IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

E.A. RENFROE & COMPANY, INC.	§	
Plaintiff,	§	**No: 2: 06-cv-1752-WMA**
v.	§	
CORI RIGSBY, et al.,	§	
Defendants.	§	

DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISQUALIFY THE COURT

Defendants Cori and Kerri Rigsby, by counsel, submit this reply to plaintiff E.A. Renfroe & Co., Inc.'s response to defendants' motion to disqualify the Court.

First, we respond to the Court's December 17, 2007 order, which directed defendants to inform the Court of the date upon which the agreement by Scruggs to indemnify the Rigsbys was executed. There is no written indemnity agreement between the Rigsbys and Mr. Scruggs. The Rigsbys and Mr. Scruggs have confirmed that each understands and has understood since this case began that Mr. Scruggs will satisfy any liability the Rigsbys might have to pay fees, expenses or any other obligations, including satisfaction of a judgment. Regarding fees and expenses in this case since October 2006, Mr. Scruggs has caused them to be paid

to the Rigsbys' attorneys by the Scruggs Law Firm or the Scruggs Katrina Group, or on its behalf by one of its member firms. On September 26, 2007, Mr. Scruggs countersigned a letter agreement dated September 13, 2007, providing the Scruggs Katrina Group's guarantee as to payment of the Rigsbys' fees and expenses in this case owed to Zuckerman Spaeder LLP. By letter dated September 24, 2007, Battle Fleenor Green Winn & Clemmer LLP confirmed to the Rigsbys that their fees and expenses in this case would be paid by the Scruggs Katrina Group and that monthly billing summaries would be sent to Mr. Scruggs. Since September 2007, Mr. Scruggs' law firm, the Scruggs Law Firm, PA, has paid the fees and expenses for both Zuckerman Spaeder LLP and Battle Fleenor Green Winn & Clemmer LLP. The Rigsbys themselves have paid no fees or expenses in connection with this case.[1]

Second, we bring to the Court's attention in writing a case that we orally cited at the hearing regarding disqualification. It is *Murray v. Scott*, 253 F.3d 1308 (11th Cir. 2001). In *Murray*, one party asserted that the trial judge may have been disqualified as to one issue in a case but nevertheless could decide another one. The Eleventh Circuit disagreed and disapproved of disqualification only as to particular issues in or stages of a case. "But when a district judge considers

[1]The Court's December 17th order raises the possibility that a statute of frauds would bar enforcement of an unwritten indemnity agreement. The statute of frauds is relevant only where an indemnity obligation is denied. Also, the issue as to an identity of interest as to obligations to pay sanctions or damages in this case depends on the intentions and understandings of Mr. Scruggs and the Rigsbys, not on the outcome of a collection suit that may never be filed.

recusal, he must consider his potential conflict with regard to the overall case, not just his potential conflict for each separate issue or each stage of the litigation." 253 F.3d at 1310-11.

Third, it appears that Renfroe's case on the merits will include evidence regarding the handling of documents after entry of the injunction, arguing that the evidence is relevant to the exemplary damages it seeks or otherwise to impeach the defendants and their motives. Certainly Renfroe has not said otherwise. Such an approach to the merits would drag through the completion of this case the same disputes about Mr. Scruggs' conduct that the Court is not in a position to handle by virtue of the other roles that it has assumed, as explained in our moving papers.

Fourth, Renfroe's response with respect to disqualification altogether ignores the position Renfroe took with respect to sanctions in its reply to our opposition to civil contempt sanctions. When discussing civil contempt sanctions and not disqualification, Renfroe wrote an entire section under the hearing: "The Rigsbys, as Principals, Are Liable for the Acts of Scruggs." Renfroe's Reply Regarding Civil Contempt Sanctions, at 11. Thereafter, Renfroe urged the Court to impose vicarious liability on the Rigsbys, based on Mr. Scruggs' acts or omissions. Although we dispute that vicarious liability can be imposed when the Rigsbys did all they could to comply with the Court's injunction, still the argument is made by Renfroe that Mr. Scruggs' acts and omissions are in law the acts and omissions of

the Rigsbys and that there is an identity of interest between them. If the Court cannot judge Mr. Scruggs' liability or not for civil contempt, it follows from Renfroe's efforts to impose vicarious liability on the Rigsbys that the Court also cannot judge their liability.

Fifth, Renfroe's principal point in its response regarding disqualification is that the argument for disqualification here, if accepted, would result in the automatic disqualification of very judge who holds a party's lawyer in contempt. That could not be less true. The executive branch declined to pursue a criminal contempt prosecution with respect to the Rigsbys' lawyer, and the Court acted under Fed. R. Civ. P. 42(a)(2) to appoint private prosecutors. Neither is a common occurrence.[2] Moreover, the Court has reopened a criminal contempt investigation with respect to the Rigsbys; the Rigsbys may be witnesses in the criminal contempt matter in which the Court has expressed an interest; and Mr. Scruggs may be a witness on the merits in this case. There are the other circumstances we identified in our moving papers and will not repeat here. On all of these facts, it is not true that disqualification here implies the need for broad disqualification in all cases in which a contempt is found.

[2]At the hearing regarding disqualification, the Court noted that Rule 42 provides that the Court "must appoint" a private prosecutor if the United States declines prosecution. We are not aware of authority holding that "must appoint" was intended to deprive a Court of discretion about whether to proceed or not.

Accordingly, for the foregoing reasons and those stated in our moving papers, the motion for disqualification should be granted.

December 21, 2007

Respectfully submitted,

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Certificate of Service

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