

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIA BEATRICE KELEHER,

Defendant.

CRIMINAL CASE NO.: 19-431 (PAD)

**DEFENDANT'S RESPONSE IN OPPOSITION TO THE GOVERNMENT'S MOTION
FOR INQUIRY INTO POTENTIAL CONFLICT OF INTEREST**

TO THE HONORABLE COURT:

COMES NOW Defendant Julia Beatrice Keleher, through the undersigned counsel, and respectfully files her *Reply to the Government's Motion for Inquiry into Potential Conflict of Interest* in the above-entitled case. In support thereof, Defendant respectfully states and prays as follows:

BACKGROUND

1. On July 9, 2019, a Federal Grand Jury returned an indictment against the Defendant and charged her with conspiracy to commit wire fraud, in violation of 18 U.S.C. §1349; wire fraud, in violation of 18 U.S.C. §1343; and conspiracy to commit an offense against the United States (theft), in violation of 18 U.S.C. §§ 371, 641. *See* Docket No. 3. On July 16, 2019, the Defendant appeared before Magistrate Judge Marcos E. Lopez for her arraignment and detention hearing and pled not guilty to all the charges brought against her. She was released on bond.
2. On July 10, 2019, Attorneys Maria Domínguez and Javier Micheo filed their respective *Notices of Appearance* on behalf of Defendant. *See* Docket No. 11, 12.

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 2

3. In an attempt to mislead the Court, on October 1, 2019, the Government filed a *Motion for Inquiry into Potential Conflict of Interest* in relation to Attorneys Domínguez and Micheo's representation of Defendant. Docket No. 139. In its motion, the Government argues that counsels' past alleged concurrent representation of Defendant and a few witnesses in the present case renders them presently unable to provide a conflict-free representation to Defendant. However, the Government's desperate attempt to persuade the Court is completely devoid of merit, as counsel's extremely limited past representation of Banco Popular, Company C, and Individual K while at McConnell Valdes LLC in no way triggers a conflict of interest with their current representation of Defendant.
4. As such, and for the reasons stated herein in detail, the Court should deny the Government's motion summarily and respect Defendant's Sixth Amendment right to choose her own counsels, Maria A. Dominguez and Javier Micheo.

LEGAL STANDARD

Rule 1.7 of the ABA Rules of Professional Conduct (the "Model Rules") provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. Model Rules of Prof'l Conduct Rule 1.7(a). 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." *Id.* at 1.7(a)(1)-(2) (emphasis ours). The concerns underlying the establishment of Rule 1.7 are that the client to whom the representation is directly adverse is likely to feel betrayed and the client on whose behalf the adverse representation is undertaken reasonably may fear that the

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 3

lawyer will pursue the client's case less effectively. *See* Model Rules of Prof'l Conduct Rule 1.7, cmt. 6 (2016).

Rule 1.10 of the Model Rules specifically governs the imputation of conflicts of interest and provides that “[w]hile **lawyers are associated in a firm**, none of them shall knowingly represent a client when any 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) (2016) (emphasis ours). As suggested by the language of Rule 1.10(a), this Rule only operates among lawyers currently associated in a firm. Comment 2 to Rule 1.10 explains that when a lawyer moves from one firm to another, the situation is instead governed by Rule 1.9(b). *See* Model Rules of Prof'l Conduct 1.10, cmt. 2 (2016).¹

Rule 1.9(b) provides that “[a] lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are **materially adverse** to that person; and (2) about whom the lawyer had **acquired information** protected by Rules 1.6 and 1.9(c) that is **material** to the matter; unless the former client gives **informed consent, confirmed in writing.**” Model Rules of Prof'l Conduct 1.9(b) (emphasis ours). In the context of Rule 1.9, this district court has stated that the purpose of the Rule is to prevent confidential information, from a prior representation, from being used for the benefit of another who is now the adversary of the prior client. *See Southwire Co. v. Ramallo Bros. Printing, Inc.*, 2009 WL 4937726 at 7 (D.P.R. 2009) (citing *Reyes Canada v. Rey Hernandez*, 193 F. Supp. 2d 409, 411 (D.P.R. 2002)).

¹ Comment 2 to Rule 1.10 also states that when a lawyer moves from one firm to another, the situation is governed by 1.10(a)(2) and 1.10(b). However, Rules 1.10(a)(2) and 1.10(b) are of inapplicable to the facts of this case.

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 4

Admittedly, where the Government has reasons to believe that defense counsel has a direct conflict with his client, the Government must alert the court. *See United States v. Matta-Timmins*, 81 F. Supp. 2d 193, 195 (D. Mass. 2000) (citing *United States v. Levy*, 25 F.3d 146, 152 (2d Cir. 1994)). Not surprisingly, defense attorneys are held to the same standards than the Government. *Id.* In the context of conflict of interests and disqualification of a defendant's counsel of choice, however, the First Circuit has cautioned that the Government bears a "heavy burden" in demonstrating that a conflict exists, and that disqualification of a defendant's counsel is justified. *See United States v. Moreno*, 132 F. Supp. 3d 265, 270 (D.P.R. 2015) (citing *In re Grand Jury Proceedings*, 859 F.2d 1021, 1026 (1st Cir. 1988)).

Here, the Government claims that there is a serious potential for conflict between Defendant, Banco Popular, Oriental Bank, Company C, and Individual K because: 1) Attorney Domínguez represented Banco Popular, Company C, and Individual K in connection with a grand jury investigation that ultimately resulted in the Indictment charging Defendant; 2) the Government expects to elicit testimony from representatives of Banco Popular, Oriental Bank, Company C, as well as Individual K; and 3) Attorneys Domínguez and Micheo were both attorneys at McConnell Valdes LLC, who has represented or currently represents Banco Popular and Oriental Bank, and, thus, said representation must be imputed to them based on their prior association with the firm.

The Government's arguments that a conflict of interest exists in this case are ludicrous. A quick study of the Government's motion demonstrates that the Government's petition is nothing more than a misguided attempt to gain a strategic advantage in this litigation by disqualifying counsel months into the case, where discovery has been studied, where motions have begun to be prepared, and where litigation strategy has been developed, thus leaving Defendant without her

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 5

attorneys of choice in a critical juncture of the case. Because no conflict of interest exists between Defendant, Banco Popular, Oriental Bank, Company C, and Individual K, the Government's motion for an inquiry into a potential conflict of interest serves no legitimate purpose and holding a hearing on the matter would be a complete and utter waste of this Court's time and resources.

ARGUMENT

I. Attorney Dominguez's limited representation of Banco Popular, Company C, and Individual K during the course of the Government's investigation does not create a concurrent conflict of interest²

First, the Government incorrectly argues that Attorney Domínguez's representation of Banco Popular in the limited context of a grand jury subpoena that the Government served on the bank, for records pertaining to Company C and Individual K, renders her unable to provide a conflict-free representation to Defendant in this case. Docket No. 139 at 2, 6. In doing so, in an effort to induce the Court to error, the Government grossly exaggerated the extent of Attorney Dominguez's representation of Banco Popular in relation to the grand jury subpoena.

To properly call for an inquiry under Rule 1.9(b), the Government must first provide some sort of evidence, beyond mere conjecture and speculation, that the instant case constitutes the "same" or a "substantially related" matter than that during which Attorney Dominguez and/or Micheo represented Banco Popular, Company C, and Individual K. This point can be conceded, insofar as it is reasonable to conclude that the grand jury subpoena served on the aforementioned companies is substantially related to the instant indictment. However, that is as far as the Government's argument gets, as the Government has not provided a scintilla of evidence that

² For the reasons stated herein, and given that the Government's arguments as they pertain to Attorney Micheo emanate from his former association with McConnell Valdes LLC and the work performed therein together with Attorney Dominguez, the arguments made in relation to Attorney Dominguez in this section are equally applicable to Attorney Micheo for purposes of this motion.

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 6

Defendant has interests which are materially adverse to Banco Popular, Company C, or Individual K, nor that either attorney received information protected by Rules 1.6 and 1.9(c) that is material to the instant indictment.

As to Banco Popular, the Government has provided no evidence that Attorney Domínguez was involved in the process of gathering, reviewing, and producing the documents requested by the grand jury. In reality, beyond requesting an extension of time on behalf of Banco Popular, Attorney Domínguez played no other role in Banco Popular's response to the Government's subpoena. Therefore, the Court simply cannot find that Attorney Domínguez received information from Banco Popular, or its representatives, that she could use for the benefit of Defendant and to the ultimate detriment of Banco Popular during their cross-examination in this case. Moreover, Banco Popular's involvement in the instant case is as a mere custodian of records. As the Court is aware, rarely do custodians of records undergo cross-examination. In fact, pursuant to Fed.R.Evid. 803(6)(D), testimony is not necessary to introduce these records into evidence, a certification suffices. Most importantly, the matter of the authenticity of the records produced by Banco Popular does not affect Defendant in any way, insofar as the records produced pertain to companies that are not named in counts under which Defendant is charged or even mentioned.

The Government's arguments as to Company C and Individual K similarly fail. The Government improperly argues that Attorney Domínguez's representation of Individual K and Company C, of which Individual K was president, in connection with a grand jury subpoena, makes her unable to provide a conflict-free representation to Defendant. Specifically, the Government states that "[t]he subpoena served on Company C requested records pertaining to contracts or agreements between Company C and [Defendant] Alberto Velázquez-Piñol, who is charged in multiple counts of the indictment along with Keleher in this case." Docket No. 139 at

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 7

2. However, a cursory review of the Government's confusing and legally flawed Indictment demonstrates that Individual K and Company C have absolutely nothing to do with, nor are they even remotely mentioned in, any of the allegations brought against Defendant. Therefore, it is absurd to argue that the interests of Individual K and Company C are materially adverse to Defendant's. Accordingly, the Government's argument is dead in the water.

As a threshold matter, it is important to note that Defendant's representation of Individual K and Company C in this matter was limited to ensuring that they complied with the Government's request for documents pursuant to a grand jury subpoena. This grand jury subpoena sought no information from Defendant, related to Defendant, or information regarding anyone directly affiliated with Defendant. A superficial review of the Indictment in this case reflects that Individual K and Company C are not mentioned until Paragraph 155 of the Indictment. Paragraph 155 falls within Count Nineteen of the Indictment, which charges Conspiracy to Commit an Offense Against the United States in violation of 18 U.S.C. § 371. Defendant is not charged in Count Nineteen of the Indictment nor is she even remotely mentioned therein.

The Government has thus provided zero evidence showing that Attorney Domínguez received any information from Individual K and Company C that she could use to Defendant's benefit and to their detriment. What is most glaring, however, is the fact that Attorney Dominguez inquired with the Government as to whether undertaking the limited representation of Individual K and Company C would pose a conflict with her representation of Defendant prior to engaging with Individual K and Company C. This inquiry was sent in writing and Attorney Dominguez

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 8

never received an affirmative response from the Government.³ Now, months later, the Government pulls a rabbit out of a hat and brings forth an argument of a potential conflict of interest when it had an opportunity to raise this upon counsel's own inquiry. This is gamesmanship at its lowest and the Court should not condone this type of litigation.

Consequently, because the Government has provided zero evidence to show that a concurrent conflict of interests exists in this case as to Banco Popular, Company C, or Individual K,⁴ the Government's arguments fail, and this Court should deny the Government's motion without a hearing.

II. Attorneys Dominguez and Micheo are No Longer Attorneys at McConnell Valdes LLC

In sum, the Government argues that a conflict of interest exists in this case because of Attorneys Dominguez and Micheo's prior association with the law firm of McConnell Valdes LLC. However, Attorneys Dominguez and Micheo are no longer attorneys at McConnell Valdes LLC. Both are now attorneys at Dominguez Micheo Ramos & Andreu Law LLC. Because they are no longer attorneys at McConnell Valdes LLC, the arguments made by the Government regarding their past association with McConnell Valdes LLC are without merit.

Given that Attorneys Dominguez and Micheo are no longer attorneys at McConnell Valdes LLC, Rule 1.10(a) is no longer applicable to their representation of Defendant in the present matter. Thus, McConnell Valdes LLC's representation of Banco Popular and Oriental Bank cannot be imputed to them under Rule 1.10(a) and the present issue must be examined under Rule 1.9(b).

³ As the Court may be aware, counsel recently moved on from McConnell Valdes LLC and are now employed at DMRA Law LLC. As a result, obtaining a copy of this communication has been somewhat difficult. However, counsel continues diligently pursuing this matter and will submit the proper evidence to the Court once obtained.

⁴ As to Oriental Bank, Attorney Dominguez is not alleged to have advised them in any matter related to the instant indictment. Therefore, the Government's argument fails to reach first base as to Oriental Bank and Trust.

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 9

When the present matter is examined under Rule 1.9(b), the Government's arguments do not pass muster.

Neither Attorney Dominguez nor Micheo provided legal representation to Oriental Bank in any matter, nor in any capacity, directly or indirectly, while at McConnell Valdes LLC. Admittedly, while at McConnell Valdes LLC, Attorney Dominguez intervened on menial matters on behalf of Banco Popular. However, the matters in which she intervened on behalf of Banco Popular are completely unrelated to the present criminal matter, aside from the brief intervention to request the extension of time to produce documents related to this case. While it is true that McConnell Valdes LLC represents both Banco Popular and Oriental Bank in other matters, the matters in which the firm has represented and continues to represent Banco Popular and Oriental Bank are completely unrelated to the present criminal matter and Attorneys Dominguez and Micheo lack any knowledge as to the extent or nature of those matters.

Additionally, while at McConnell Valdes LLC, neither Attorney Dominguez nor Micheo acquired any confidential information regarding Banco Popular or Oriental Bank that it could use for the benefit of Defendant in this case. Thus, even if this Court finds that McConnell Valdes LLC's representation of Banco Popular and Oriental Bank are imputed to Attorney Dominguez and Micheo merely because of their former association with the firm, undersigned counsel respectfully proffers to the Court that they never acquired information that they could use for the benefit of Defendant, and against Banco Popular or Oriental Bank, during their cross-examination, particularly when considering that the extent of the testimony of Banco Popular or Oriental Bank's representatives would be to authenticate records. As such, other than creating needless delays and promoting inefficient use of government resources, removing Attorney's Dominguez and Micheo as Defendant's counsel of choice serves no legitimate purpose.

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 10

III. *The Government's filing is nothing more than a bad faith litigation trick disguised as an ethical inquiry*

The Government's motion is nothing more than a bad faith litigation tactic. In the context of disqualification of an attorney for an alleged conflict of interest, this district court has stated that a motion to disqualify should be approached with **cautious scrutiny** because they are **often used for strategic purposes**. See *Reyes Canada v. Rey Hernandez*, 193 F. Supp. 2d 409, 411 (D.P.R. 2002) (emphasis ours). Ultimately, disqualification of a defendant's counsel of choice is a **measure of last resort**. See *United States v. Diozzi*, 807 F.2d 10, 12-13 (1st Cir. 1986).

The reality is that the Government here has found itself tied to the charges and allegations it brought in its indictment, which fail to state an offense against the United States. Finding itself without a legitimate way to redeem its fatally flawed indictment, the Government stooped to the level of manufacturing an inexistent conflict of interest in order to persuade the Court to interfere with Defendant's Sixth Amendment right to counsel. Most importantly, when considering that Attorney Dominguez inquired as to whether a potential conflict would arise prior to undertaking the representation of Company C and Individual K, and considering that the Government never responded in the affirmative, the Court may only conclude that this is a very transparent and ill-fated attempt to gain a strategic advantage in this litigation by disqualifying counsel. The Court should not stand for that and should summarily deny the Government's motion without a hearing.

CONCLUSION

The Government's motion is dead on arrival. The Government has failed to demonstrate that Attorneys Dominguez or Micheo's limited representation of Banco Popular, Company C, and Individual K, and their past association with McConnell Valdes LLC, violates Rule 1.9(b) in any way. Specifically, there is no evidence on the record, nor will there ever be, that Defendant has

United States v. Julia Beatrice Keleher, et al.
Response in Opposition to the Government's Motion for Inquiry into Potential Conflict of Interest
Page 11

interests adverse to those of Banco Popular, Company C, or Individual K. Moreover, counsel did not obtain any information protected by Rules 1.6 and 1.9(c) that is material to this matter. Finally, in the event the Court errs and finds that a conflict exists here, both Defendant and Individual K⁵ have expressed to counsel that they are willing to provide written consent to counsels' continued representation of Defendant. Accordingly, the Government's motion fails on both of the required prongs for disqualification under Rule 1.9(b) and should be denied without a hearing on the matter, insofar as a hearing would constitute a gross waste of judicial resources.

WHEREFORE, the defendant, Julia Beatrice Keleher, respectfully requests the Court DENY the Government's motion without a hearing on the matter.

Respectfully submitted on this 2nd day of October 2019, in San Juan, Puerto Rico.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will provide access to all parties of record.

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⁵ Counsel continues to refer to this individual as "Individual K" to protect his privacy and conceal his identity. However, counsel proffers that they communicated directly with Individual K about the nature of this motion and the relief sought and he expressed his consent for counsel to continue to represent Defendant and expressed willingness to state so in writing.