

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

v.

**[1] JULIA BEATRICE KELEHER,
Defendant.**

CRIMINAL NO. 19-431 (PAD)

MOTION FOR INQUIRY INTO POTENTIAL CONFLICT OF INTEREST

The United States has reason to believe that Attorneys Maria Domínguez-Victoriano (“Domínguez”) and Javier Micheo-Marcial (“Micheo”), who represent Julia Beatrice Keleher (“Keleher”), have also served as legal counsel for multiple witnesses whom the United States intends to call at trial in connection with matters concerning this case. Given the possible existence of an unwaivable conflict of interest, and in order to preserve Keleher’s Sixth Amendment right to conflict-free counsel, the United States respectfully requests that the Court schedule a hearing to determine whether there exists an unwaivable conflict of interest which would preclude Domínguez and Micheo from continuing to represent Keleher.

RELEVANT BACKGROUND

On July 9, 2019, a federal grand jury returned an indictment charging Keleher in seven counts with violations of 18 U.S.C. §§ 371, 1343 and 1349. *See* D.E. 3. On July 10, 2019, Domínguez and Micheo, respectively, filed Notices of Appearance on behalf of Keleher. *See* D.E. 11 and 12. At the time, Domínguez was a capital member of the law firm McConnell Valdes, LLC, and Micheo was an associate of that same law firm. According to McConnell Valdés LLC’s

website, Domínguez led the firm's government enforcement, white collar, and criminal defense practice team. Micheo, for his part, was a member of the team that Domínguez led.

During the course of the investigation that ultimately led to the indictment of Keleher and her co-defendants, federal agents served grand jury subpoenas on Banco Popular de Puerto Rico and on an entity referred to in the Indictment as Company C. The subpoena served on Banco Popular de Puerto Rico requested, among other things, records pertaining to Company C and an individual referred to in the indictment as Individual K, who at the time was president of Company C. The subpoena served on Company C requested records pertaining to contracts or agreements between Company C and Alberto Velázquez-Piñol, who is charged in multiple counts of the indictment along with Keleher in this case. Matters pertaining to Company C and Individual K are specifically alleged in the indictment. *See* D.E. 3 at ¶¶ 155, 159, 160, 164, 166, 168, 169.

After the Banco Popular subpoena was served, the United States received an email from Domínguez on February 21, 2019 wherein Dominguez indicated that she was representing Banco Popular de Puerto Rico in connection with a grand jury subpoena for records pertaining to Company C. On behalf of Banco Popular, Dominguez then proceeded to request an extension of time to produce the records pertaining to Company C.

On April 4, 2019, Puerto Rico news outlets published a copy of a grand jury subpoena issued during the course of the investigation and served on Banco Popular for financial records of Keleher. As a result of the unlawful disclosure of the grand jury subpoena, an employee of Banco Popular was charged with violations of 18 U.S.C. §§ 1510(b) and 1001(a)(2). *See* D.E. 3, Crim. No. 19-386(PAD).

Seven days after the publication of the grand jury subpoena (i.e. on April 11, 2019), the United States received an email from Dominguez indicating that she had been retained by Keleher

the day prior in connection with the criminal investigation. The following month, the United States received multiple emails from Domínguez wherein she indicated that she represented Individual K in connection with the grand jury's investigation and Company C.

Moreover, Dominguez and Micheo's former employer, McConnell Valdés LLC, advertises Banco Popular de Puerto Rico and Oriental Bank & Trust among its "clients." See <http://www.mcvpr.com/McV-Clients>. The United States expects to call representatives from these entities as witnesses at trial.

As of September 20, 2019, Dominguez and Micheo resigned from McConnell Valdés, LLC and launched their own firm, DMRA, LLC. See D.E. 136. Notwithstanding their disassociation from McConnell Valdés, LLC, Domínguez and Micheo continue to maintain a fiduciary duty to Keleher, Company C, Individual K, Banco Popular, and Oriental Bank & Trust.

DISCUSSION

It is well settled that a prosecutor has "a general duty 'to alert the [C]ourt to defense counsel's potential and actual conflicts of interest.'" *Taillon v. United States*, No. 11-cv-470-SM, 2013 U.S. Dist. LEXIS 69967, at *20 (D.N.H. May 15, 2013) (quoting *United States v. McKeighan*, 685 F.3d 956, 966 (10th Cir. 2012)); see also *United States v. Matta-Timmings*, 81 F. Supp. 2d 193, 195 (D. Mass. 2000) ("Where the government has reason to believe that the defense counsel has a direct conflict with his client, the government must alert the court.") (citing *United States v. Levy*, 25 F.3d 145, 152 (2d Cir. 1994)). The District of Puerto Rico has established Local Rules which specifically include standards for the professional conduct of practicing attorneys. "In order to maintain the effective administration of justice and the integrity of the Court, each attorney admitted or permitted to practice before this Court shall comply with the standards of professional conduct required by the Model Rules of Professional Conduct (the "Model Rules"), adopted by

the American Bar Association, as amended. Attorneys who are admitted or permitted to practice before this Court are expected to be thoroughly familiar with the Model Rules' standards." L.Cv.R. 83E(a).

Rule 1.7 of the Model Rules addresses conflicts of interest between two current clients and states as follows:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Model Rules of Prof'l Conduct R. 1.7 (2016).

In this context, the Model Rules have identified special considerations for the simultaneous representation of two clients in the same matter. *See* Model Rules of Prof'l Conduct R. 1.7 cmt. 24 (2016) ("In considering whether to represent multiple clients in the same matter, a lawyer

should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible.”).

The conflict of interest provisions of the Model Rules, including Model Rule 1.7, are imputed on all attorneys working at a law firm with respect to all clients of the firm. Model Rule 1.10 specifically addresses the imputation of conflicts of interest and provides in pertinent part, with certain exceptions, that “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9.” Model Rules of Prof’l Conduct Rule 1.10(a). As a result, the representation of a client by one attorney within a firm is imputed to all attorneys within the firm. As the comments to Model Rule 1.10 explain,

The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated.

Model Rules of Prof’l Conduct 1.10 cmt. 2 (2016).

In this case, Domínguez has personally represented Banco Popular de Puerto Rico, Company C and Individual K in connection with a grand jury investigation that ultimately resulted in an indictment charging Keleher, Dominguez and Micheo’s current client. The United States expects to elicit testimony from representatives of Banco Popular de Puerto Rico, Oriental Bank & Trust and Company C, as well as Individual K. It logically follows that to advocate zealously

on behalf of Keleher, as she is ethically required to do, Domínguez and Micheo must cross-examine these witnesses. The quandary in which Domínguez and Micheo will find themselves if the Court permits them to remain as Keleher's counsel is that at trial they will have to cross-examine their own current or former clients whom she represented in matters directly related to this case, and to whom they owe a fiduciary duty. *See* Model Rules of Prof'l Conduct Rule 1.9(a) ("A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.").

What is more, in reviewing the evidence in this case to prepare a defense for Keleher, Domínguez and Micheo will necessarily be called upon to review and evaluate evidence supplied by their current and former clients, Banco Popular, Oriental Bank, Company C, and Individual K. They will also have to determine whether any potential deficiencies exist in the evidence produced from their other clients in response to grand jury subpoenas. This they cannot objectively do because they represented these very entities and individual in connection with the grand jury subpoenas.

The United States is mindful that under certain circumstances, clients may waive actual or potential conflicts of interest. *See, e.g., United States v. Saccoccia*, 58 F.3d 754, 772 (1st Cir. 1995) ("A defendant may waive his right to assistance of an attorney unhindered by a conflict of interest.") (citation omitted). A waiver does not, however, "eliminate the [C]ourt's responsibility to balance the right to one's own counsel with the [C]ourt's interest in preserving the integrity and the fair administration of justice." *See, e.g., United States v. Snyder*, 707 F.2d 139, 143 (5th Cir. 1983). In this case, the Court should not accept any waiver from Keleher or Domínguez and

Micheo's other clients because, for the reasons set forth above, there exists an actual conflict of interest that will become exacerbated as this case progresses. *See, e.g., Wheat v. United States*, 486 U.S. 153, 164 (1988) (observing that while a trial court "must recognize a presumption in favor of petitioner's counsel of choice, [] that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict."); *see also United States v. Mulero-Vargas*, 358 F. Supp. 3d 183, 193 (D.P.R. 2019) ("Courts have 'substantial latitude' to accept or reject waivers, '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.'") (quoting *Wheat*, 486 U.S. at 193).

In short, In light of the information the United States has brought to the Court's attention, the Court "is duty bound to inquire into the circumstances and determine whether the defendant can receive a fair trial with effective assistance of counsel." *See United States v. Matta-Timmins*, 81 F. Supp. 2d 194, 195 (D. Mass. 2000). This inquiry should compel the Court to conclude that preserving Keleher's Sixth Amendment right to effective assistance of counsel requires disqualification of Domínguez and Micheo from representing her in this case. What is more, the United States respectfully submits that the Court should hold the inquiry at its earliest possible convenience. This would both avoid the need for new counsel following an appeal or a collateral attack on a conviction, would avoid the potential for needless delays, and would promote the efficient use of court and government resources.

CONCLUSION

For the reasons set forth above, the United States respectfully requests that this Court hold a hearing at its earliest convenience to determine whether Domínguez and Micheo's representation of Keleher is tainted by an unwaivable conflict of interest.

WHEREFORE, the United States respectfully requests that this Honorable Court take notice of the foregoing and GRANT the United States of America's request.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of October, 2019.

CERTIFICATE OF SERVICE:

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney

s/Jose Capo Iriarte
JOSE CAPO IRIARTE
Senior Litigation Counsel
USDC-PR No. 227901

United States Attorney's Office
Torre Chardón, Suite 1201
350 Carlos Chardón Ave.
San Juan, PR 00918
787-766-5656