

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No:

Defendants.

_____ /

ORDER FOR HEARING ON JOINT REPRESENTATION PURSUANT TO RULE 44(c)

The court notes that multiple defendants in this case are represented jointly by a single attorney. Rule 44(c) of the Rules of Criminal Procedure provides as follows in cases of joint representation:

Whenever two or more defendants have been jointly charged pursuant to Rule 8(b) or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, *the court shall promptly inquire* with respect to such joint representation and shall personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel. Fed. R. Crim. P. 44(c) (emphasis added.)

Joint representation in any criminal case presents the potential for a conflict of interest; the court is required to “promptly inquire” even if counsel does not raise the issue.

The court notes that court-appointed counsel is available, if needed (and assuming a defendant qualifies financially), to represent a defendant or to consult with a defendant concerning dual representation.

Any defendant who proposes to waive possible conflicts of interest resulting from joint representation, must do so on the record and under oath. The court notes, however, that in appropriate situations a court may disqualify an attorney despite a defendant's proposed waiver of the right to conflict-free counsel, even if the waiver is voluntary, knowing and intelligent. See *Wheat v. United States*, 486 U.S. 153, 163 (1988) ("district court must be allowed substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses"). The court intends to strongly recommend against dual or joint representation and is inclined to prohibit joint representation.

Accordingly, a hearing shall be held in order to so advise the defendants in person as required by Rule 44(c), and for considering any proposed waiver of the right to separate counsel.

The court cautions that an attorney proposing to jointly represent co-defendants must be prepared with reasoned analysis to argue "that there is good cause to believe no conflict of interest is likely to arise" Fed. R. Crim. P. 44(c). The court must conclude that, under the particular circumstances of this case, there is no reasonable possibility

that a conflict could arise that could result in a lack of effective assistance of counsel or other prejudice to either defendant.

The court's case manager will promptly schedule a hearing consistent with this Order. In the event that the defendants retain additional, separate counsel, and the purpose of the hearing is thus rendered moot, original counsel must promptly notify the court and the second counsel must file an appearance forthwith.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

July _____, 2003