, the undersigned, declare as follows:

5 That I am over the age of 18 years and am not a party to this action and I am employed by
6 the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

7 That I served a copy of the **People's Notice of Motion and Motion for Determination of**
8 **Attorney-Client Conflict of Interest** on October 5, 2015 pursuant to California Code of Civil
9 Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Timothy
10 Rien at rienlaw@sbcglobal.net, Tim Allen Pori at tim@defense-attorney-pori.com, Martha
11 Carlton-Magana at carltnm@hotmail.com, Preciliano Martinez at attymartinezp@yahoo.com,
12 Hans Hjertonsson at Hans.hjertonsson@gmail.com, Alonzo Gradford at gradfordlaw@gmail.com,
13 Lawrence Niermeyer at lniermeyer@aol.com, Robert Lee Forkner at RLFCrimLaw@aol.com,
14 Bruce Perry at brucerperry@msn.com and Stephanie Mitchell at stephanie.mitchell@stanct.org.

15 That I placed a hard copy in the box assigned to each attorney located at the District
16 Attorney's Office at 832 12th Street, Suite 300, Modesto, California.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 5th day of October 2015, at Modesto, California.

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Declarant

Case No. 1490969
People v. Carson et al.
Hearing: 10/5/2015
Dept. 26