[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14446

D.C. Docket No. 1:19-cr-00077-LMM-RGV-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDRICO PACHECO-ROMERO,

Defendant,

JEROME D. LEE,
STEPHEN ELIJAH BROWN-BENNETT,
TAYLOR, LEE & ASSOCIATES,

Interested Parties-Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(April 28, 2021)

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR, Circuit Judge, and SELF,* District Judge.

---

* Honorable Tilman Eugene Self III, United States District Judge for the Middle District of Georgia, sitting by designation.

JILL PRYOR, Circuit Judge.

Attorneys Jerome Lee and Stephen Elijah Brown-Bennett of the law firm Taylor, Lee & Associates were retained to represent six defendants who were charged in federal district court with conspiring to possess with intent to distribute methamphetamine. Shortly after the defendants were arraigned, the district court disqualified the attorneys and the law firm from representing any of the defendants based upon an actual or potential conflict of interest.

Before the district court entered the disqualification order, the law firm had collected a total of $21,000 from the defendants. Because the attorneys and the law firm were disqualified so early in the case, questions arose about whether the law firm had earned the entire fee it collected and, if it had not, whether the portion of the fee that did not belong to the law firm should be refunded to the defendants or used to reimburse the fees and expenses of the defendants' appointed replacement counsel pursuant to the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A(f). The attorneys refused to comply with court orders directing them to turn over information the court needed to determine what portion of the fee, if any, the law firm had not earned. Because of their non-compliance, the district court ordered the law firm to pay $15,000 of the $21,000 fee into the court's registry. Eventually, the law firm paid the money into the court's registry and the attorneys provided the requested information. The court then determined that $8,000 of the funds in the registry had been earned by and thus belonged to the

law firm. Exercising its authority under the CJA, the court directed that the remaining $7,000 be paid to the CJA fund as reimbursement for the fees and expenses incurred by defendants' counsel who were appointed by the court after the disqualification.

In this appeal, appellants Lee, Bennett, and the law firm challenge the district court orders requiring the firm to pay $15,000 into the court's registry and directing that $7,000 of those funds be paid to the CJA fund to cover the fees and expenses of the defendants' court-appointed counsel. After careful consideration and with the benefit of oral argument, we affirm in part and dismiss in part.

I. FACTUAL BACKGROUND

In the underlying criminal case, six individuals were charged in the United States District Court for the Northern District of Georgia with conspiring to possess with intent to distribute methamphetamine. After their arrests, all six defendants retained the law firm of Taylor, Lee & Associates to represent them. The attorneys who represented the defendants were Lee, one of the firm's named partners, and Bennett, an associate of the firm. Under the terms of their engagement letters with the firm, each defendant agreed to pay a flat fee of $7,500 for representation throughout his criminal case. The flat fee was to be paid by each defendant as follows: $3,500 up front and the remaining $4,000 in monthly installment payments.

As it turns out, Lee and Bennett represented the defendants only briefly. They appeared as counsel for most of the defendants at their initial appearances and for all the defendants at their detention hearings and arraignments. Each defendant purported to waive any conflict of interest arising from the joint representation. But the magistrate judge, who was presiding over proceedings related to disqualification,[1] expressed concern about the conflict-of-interest issues that might arise from joint representation in a drug conspiracy case. *See* Fed. R. Crim. P. 44(c)(2); *United States v. Wheat*, 486 U.S. 153, 163-64 (1988) (discussing conflict-of-interest issues that may arise when an attorney "propose[s] to defend [multiple] conspirators of varying stature in a complex drug distribution scheme").

On March 14, 2019, the magistrate judge held a hearing on disqualification. At the hearing, each defendant indicated that he wanted to continue with the joint representation. The magistrate judge raised the question of whether the law firm was being paid by the defendants or some other third party. Each defendant stated that he, or his family, had paid the law firm. And Lee indicated that the firm could provide records confirming that the payments to the firm came from each defendant or his family, not a third party.

After the hearing, the magistrate judge disqualified the appellants from representing any of the defendants.

---

[1] *See* Fed. R. Crim. P. 59(a) (permitting a district court judge to "refer to a magistrate judge for determination any matter that does not dispose of a charge or defense").

Noting the government's allegations that the defendants had played differing roles in the drug-distribution organization, the magistrate judge found that joint representation by a single law firm of the six defendants charged in the conspiracy gave rise to "serious potential, if not actual, conflict of interest" issues. Doc. 76 at 4.[2] After disqualifying the appellants, the magistrate judge determined that each defendant was financially unable to obtain counsel and appointed counsel for each one pursuant to the CJA.[3] *See* 18 U.S.C. § 3006A(c).

After the disqualification, the magistrate judge raised the issue of whether, given the limited course of the representation, the law firm was entitled to keep its entire fee.[4] At a hearing on March 26, the magistrate judge explained that the law firm was entitled to keep at least a portion of the fee, for work that was

---

[2] "Doc." numbers refer to the district court's docket entries.

[3] Although some defendants replaced their appointed counsel with retained counsel, each defendant was represented by court-appointed counsel for at least some portion of his criminal case.

[4] Georgia law permits an attorney to charge a client a flat fee for representation in a criminal case. *See Fogarty v. State*, 513 S.E.2d 493, 497 (Ga. 1999). The attorney may not be entitled to keep the entire flat fee, however, if the representation is terminated before the case ends. *See In re Polk*, 814 S.E.2d 327, 328-29 (Ga. 2018); *see also Nash v. Studdard*, 670 S.E.2d 508, 514 (Ga. Ct. App. 2008) (recognizing that an attorney who had charged a client a flat fee for representation in a criminal case had an obligation to return any "unearned portion" of the flat fee when the representation was terminated while the criminal case remained pending).

performed before disqualification, but that it would owe a partial refund if the total amount collected from the defendants exceeded the fee that was earned prior to disqualification. Because the law firm had received at least one payment from each defendant, the magistrate judge explained, it appeared that the firm had collected at least $21,000.[5] In order to determine whether the defendants were entitled to a refund, the magistrate judge ordered Lee and Bennett, by March 29, to provide the court with an accounting showing the fees each defendant paid to the law firm and the services provided to each defendant. Lee and Bennett agreed to provide the information by the deadline.

By the deadline, the only information the attorneys provided to the court was an affidavit from a family member of each defendant. Each affiant described his or her relationship to the defendant and then stated that money paid to the law firm came from the affiant's "personal funds." *See*, *e.g.*, Doc. 83 at 2. The affidavits did not disclose when any such payment was made, the number of payments made, or the amount paid.

---

[5] By this point, the magistrate judge had received copies of the defendants' engagement letters with the law firm. Under the terms of the engagement letters, signed on February 9 and February 11, the defendants agreed to make monthly installment payments on the 9th or 11th of the month. Because the appellants were disqualified on March 22, it was unclear to the magistrate judge whether the law firm had received any monthly installment payments from the defendants.

Although the court also had directed the attorneys to provide information showing the total amount the defendants had paid to the law firm and identifying the services the firm had provided to the defendants, the attorneys did not provide this information, sought no extension of time to provide this information, and offered no explanation for failing to provide this information.

On April 24, nearly a month after the accounting information was due, the magistrate judge entered an interim order addressing the status of the fees the defendants had paid to the law firm. The order noted that the court had "afforded counsel the opportunity to submit an accounting" to address the firm's entitlement to the fees, yet they had failed to provide information showing how much the law firm had collected from each defendant or the services it had provided. Doc. 107 at 1.

The magistrate judge proceeded to make interim findings related to the law firm's fee. The magistrate judge began with an understanding that the law firm had collected a total of at least $21,000 in initial payments from the defendants. Based on the record showing that Lee and Bennett had represented the defendants at their initial appearances, arraignments, and detention hearings, the magistrate judge estimated that the law firm had earned $6,000 as reasonable compensation for these services.

In light of his estimates that the firm had collected $21,000 from the defendants but earned a fee of only

about $6,000, the magistrate judge directed the attorneys and the law firm, by April 30, to deposit the remaining $15,000 in fees the law firm had collected from the defendants into the court's registry. The magistrate judge said that the funds would be held in the registry pending further proceedings inquiring into whether they belonged to the firm or should be refunded to the defendants or "applied to the CJA fund." *Id.* at 1-2.

The appellants did not comply with this order. They first sought a one-week extension of the deadline to pay into the court's registry, saying the firm needed additional time to come up with $15,000. The magistrate judge extended the deadline to May 6. On May 6, though, the appellants still had not paid any money into the registry, requested another extension of time, or explained their inability to comply with the extended deadline.

The magistrate judge then ordered the attorneys to appear at a show-cause hearing, and also address in writing, why sanctions should not be imposed. The appellants filed with the district court objections to the magistrate judge's order. In their objections, they asserted that the magistrate judge had no authority to order the law firm to pay money into the court's registry. They complained that the magistrate judge had failed to afford them due process, arguing that before entering the order requiring payment into the registry, the magistrate judge supposedly had given them no opportunity to be heard on "what work had been done or

exactly how much the Defendants had paid to" the law firm. Doc. 125 at 5.

At the show-cause hearing on May 9, Lee represented that the law firm had not paid into the court's registry because it did not have $15,000 in its bank account. He also complained that it was not "fair" or "reasonable" for the court to inquire whether the law firm had earned the fees the defendants had paid it. Doc. 227 at 15.

On May 17, the district court overruled the objections. The district court ruled that the magistrate judge had the authority to order the appellants to pay a portion of the fees the law firm had received into the court's registry. The court found that each defendant had paid a "substantial retainer[] prior to disqualification for services that would never be rendered." Doc. 142 at 4. And because each defendant, for at least a portion of the case, had been represented by court-appointed counsel, the court found that the CJA "empowered" the magistrate judge to recover money belonging to the defendants to offset the fees and expenses of their appointed counsel. *Id.* (citing 18 U.S.C. § 3006A(f)).

The district court also rejected the argument that the magistrate judge had failed to afford due process before directing the appellants to pay the funds into the court's registry. The district court observed that the magistrate judge had "issued several orders, granted extensions of time, and held several hearings" to give the appellants an "opportunity to provide an

accounting." *Id.* at 5. By doing so, the district court explained, the magistrate judge had given them an opportunity to be heard on what portion of the fees the law firm had earned before the disqualification. "[H]aving not provided an accounting despite numerous orders and hearings on this issue," the court said, the appellants "cannot no[w] complain" that the magistrate judge "overestimated the proper . . . amount" to be paid into the registry. *Id.* at 6. And, the court noted, the inquiry into the total fees the law firm had earned was not complete. The money would be held essentially in "escrow" in the court's registry so the appellants "could still . . . provide billing evidence" to establish how much the law firm had earned and potentially be entitled to the return of some or all of the deposited money. *Id.*

Even after the district court entered this order, the appellants did not pay any funds into the court's registry or provide an accounting. On May 20, the magistrate judge entered an order certifying facts for the district court to consider in contempt proceedings against the appellants. *See* 28 U.S.C. § 636(e)(6) (setting forth procedures for magistrate judge to certify to district court facts related to contempt proceedings). The district court then ordered the appellants to appear at a contempt hearing, instructing that they could avoid being held in contempt by depositing $15,000 into the court's registry and providing an accounting.

It was only at the contempt hearing on June 19 that the appellants finally agreed to deposit the $15,000 and to submit an accounting. Immediately

after the hearing, Lee paid $15,000 into the court's registry, but the promised accounting information was not supplied.

Afterward, the district judge entered an order notifying the appellants of her intention to hold them in contempt and order them to pay $500 per day until they provided an accounting. Before holding them in contempt, however, the court gave the appellants "one more opportunity to provide the accounting." Doc. 170 at 9. Because the appellants then submitted time records detailing the services they had performed on the defendants' behalf, the court did not hold them in contempt.

The district court referred the issue of how the money in the court's registry should be distributed to the magistrate judge. Noting that the appellants still had not verified the total fees the law firm had collected from the defendants, the magistrate judge entered another order directing the appellants to provide documentation verifying the amount of fees the defendants had paid to the law firm. About a month later—now nearly five months after the magistrate judge had first ordered the appellants to provide this information—Lee submitted an affidavit stating that the firm had received only an initial payment from each defendant and had no receipts or bank records related to the payments.

The magistrate judge held a hearing where the appellants had yet another opportunity to be heard on the total amount of fees the law firm had earned. At

the hearing, Lee and Bennett admitted that they had not kept contemporaneous time records reflecting the time they spent working on the case. They relied on their recollections of how much time they spent working on the case to create the time records that they filed with the court.

After the hearing, the magistrate judge issued an order addressing the distribution of funds in the court's registry. The judge found that the law firm had collected total fees of $21,000 from the defendants. Based on the scope of the legal services Lee and Bennett provided before their disqualification and their hourly rates,[6] the magistrate judge found that the appellants had earned total fees of $14,000. Accounting for the $6,000 the law firm had been permitted to keep, the magistrate judge directed the clerk of court to pay the firm $8,000, plus accrued interest, from the funds held in the court's registry. After finding that the remaining $7,000 in the registry constituted funds "available" to the defendants for CJA purposes, 18 U.S.C. § 3006A(f), the magistrate judge directed the clerk to pay this amount to the CJA fund "to defray the expense associated with appointing counsel" for the defendants. Doc. 195 at 6.

The appellants objected to the magistrate judge's order. After the district court overruled their objections

---

[6] The magistrate judge reduced Lee's in-court hourly rate from $500 per hour to $400 per hour and Bennett's in-court hourly rate from $350 per hour to $300 per hour.

and directed compliance with the magistrate judge's order, they filed this appeal.[7]

II. LEGAL ANALYSIS

Under the CJA, district courts must furnish legal counsel to criminal defendants who are "financially unable to obtain counsel." 18 U.S.C. § 3006A(b). The CJA addresses the compensation of appointed attorneys. *Id.* § 3006A(d)(1).

If at any time after the appointment of counsel the court finds that a defendant "is financially able to obtain counsel or to make partial payment," the court "may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate." *Id.* § 3006A(c). When a court finds that "funds are available for payment from or on behalf of a person furnished representation," the court may direct that the money be paid "to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, . . . or to the court for deposit in the Treasury as a reimbursement." *Id.* § 3006A(f).[8]

---

[7] On appeal, the United States did not submit a brief or appear at oral argument. In a letter to the court, the government explained that it chose not to participate in the appeal because it had not been involved in the "hearing or . . . litigation in the district court concerning [the] fee" and did "not have a stake" in the outcome. Jan. 22, 2021 Letter at 2.

[8] The appellants argue that once a district court determines a defendant is financially unable to obtain counsel, the court may

On appeal, the appellants challenge on four grounds the district court's orders entered pursuant to § 3006A(f). We begin by examining our appellate jurisdiction to review each ground. We then address the merits of those challenges over which we have appellate jurisdiction.

A.

Federal law grants the courts of appeals "jurisdiction" to review "final decisions" of the district courts. 28 U.S.C. § 1291. This provision confers "jurisdiction to review decisions made by a district court in a *judicial* capacity." *Ayestas v. Davis*, 138 S. Ct. 1080, 1089 (2018) (emphasis in original). But "not all decisions made by

---

not make a finding under the CJA that funds are available to the defendant. They misunderstand the CJA. As we explain above, the CJA expressly permits a district court, after finding that a defendant is financially unable to obtain counsel and appointing counsel, to determine later that funds are available to the defendant and direct that those funds be paid to the Treasury as reimbursement for compensation paid to appointed counsel. 18 U.S.C. § 3006A(c), (f).

To support their interpretation, the appellants cite to our predecessor court's decision in *United States v. Jimenez*, 600 F.2d 1172 (5th Cir. 1979). Even though *Jimenez* constitutes binding precedent, *see Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), it does not change our analysis. Nothing in *Jimenez* prohibits a district court, after determining that a defendant is financially unable to obtain counsel, from finding that funds are available to the defendant nonetheless. In *Jimenez*, our predecessor court merely recognized that after finding a defendant was financially unable to afford counsel, a district court could not, *without more, order as a condition of probation* that the defendant reimburse the government for the cost of his appointed counsel. 600 F.2d at 1174.

a federal district court are 'judicial' in nature; some decisions are properly understood to be 'administrative'" and are not subject to review under § 1291. *Id.* (quoting *Hohn v. United States*, 524 U.S. 236, 245 (1998)). We have previously held that because district court orders under § 3006A(f)—whether directing a person to pay money into the court's registry or directing a court clerk to pay money from the registry to cover the cost of appointed counsel—are administrative, not judicial, in nature, we generally lack jurisdiction under § 1291 to review them. *United States v. Griggs*, 240 F.3d 974, 974 (11th Cir. 2001); *see United States v. Owen*, 963 F.3d 1040, 1053 (11th Cir. 2020).

There is one exception to this rule, however. We may review district court orders under § 3006A(f) to ensure that the "district court complied with the procedural requirements of § 3006A." *Owen*, 963 F.3d at 1053 (citing *United States v. Bursey*, 515 F.2d 1228 (5th Cir. 1975)).

With these principles in mind, we examine our jurisdiction to review each of the appellants' four grounds for challenging the district court's orders in this case.[9] Three of these grounds concern the district

---

[9] We raise *sua sponte* the question of whether we have jurisdiction under § 1291 to review the district court's orders. *See Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1233 (11th Cir. 2020) ("[L]ongstanding principles of federal law oblige us to inquire *sua sponte* whenever a doubt arises as to the existence of federal jurisdiction." (internal quotation marks omitted)); *Corsello v. Lincare, Inc.*, 276 F.3d 1229, 1230 (11th Cir. 2001) (reflecting that the question of whether a district court order constituted a final decision for purposes of § 1291 is a jurisdictional issue subject to *sua sponte* review).

court's failure to comply with the procedural requirements of § 3006A(f). They include that the district court: lacked the authority to raise *sua sponte* the question of whether a portion of the fees paid to the appellants were available to the defendants for purposes of the CJA, failed to perform an appropriate inquiry into whether the funds were available to the defendants before compelling the payment of funds into the court's registry, and improperly required the appellants to pay funds into the court's registry before any appointed counsel had submitted a payment voucher. We have jurisdiction to review these challenges. *See Owen*, 963 F.3d at 1053-54.

We lack jurisdiction, though, to review the appellants' fourth challenge, that the district court erred in finding that a portion of the funds were available to the defendants. This argument does not fit within the narrow exception that permits us to review a district court's compliance with § 3006A's procedures. *See id.* at 1053. We therefore address it no further.

We now turn to the merits of the challenges over which we have jurisdiction.

B.

We begin with the appellants' argument that the district court lacked the authority to raise *sua sponte* the question of whether a portion of the fees paid to the appellants were "available for payment from or on behalf of" the defendants. 18 U.S.C. § 3006A(f). We discern no error.

The CJA contemplates a district court's *sua sponte* inquiry into the availability of funds. The statute makes no mention of motions to investigate a defendant's financial status. Instead, the CJA provides that a judge may require partial payment "[i]f *at any time* after the appointment of counsel the . . . court finds that the person is financially able" to pay. 18 U.S.C. § 3006A(c) (emphasis added).

Next, we consider the appellants' argument that the district court failed to perform an appropriate inquiry before ordering them, under the threat of contempt, to pay $15,000 into the court's registry. We find the argument meritless.

To satisfy the procedural requirements of § 3006A(f), a district court must make an "appropriate inquiry" into the availability of funds. *Owen*, 963 F.3d at 1053-54 (internal quotation marks omitted). To perform an appropriate inquiry, the district court must give an interested party "notice and an opportunity to be heard" on the funds-availability issue. *Id.*; *Bursey*, 515 F.2d at 1236. A binding decision from our predecessor court established that a district court must make an appropriate inquiry before directing the clerk to pay funds *from* the court's registry. *Bursey*, 515 F.2d at 1236. But we have not decided whether a district court also must make an appropriate inquiry before directing an interested party to pay money *into* the court's registry. *See Owen*, 963 F.3d at 1054. In *Owen*, we observed that the text of § 3006A(f) "suggests" that a district court must perform an appropriate inquiry before directing money to be paid in the registry. *Id.*

But we did not resolve this question in *Owen* because we assumed, without deciding, that such an inquiry was required. *Id.* Following that approach, we again assume, without deciding, that the district court had to perform an appropriate inquiry before directing the appellants, who were interested parties, to pay money into the court's registry.

The district court performed a thoroughly appropriate inquiry before entering its order directing the payment of $15,000 into the court's registry. Within days after the appellants were disqualified, the magistrate judge raised the question of whether the law firm could keep all of fees it had been paid or "whether some portion of the fees . . . should be refunded" to the defendants. Doc. 136 at 14. This put the appellants on notice as of March 26 that the court was considering whether a portion of the fees paid to the law firm belonged instead to the defendants. After identifying this issue, the magistrate judge gave the appellants an opportunity to be heard by directing them to submit, by March 29, an accounting addressing how and by whom the fees had been paid and what services the attorneys had performed to earn the fees before their disqualification. It was only after the appellants ignored the order and refused to provide this information that the magistrate judge, on April 24, directed the appellants to pay $15,000 into the court's registry.

But that is not all. The appellants were able to seek further review in the district court when they filed objections to the magistrate judge's order. The district court reviewed their objections, considering

whether the magistrate judge's ruling was "contrary to law or clearly erroneous," thus giving them another opportunity to be heard on whether the funds belonged to the law firm. Fed. R. Crim. P. 59(a); *see* 28 U.S.C. § 636(b)(1)(A). Because the appellants received sufficient notice and several opportunities to be heard on what portion of the total fees belonged to the law firm versus the defendants before they were to pay money into the court's registry, we conclude that the district court performed an appropriate inquiry that complied with the procedural requirements of § 3006A(f).

Even if we assume that the district court failed to afford the appellants adequate notice and opportunity to be heard before directing them to pay money into the court's registry, we would conclude that any error was harmless because the district court afforded them appropriate process before directing the clerk to pay the money out of the court's registry. *See Owen*, 963 F.3d at 1054. When the court entered the order requiring payment into the court's registry, it invited them to present information proving they were entitled to the funds in "escrow." Doc. 142 at 6. The appellants then had several more opportunities to be heard on the total fee the law firm had earned before the district court made its final determination that $7,000 of the funds paid to the firm constituted "funds available for payment" from or on behalf of the defendants and directed the money to be paid into the CJA Fund. Doc. 206 at 6 (citing 18 U.S.C. § 3006A(f)). And appellants have identified no harm that they suffered because of this timing.

True, the appellants try to attack the timing of the proceedings by saying it was not "until *after* [they] had already been threatened with contempt and forced to surrender the funds that § 3006A(f) was even mentioned as the basis for the lower courts' authority." Appellants' Br. at 15-16 (emphasis in original). The record flatly contradicts their assertion, however. The magistrate judge's order directing the law firm to pay $15,000 into the court's registry, issued on April 24, identified the CJA as a source of the court's authority for its inquiry into whether the funds belonged to the attorneys or the defendants. *See* Doc. 107 at 2 (stating that "a portion of the fees paid to" the law firm may be "applied to the CJA fund").[10] And on May 17, when the district court overruled the appellants' objections to this order, it recognized that a finding that a portion of the fees belonged to the defendants would mean that this money constituted funds available to the defendants that could be used to reimburse the fees and expenses of their appointed counsel under the CJA. *See* Doc. 142 at 4 (citing 18 U.S.C. § 3006A(f)). It was after these two orders, on May 22, that the show-cause order threatening contempt sanctions was issued. We therefore reject the appellants' procedural argument.

Lastly, we evaluate the appellants' argument that the district court should not have ordered them to pay

[10] Significantly, it was on April 23 and April 24 that the magistrate judge entered the orders finding that each defendant was financially unable to employ counsel and appointing counsel under the CJA. Thus, the magistrate judge invoked the court's authority under the CJA as soon as the statute was implicated by the appointment of CJA counsel.

over any funds until after appointed counsel submitted their CJA payment vouchers. This argument also fails.

The CJA broadly permits a district court or magistrate judge to "authorize or direct" payment of available funds "*[w]henever*" it finds that the funds are available. 18 U.S.C. § 3006A(f) (emphasis added); *see also United States v. Robertson*, 980 F.3d 672, 677 (9th Cir. 2020) ("The plain language of [section 3006A(f)] makes it clear that the district court acted within its discretion when it . . . ordered reimbursement and payment for future defense costs before sentencing." (internal quotation marks omitted)); 7A Guide to Judiciary Policy § 210.40.40 (instructing courts to "direct the person to pay the available excess funds to the clerk of the court at the time of [counsel's] appointment or from time to time after that"). Given this plain language, the district court committed no procedural error based on the timing of its order directing the appellants to pay funds into the court's registry.

III. CONCLUSION

We dismiss for lack of jurisdiction the appellants' challenge to the district court's determination that funds were available to the defendants. As to all the appellants' other challenges, we affirm.

AFFIRMED IN PART, DISMISSED IN PART.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA v. FREDRICO PACHECO-ROMERO, *et al.*,	CRIMINAL CASE NO. 1:19-CR-0077-LMM-RGV

ORDER

(Filed Apr. 24, 2019)

Following an *ex parte* hearing on March 26, 2019, [Doc. 79], attorneys Jerome D. Lee ("Lee") and S. Eli Bennett ("Bennett") submitted affidavits from the individuals who paid the retainers for the representation of defendants Fredrico Pacheco-Romero, Carlos Martinez, Eduardo Lopez, Victor Manuel Sanchez, Jorge Mendoza-Perez, and Santana Cardenas, collectively referred to as "defendants," see [Doc. 83 at 2-15]. Lee and Bennett had previously submitted letters of engagement for the representation of each defendant showing the terms of payment for their representation. [Doc. 84]. After Lee and Bennett and their firm were disqualified from representing these defendants, [Doc. 76], the Court afforded counsel the opportunity to submit an accounting of the fees paid for each defendant and services provided, including the amount of fees counsel contend they have earned for services provided prior to their disqualification, [Doc. 79], but they failed to do so. Having considered the representation counsel provided until they were disqualified, the Court

concludes that a portion of the fees paid to Lee and Bennett and their firm for representation of these defendants should either be refunded or applied to the CJA fund since defendants now have court-appointed counsel.

Accordingly, the Court **ORDERS** Lee and Bennett and their firm to deposit into the registry of the Court the sum of $15,000 by April 30, 2019, as the Court finds that the balance of the fees paid to them provides reasonable compensation for the services Lee and Bennett provided prior to disqualification. Newly appointed counsel shall promptly provide a copy of this Order to their clients to notify them that the individuals who paid fees to Lee and Bennett on their behalf for representation in this case may petition the Court for a partial refund of a portion of the fees deposited with the Clerk by Lee and Bennett and their firm. Any such petition shall be filed in this case by May 10, 2019, and shall include proof of payment and the amount of refund requested. At the pretrial conference in this case, the Court will address further proceedings with respect to any petitions for partial refund of fees paid, including the scheduling of an evidentiary hearing.

IT IS SO ORDERED, this 24th day of APRIL, 2019.

/s/ Russell G. Vineyard
RUSSELL G. VINEYARD
UNITED STATES
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA V. FREDRICO PACHECO-ROMERO, ET AL., DEFENDANTS.	DOCKET NO. 1:19-CR-77-LMM-RGV-1 ATLANTA, GEORGIA MAY 9, 2019

TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE
RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES OF COUNSEL:

FOR THE GOVERNMENT:

THEODORE S. HERTZBERG
TYLER A. MANN
OFFICE OF THE U.S. ATTORNEY

ALSO PRESENT:

S. ELI BENNETT
JEROME D. LEE

COURT REPORTER:

ANDY ASHLEY
1949 U. S. COURTHOUSE
75 TED TURNER DRIVE
ATLANTA, GEORGIA 30303-3361
(404) 215-1478

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT PRODUCED BY COMPUTER.

[2] PROCEEDINGS

(ATLANTA, FULTON COUNTY, GEORGIA; MAY 9, 2019 IN OPEN COURT.)

THE COURT: THIS IS THE CASE OF THE UNITED STATES OF AMERICA VERSUS FREDRICO PACHECO-ROMERO, ET AL., CASE NUMBER 1:19-CR-77. WE'RE HERE FOR A SHOW CAUSE HEARING BASED ON AN ORDER ENTERED ON MAY 7TH, 2019. WE HAVE MR. HERTZBERG AND MR. MANN ON BEHALF OF THE UNITED STATES. MR. LEE AND MR. BENNETT ARE PRESENT HERE IN COURT.

MR. LEE, MR. BENNETT, HAVE YOU BROUGHT THE FUNDS TO DEPOSIT INTO THE REGISTRY OF THE COURT AS ORDERED TO DO SO?

MR. LEE: I DO NOT HAVE THE MONEY, JUDGE.

THE COURT: MR. BENNETT.

MR. BENNETT: NO, YOUR HONOR.

THE COURT: OKAY. DO YOU ALL WISH TO EXPLAIN WHY YOU DO NOT HAVE THE FUNDS TO DEPOSIT INTO THE REGISTRY OF THE COURT?

YOU CAN COME TO THE PODIUM, PLEASE, SIR.

MR. LEE: THIS IS OUR PAYROLL CYCLE, AND SO WE MISSED PAYROLL ACTUALLY, AND SO NORMALLY OUR NORMAL WEEK WE WILL HAVE RECOVERED BY TUESDAY OR WEDNESDAY. THIS WEEK WE HAVE NOT RECOVERED BY THAT POINT IN TIME, AND WE ARE STILL SHORT, AND I STILL HAVE A BUNCH OF STUFF OUT.

I MEAN IF I GAVE YOU A CHECK, I COULDN'T EVEN VOUCH FOR IT BEING LEGITIMATE. SO IF I EVEN ASKED CHRIS TO WRITE ME [3] A CHECK FROM THE FIRM, I COULD GIVE IT TO THE CLERK, BUT I COULD NOT GUARANTEE IF IT WAS DEPOSITED IT WOULD ACTUALLY CLEAR.

THE COURT: WELL, DO YOU HAVE ANY FUNDS PERSONALLY?

MR. LEE: I NEVER RECEIVED ANY OF THESE FUNDS PERSONALLY.

THE COURT: WELL, DO YOU HAVE ANY FUNDS PERSONALLY? YOU'RE A PARTNER IN THE FIRM, RIGHT?

MR. LEE: YES, BUT I –

THE COURT: DO YOU HAVE ANY FUNDS PERSONALLY TO MEET THE 15,000 DOLLAR OBLIGATION?

MR. LEE: YES, I COULD, BUT LIKE I SAID, JUDGE, I DIDN'T RECEIVE THESE FUNDS.

OUR ENGAGEMENT AGREEMENT IS WITH THE FIRM. THAT'S WHERE THE MONEY WENT. THAT'S WHO HAS THE MONEY. I DO NOT PERSONALLY HAVE THE MONEY TO RETURN BECAUSE I NEVER RECEIVED IT IN THE FIRST PLACE.

THE COURT: WELL, DID THE FIRM SET ASIDE THE MONEY AS YOU WERE DIRECTED TO DO SO LAST MONTH?

MR. LEE: JUDGE, WE ARE NOT IN A POSITION TO SET ASIDE MONEY. WE'RE JUST RUNNING TOO TIGHT RIGHT NOW.

THE COURT: SO DESPITE THE COURT'S DIRECTION, THE FIRM DID NOT SET ASIDE MONEY OR INFORM THE COURT THAT IT COULD NOT SET ASIDE THE FUNDS?

MR. LEE: TO MY KNOWLEDGE THE FIRM DID NOT SET ASIDE MONEY, JUDGE.

[4] THE COURT: AND YOU'VE NOT INFORMED ME UNTIL TODAY THAT YOU DO NOT HAVE THE FUNDS?

MR. LEE: NO, I TOLD YOU ON THE FIRST DEADLINE, JUDGE, I SAID I DO NOT HAVE THE FUNDS BECAUSE IT WAS A PAYROLL WEEK.

THE COURT: YES, AND YOU SOUGHT AN EXTENSION UNTIL MAY 6TH.

MR. LEE: BECAUSE I THOUGHT NORMALLY WE CAN NORMALLY CLEAR STUFF BY THE FIRST OF THE WEEK, BUT THIS HAS BEEN

A VERY SLOW WEEK GOING INTO MEMORIAL DAY, GOING INTO THE FIRST OF THE MONTH, EVERYBODY IS PAYING RENT. PAYING YOUR LAWYER IS AT THE BOTTOM OF THE LIST AT THIS TIME.

THE COURT: BUT YOU DIDN'T SEEK ANY EXTENSION BASED ON THE REPRESENTATION THAT THE FIRM DOESN'T HAVE THE MONEY TO PAY INTO THE COURT? IN OTHER WORDS, THE MAY 6TH DEADLINE CAME AND PAST WITHOUT EITHER PAYMENT, DEPOSIT OF THE FUNDS OR ANY REQUEST FOR AN EXTENSION?

MR. LEE: I STILL THOUGHT I WOULD BE ABLE TO COME UP WITH IT, AND SO I WAS STILL TRYING TO SEE IF I CAN GET IT TOGETHER.

THE COURT: WELL, MR. LEE, YOU'VE ALREADY SAID YOU HAVE THE FUNDS PERSONALLY TO MEET THE OBLIGATION. IT'S THE FIRM THAT DOESN'T HAVE THE FUNDS.

MR. LEE: WELL, THIS IS THE FIRM'S OBLIGATION, SO I WOULD NOT PERSONALLY PUT MY FUNDS TO COVER A FIRM EXPENSE. OH, [5] IF IT WERE AN OPERATING – IF IT WAS SOMETHING TO DO WITH US, THE FIRM STAYING OPEN, THEN THERE'S NOT A LOT ABOUT THAT, YES, I WOULD, BUT LIKE I SAID, THIS DOES NOT INVOLVE THE FIRM STAYING OPEN.

THE COURT: BUT THE ORDER WAS TO DEPOSIT THE FUNDS BASED ON THE EXTENSION YOU REQUESTED AND I GRANTED TO MAY 6TH, AND WHEN THE FUNDS WEREN'T DEPOSITED, MS. ZARKOWSKY REACHED OUT TO YOUR FIRM AND GOT NO RESPONSE IN TERMS OF A REQUEST FOR FURTHER EXTENSION OR ANY EXPLANATION UNTIL JUST NOW WHEN YOU'VE JUST TOLD ME THAT YOU DON'T HAVE – THE FIRM DOESN'T HAVE THE FUNDS TO DEPOSIT INTO THE REGISTRY OF THE COURT; IS THAT RIGHT?

MR. LEE: THAT'S ACCURATE, THAT'S AN ACCURATE RETELLING OF THE EVENTS, JUDGE.

THE COURT: OKAY. YOU MAY BE SEATED, MR. LEE.

MR. BENNETT, WOULD YOU COME TO THE PODIUM.

MR. BENNETT: YES, SIR.

THE COURT: SO, MR. BENNETT, YOU AND MR. LEE AND THE FIRM WERE ORDERED TO DEPOSIT 15,000 DOLLARS INTO THE REGISTRY OF THE COURT BY MAY 6TH.

MR. BENNETT: YES, SIR.

THE COURT: THAT HASN'T HAPPENED. MR. LEE SAYS THE FIRM DOESN'T HAVE THE

FUNDS TO MAKE THAT DEPOSIT; IS THAT RIGHT?

MR. BENNETT: I WOULD HAVE NO PERSONAL KNOWLEDGE OF [6] THAT. I'M ONLY AN ATTORNEY. I'M AN ASSOCIATE ATTORNEY IN THE FIRM. I'M A W-2 EMPLOYEE. THAT'S NOT – THAT DOESN'T CONCERN ME. I DON'T CONCERN MYSELF WITH FINANCIAL MATTERS EVEN WITH CLIENT INTAKE, TAKING PAYMENTS, ANYTHING OF THAT NATURE.

THE COURT: SO YOU HAVE NO INFORMATION ABOUT THE ABILITY TO PAY THE 15,000 DOLLARS?

MR. BENNETT: NO, SIR, BUT I WOULD BELIEVE MR. LEE'S ACCOUNT BASED ON MY OWN EXPERIENCE WITH THE FIRM AND HOW IT OPERATES.

THE COURT: DO YOU INDIVIDUALLY HAVE THE FUNDS AVAILABLE TO PROVIDE THE 15,000 DOLLARS INTO THE REGISTRY OF THE COURT?

MR. BENNETT: YES, SIR.

THE COURT: ALL RIGHT. SO YOU AND MR. LEE TOGETHER WOULD HAVE THAT ABILITY TO DO SO?

MR. BENNETT: PERSONALLY I BELIEVE I WOULD.

THE COURT: ALL RIGHT.

MR. BENNETT: HOWEVER, I ACCEPTED NO PAYMENTS FROM THESE CLIENTS.

THE COURT: AND YOU WERE AWARE OF THE MAY 6TH DEADLINE?

MR. BENNETT: YES, SIR.

THE COURT: AND IT WAS NOT MET.

MR. BENNETT: NO, SIR.

THE COURT: AND NO EXTENSION WAS REQUESTED?

[7] MR. BENNETT: NOT REGARDING THE MAY 6TH DEADLINE, NO, SIR.

THE COURT: DO YOU HAVE ANY EXPLANATION FOR THAT?

MR. BENNETT: NO, SIR.

THE COURT: OKAY. YOU MAY BE SEATED.

MR. BENNETT: THANK YOU.

THE COURT: THE ORDER ENTERED ON MAY 7TH ALSO REQUIRED YOU TO RESPOND IN WRITING AS TO WHY SANCTIONS, WHICH COULD INCLUDE THE INITIATION OF CONTEMPT PROCEEDINGS, SHOULD NOT BE IMPOSED FOR FAILURE TO COMPLY WITH THE COURT'S ORDERS.

DO YOU HAVE A WRITTEN SUBMISSION, MR. LEE?

MR. LEE: JUDGE, I WILL BE ABLE TO FILE THOSE BEFORE THE DAY IS OVER, AND THEN THE OTHER PART OF IT, TOO, JUDGE, IS I MEAN I TECHNICALLY OBJECTED TO THE ORDER BECAUSE, LIKE I SAID, I THINK THERE ARE ISSUES HERE, BUT ASIDE FROM THAT, I MEAN I THINK I INTERPRETED THE RULE 59 REQUEST AS TO BE A WRITTEN RESPONSE TO THE ORDER, BUT IF YOU WANT ME TO SUBMIT SOMETHING IN ADDITION TO THAT, I CAN.

THE COURT: WELL, THE ORDER OF MAY THE 7TH REQUIRED YOU TO APPEAR AT THIS TIME, AND WE'RE ACTUALLY LATE, IT'S 10:40, BECAUSE OUR INTERPRETER WAS LATE GETTING TO COURT FOR THE PREVIOUS PROCEEDING, REQUIRED YOU TO APPEAR, TO SHOW CAUSE IN PERSON AND IN WRITING WHY SANCTIONS, WHICH COULD INCLUDE THE INITIATION OF CONTEMPT PROCEEDINGS, SHOULD NOT BE IMPOSED FOR [8] FAILURE TO COMPLY WITH THE COURT'S ORDER OF MAY 24TH, AND – I'M SORRY, APRIL 24TH AND MAY 2ND, 2019, AND WHAT YOU'RE TELLING, MR. LEE, IS YOU DON'T HAVE A WRITTEN RESPONSE AS ORDERED TODAY, OR AT THIS TIME YOU'VE NOT APPEARED WITH A WRITTEN RESPONSE TO THE ORDER?

MR. LEE: I DIDN'T BRING A SECOND WRITTEN RESPONSE, NO, SIR.

THE COURT: WELL, THE – WE'LL TALK ABOUT THE OBJECTION IN A MOMENT.

MR. BENNETT, DO YOU HAVE A WRITTEN RESPONSE AS ORDERED BY MAY 7TH?

MR. BENNETT: NO, SIR, I CONSTRUED, MAYBE MISTAKENLY, THE RULE 59 OBJECTIONS AS OUR RESPONSE. IF THERE'S A SEPARATE RESPONSE REQUIRED, I APOLOGIZE FOR THE MISUNDERSTANDING. I'LL PRODUCE ONE BEFORE THE END OF THE DAY.

THE COURT: WELL, THE OBJECTIONS THAT YOU REFERRED TO IS THAT DOCUMENT NUMBER 125 THAT WAS FILED AFTER THE SHOW CAUSE ORDER WAS ENTERED? THERE'S ONLY ONE OBJECTION THAT'S ON THE RECORD THAT I'M AWARE OF.

MR. LEE: THAT'S CORRECT, JUDGE.

THE COURT: AND IT'S ENTITLED DEFENDANT'S OBJECTIONS TO THE MAGISTRATE JUDGE'S COURT'S ORDER, AND IT PURPORTS TO BE A DOCUMENT FILED ON BEHALF OF THE INDIVIDUAL DEFENDANTS NAMED WHO YOU'VE BEEN DISQUALIFIED FROM REPRESENTING.

MR. LEE: RIGHT.

[9] THE COURT: I DON'T SEE AN OBJECTION FROM TAYLOR, LEE & ASSOCIATES, LLC OR FROM EITHER OF YOU INDIVIDUALLY ON THE RECORD.

THE TIME PAST FOR – THE TIME HAS PAST FOR OBJECTING TO THE ORDER, AND SO ANY OBJECTION HAS BEEN WAIVED, IT APPEARS TO ME.

MR. LEE: JUDGE, THAT WAS JUST OUR FORM. IF YOU DON'T STYLE THE TOP OF THAT, YOU CAN'T – I MEAN CM/ECF LIKE I'VE NEVER BEEN ABLE TO FILE SOMETHING AS MYSELF. SO WHEN I WENT IN AND FILED IT THAT WAS HOW WE – THAT'S JUST HOW IT WAS FILED.

I MEAN THAT'S BOILERPLATE OF THE – I MEAN I JUST LITERALLY OPENED UP THE LAST MOTION WE HAD AND CHANGED THE TOP AND PUT IT IN FROM THERE. BECAUSE WHEN YOU FILE UNDER CM/ECF YOU HAVE TO PICK SOMEONE UNDER WHOM TO FILE. THAT'S WHY IT'S STYLED –

THE COURT: WELL, IF YOU HAVE A PROBLEM WITH AN ECF FILING, YOU CAN COME DOWN AND FILE AT THE COUNTER, AS WELL. IF TAYLOR, LEE & ASSOCIATES AND YOU AND MR. BENNETT ARE OBJECTING TO THE ORDER, YOU HAD 14 DAYS TO DO SO, AND NO OBJECTIONS WERE FILED ON BEHALF OF THOSE ENTITIES.

THE OBJECTIONS ARE NOT ONLY IN THE TITLE BUT IN THE CONTENT ARE PURPORTED ON BEHALF OF INDIVIDUALS YOU DO NOT REPRESENT. YOU'VE BEEN DISQUALIFIED FROM REPRESENTING. AND TO ADDRESS A SECOND POINT, YOU HAVE NOT IN THIS OBJECTION [10]

ADDRESSED OR EXPLAINED OR SHOWN CAUSE FOR YOUR FAILURE TO COMPLY WITH THE MAY 6TH DEADLINE. THESE OBJECTIONS WERE FILED AFTER I ENTERED THE ORDER TO SHOW CAUSE.

SO NOTHING HAS BEEN DONE, AND SO YOU WERE AWARE OF THE ORDER, AND THESE DEFENDANTS' OBJECTIONS DO NOT ADDRESS THE FAILURE TO DEPOSIT THE FUNDS, AND YOU HAVEN'T COME TO COURT WITH THE FUNDS TODAY DESPITE THE FACT THAT YOU INDIVIDUALLY AND, MR. LEE, AM I CORRECT, THAT YOU'RE A PARTNER IN THE FIRM?

MR. LEE: I AM.

THE COURT: AND THAT YOU HAVE NOT DEPOSITED THE FUNDS AS ORDERED. YOU HAVE NOT COME TO COURT WITH A WRITTEN RESPONSE AS ORDERED.

WHAT OTHER – WHAT WOULD YOU LIKE FOR ME TO TAKE INTO CONSIDERATION IN DECIDING WHAT SANCTIONS SHOULD BE IMPOSED, MR. LEE?

MR. LEE: AGAIN, JUDGE –

THE COURT: COME TO THE PODIUM, PLEASE, SIR.

MR. LEE: JUDGE, I THINK WE HAVE MADE OBJECTIONS TO – UNDER THE RULE 59, AND I GUESS TO BE PERFECTLY CLEAR ABOUT

A COUPLE OF THINGS – WELL, THAT DOESN'T MATTER.

I THINK WE HAVE MADE OBJECTIONS, JUDGE, AND LIKE I SAY IT WAS JUST A BOILERPLATE IN THE FORM OF THE ISSUE, BUT AS FAR AS MY INTERPRETATION IS WE HAVE MADE OBJECTIONS, AND THAT'S WHAT WE CONSIDER TO BE OUR WRITTEN RESPONSE.

[11] AND THEN IN TERMS OF THE OTHER THINGS, LIKE I SAID, I'M THE ONLY ONE THAT REALLY PROBABLY COULD SAY WHETHER OR NOT THE FIRM HAD THE CAPABILITY OF MAKING THE PAYMENT, AND I'M STATING IN MY PLACE THAT WE WERE NOT ABLE TO MAKE THE PAYMENT, OR MAKE IT IN THE WAY LIKE I SAID IF I BROUGHT A CHECK DOWN HERE, I COULD NOT GUARANTEE IT WOULD CLEAR BASED ON THE BALANCES THAT WE HAVE.

AND THEN IN TERMS OF – I CAN'T REMEMBER NOW THE THIRD PART OF THAT, BUT I GUESS IN TERMS OF IF WE'RE IGNORING ALL OF THAT, THEN I WOULD SAY THAT MY PRIMARY DEFENSE IS THAT WE ARE UNABLE TO PAY, AND THAT WE DID NOT INDIVIDUALLY RECEIVE THE FUNDS IN QUESTION. WE WERE NOT LISTED ON THE ENGAGEMENT AGREEMENTS, AND SO I AM NOT RESPONSIBLE PERSONALLY FOR THE RETURN OF FUNDS. SO THAT'S OUR POSITION ON THAT.

THE COURT: ALL RIGHT.

MR. BENNETT: I WOULD ECHO THAT POSITION, YOUR HONOR.

THE COURT: YOU HAVE NOTHING TO ADD?

MR. BENNETT: NO, SIR.

THE COURT: ALL RIGHT. I'M GOING TO LET THE RECORD REFLECT THE HISTORY OF THE PROCEEDINGS HERE BECAUSE I THINK THERE'S BEEN A PATTERN OF DISOBEYING COURT ORDERS IN THESE MATTERS BY MR. LEE AND MR. BENNETT, AND I'M GOING TO RECITE THAT RECORD AND ALLOW YOU TO ENTER ANY RESPONSE TO THAT AS I MAKE THESE ENTRIES INTO THE RECORD.

THE COURT CONDUCTED A RULE 44 HEARING ON MARCH THE [12] 14TH. AS PART OF THAT I CONDUCTED AN EX PARTE PROCEEDING WITH MR. LEE AND MR. BENNETT. DURING THAT EX PARTE, THEY WERE DIRECTED TO PROVIDE CERTAIN INFORMATION TO THE COURT BY MARCH THE 21ST SPECIFICALLY IDENTIFYING THE PERSONS WHO PAID THE RETAINERS FOR THE REPRESENTATION OF THE DEFENDANTS AND EXPLAIN THAT RELATIONSHIP TO THOSE DEFENDANTS, AND THE SOURCE OF THE FUNDS. COUNSEL FAILED TO DO SO BY MARCH 21ST.

SO ON MARCH 22ND I ISSUED AN ORDER REQUIRING COUNSEL TO APPEAR ON MARCH 26TH

TO PROVIDE THE RECORDS REQUESTED AND TO ADDRESS WHETHER ANY PORTION OF THE FEES PAID TO THEM SHOULD BE REFUNDED. COUNSEL WAS ALSO ORDERED TO NOTIFY EACH INDIVIDUAL WHO PAID FEES ON BEHALF OF THE DEFENDANTS OF THE HEARING TO ALLOW THOSE INDIVIDUALS AN OPPORTUNITY TO ATTEND THE HEARING.

ON MARCH 26TH I CONDUCTED AN EX PARTE HEARING WITH COUNSEL IN WHICH WE DISCUSSED A POSSIBLE REFUND OF A PORTION OF THE FEES. COUNSEL APPEARED BUT DID NOT PROVIDE THE DOCUMENTS AS ORDERED TO DO SO ON MARCH 22ND.

COUNSEL WAS ORDERED TO SUBMIT AFFIDAVITS BY FRIDAY, MARCH 29TH. THAT DATE WAS SELECTED AFTER CONFERRING WITH COUNSEL ABOUT THEIR ABILITY TO PROVIDE THE INFORMATION REQUIRED BY THE COURT. COUNSEL WAS ALSO ORDERED TO PROVIDE BY THAT SAME DATE AN ACCOUNTING OF THE FEES PAID FOR EACH DEFENDANT, SERVICES PROVIDED, INCLUDING THE AMOUNT OF FEES THAT COUNSEL CONTEND THEY HAVE EARNED FOR SERVICES PROVIDED PRIOR TO DISQUALIFICATION.

[13] COUNSEL I BELIEVE WILL RECALL THAT WE DISCUSSED THAT THE COURT RECOGNIZED THAT YOU HAD EARNED FEES FOR WHICH YOU SHOULD BE PAID, AND I PROPOSED

A PROCEDURE THAT WOULD ALLOW YOU REASONABLE COMPENSATION, AND AT THAT TIME DIRECTED YOU TO SET ASIDE 20,000 DOLLARS IN A SEPARATE ACCOUNT TO BE AVAILABLE IF FUNDS – IF A PORTION OF THOSE FUNDS WERE TO BE REFUNDED.

MY RECOLLECTION, THOUGH I STAND TO BE CORRECTED, IS THAT COUNSEL AGREED THE PROCEDURE WAS FAIR AND REASONABLE, AND I BELIEVE THOSE WERE THE WORDS USED BY COUNSEL. NO OBJECTION WAS RAISED WITH RESPECT TO THE NOTION OF THERE BEING A PROCEDURE TO EXPLORE THE POSSIBLE PORTION REFUND OF FEES. THE DEADLINE OF MARCH 29TH WAS NOT MET. COUNSEL DID NOT PROVIDE THE INFORMATION.

WE DID RECEIVE IN CHAMBERS ON APRIL 2ND THE AFFIDAVITS, BUT THEY PROVIDED NO RECORD OF THE FEES PAID OR AN AMOUNT THAT THEY CLAIM TO BE RETAINED FOR THEIR SERVICES PROVIDED.

ON APRIL 23RD THE COURT QUALIFIED EACH OF THE INDIVIDUAL DEFENDANTS TO HAVE APPOINTED COUNSEL BASED ON THEIR REPRESENTATION THAT THEY DID NOT HAVE THE FUNDS TO HIRE COUNSEL. SOME INDICATED THAT THEIR FAMILY MEMBERS MAY SEEK TO RETAIN COUNSEL. SOME INDICATED THAT THEY HAD NOT BEEN REFUNDED FEES. OTHERS SIMPLY DID NOT KNOW.

SO ON APRIL 24TH, THE COURT ENTERED AN ORDER FOR MR. LEE, MR. BENNETT AND THEIR FIRM TO DEPOSIT 15,000 DOLLARS INTO [14] THE REGISTRY OF THE COURT BY APRIL 30TH, AND NOTED THAT A FUTURE HEARING WOULD BE HELD TO ADDRESS ANY CLAIMS FOR PARTIAL REFUND AND TO DETERMINE WHETHER ANY OF THOSE FUNDS SHOULD BE APPLIED TO THE CJA BASED ON THE APPOINTMENT OF COUNSEL FOR THE DEFENDANTS.

ON APRIL 30TH MR. LEE, MR. BENNETT AND THE FIRM MOVED FOR AN EXTENSION TO MAY 6TH TO DEPOSIT THE FUNDS BECAUSE OF PAYROLL WEEK. NO OBJECTION MENTIONED TO THE DEPOSIT OF THE FUNDS INTO THE REGISTRY. THE EXTENSION WAS GRANTED TO MAY 6TH.

ON MAY 6TH THE FUNDS WERE NOT DEPOSITED. NO MOTION FOR AN EXTENSION WAS FILED. THERE WAS NO RESPONSE TO EMAIL COMMUNICATIONS FROM MY COURTROOM DEPUTY CLERK TO THE FIRM TO INQUIRE ABOUT THE STATUS.

THEREFORE, ON MAY 7TH I ISSUED THE ORDER TO APPEAR WITH THE FUNDS IN COURT AND TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED, TO RESPOND IN PERSON AND IN WRITING, AND THE RECORD REFLECTS TODAY THAT COUNSEL AND THE FIRM HAVE NOT APPEARED WITH FUNDS AND HAVE NOT

PROVIDED A WRITTEN RESPONSE DESPITE THEIR CONTENTION THAT THE DEFENDANTS' OBJECTIONS TO THE ORDER WOULD QUALIFY FOR THAT.

MR. LEE, DO YOU HAVE ANYTHING YOU WANT TO CORRECT ABOUT THE SUMMARY?

MR. LEE: BRIEFLY, JUDGE –

THE COURT: YOU CAN COME TO THE PODIUM, PLEASE, SIR.

[15] MR. LEE: I WILL BE – I JUST WANT TO BE PERFECTLY CLEAR THAT WE'VE NEVER AGREED TO THIS SETUP, AND THAT NO ONE MADE A REQUEST FROM OUR DEFENDANTS AND THE PEOPLE WHO WE HAVE A CONTRACT WITH FOR RETURN OF FUNDS, AND THAT WE NEVER DEEMED THIS PROCEDURE FAIR AND REASONABLE.

IT SEEMED TO US THAT BEFORE YOU EVEN HAD REVIEWED ANYTHING YOU HAD ALREADY MADE A DECISION. THAT'S WHY YOU ASKED FOR THE ENTIRE AMOUNT THAT WE WERE EVEN PAID TO BE PUT INTO THE REGISTRY FROM THE BEGINNING, AND WE JUST DID NOT OBJECT UNTIL AFTER WE HAD CONSULTED COUNSEL.

SO THAT WAS WHAT THE SITUATION MORE WAS. IT WASN'T THAT WE AGREED BECAUSE WE NEVER AGREED, JUDGE. IT WAS JUST THAT WE DIDN'T UNDERSTAND EVEN WHAT WAS BEING ATTEMPTED TO BE ACCOMPLISHED. LIKE I SAID

IN 20 YEARS, I'VE NEVER HAD THIS SITUATION OCCUR. THAT'S ALL I HAVE TO SAY, SIR.

THE COURT: ALL RIGHT. MR. BENNETT.

MR. BENNETT: NO, SIR.

THE COURT: YOU HAVE NO CORRECTION TO THE STATEMENTS OF THE FACTS AS STATED THEN? NEITHER COUNSEL HAS A CORRECTION TO THOSE STATEMENTS –

MR. BENNETT: I'LL ADOPT –

THE COURT: – OTHER THAN WHAT MR. LEE SAID?

MR. BENNETT: I'LL ADOPT MR. LEE'S STATEMENTS.

THE COURT: ALL RIGHT. AND YOU – NEITHER COUNSEL WISHES TO BE HEARD FURTHER ON WHAT SANCTIONS THE COURT SHOULD [16] PURSUE FOR NONCOMPLIANCE? I'M JUST GIVING YOU OPPORTUNITIES. I'VE AFFORDED THAT ONCE. I'M GIVING YOU ONE FINAL OPPORTUNITY.

MR. LEE: I GUESS I WOULD SAY FIRST OF ALL, JUDGE, IN TERMS OF FUNDS, LIKE I SAID I DON'T HAVE THE FUNDS. I NEVER RECEIVED THE FUNDS. THE FUNDS HAVE NOTHING TO DO WITH ME. THE FEES ARE NOT PAID TO ME. SO IN REGARDS TO MYSELF PERSONALLY AND MR. BENNETT, I DON'T THINK THAT WAS TO US.

TO THE EXTENT THE FIRM IS BEING ORDERED TO DEPOSIT MONEY INTO THE REGISTRY FOR FEES THAT WERE PAID, CUSTOMARILY ON THIS, YOU KNOW, PEOPLE DO THE FINE-A-DAY THING UNTIL PEOPLE PAY THE MONEY OR WHATEVER. THAT WOULD SEEM TO BE TO ME THE APPROPRIATE RESOLUTION IN THIS SITUATION, AND THE COURT COULD TACK ON A FEE EVERY DAY WE DON'T PAY, AND LIKE I SAID, WHEN I GET THE MONEY I WILL PAY OR THE FIRM WILL PAY BECAUSE LIKE I CAN SAID I DON'T HAVE THE MONEY.

THE COURT: ANYTHING YOU WANT TO ADD, MR. BENNETT?

MR. BENNETT: THAT'S ALL I HAVE, JUDGE.

THE COURT: ALL RIGHT. I'LL TAKE THE MATTER UNDER ADVISEMENT AND WILL ISSUE AN ORDER.

ANYTHING FROM THE GOVERNMENT?

MR. HERTZBERG: NO, YOUR HONOR. THANK YOU.

THE COURT: WE'RE IN RECESS.

(PROCEEDINGS CONCLUDED.)

[17] CERTIFICATE

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, ANDRE G. ASHLEY, DO HEREBY CERTIFY THAT I AM A U.S. DISTRICT REPORTER FOR THE NORTHERN DISTRICT OF GEORGIA, THAT I REPORTED THE FOREGOING AND THE SAME IS A TRUE AND ACCURATE TRANSCRIPTION OF MY MACHINE SHORTHAND NOTES AS TAKEN AFORESAID.

IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND ON THIS 9TH DAY OF MAY, 2019.

S/ ANDRE G. ASHLEY
ANDRE G. ASHLEY
OFFICIAL COURT REPORTER
NORTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	
v.	
FREDRICO PACHECO-ROMERO, ***et al.*****,**	**1:19-cr-00077**
Defendants.	

DEFENDANTS' OBJECTIONS TO THE MAGISTRATE COURT'S ORDER REQUIRING RETURN OF FUNDS

(Filed May 7, 2019)

COME NOW Defendants FREDDY PACHECO-ROMERO, CARLOS MARTINEZ, EDUARDO LOPEZ, VICTOR MANUEL SANCHEZ, JORGE MENDOZA PEREZ, and SANTANA CARDENAS, collectively referred to as "Defendants," by and through undersigned counsel and pursuant to 28 U.S.C. § 636(b)(1)(A) and Fed. R. Crim. P. 59(a), hereby move this Court to set aside the Magistrate's April 24, 2019 ordering the Defendants to file Motions to Return Fees and ordering the Defendants' prior counsel to deposit $15,000 into the Court Registry (the "Order"). [Doc. 107]. In support, Defendants show the Court the following:

FACTS AND PROCEDURAL HISTORY

On February 9th, 2019, attorneys from Taylor, Lee & Associates (hereinafter "TLA") began its

representation of the Defendants[1] Attorneys from TLA interviewed the Defendants at the Doraville city jail, Clayton County jail, and Henry County jail immediately upon learning of their whereabouts and within hours of their arrests. From the very inception of this case, the Government's strategic attempts to separate Defendants from their counsel are apparent from the record. While Lopez, Cardenas, Sanchez, and Mendoza-Perez were all initially detained at the Doraville city jail, they were transferred without notice or explanation to the Atlanta city jail and interrogated for hours without access to counsel.

TLA filed a habeas corpus action against the Drug Enforcement Administration ("DEA") on their behalf,[2] and these five Defendants were presented to a Magistrate shortly thereafter. [Doc. 2, 5, 8, 11, 14]. The Government's intent to separate certain of the Defendants from their attorneys is also evident from the treatment of Defendant Pacheco-Romero. The Government arranged Pacheco-Romero's first appearance to be conducted separately from his co-Defendants without his retained counsel present. [Doc. 20-22]. After Pacheco-Romero notified his appointed lawyer and the court that he had retained TLA, he was advised by the court

---

[1] The Order erroneously dates the attorney-client relationship to February 20, 2019, but this only reflects the date that the official entry of appearance was electronically filed. Prior to this case being created through the filing of a criminal complaint, the first Magistrate involved in this case received notice of TLA's representation of Defendants via email.

[2] See Mendoza, et. al. v. Uttim, 1:19-cv-0722-MLB.

to either retain different counsel or continue with appointed counsel. [Doc. 73, Ex. 1, pg. 24-34].

Furthermore, conflict advisories have been administered to the Defendants *each time* they have appeared in court, on February 13, February 15, March 6, and March 14, 2019. Despite the potential coercive pressure created by the repeated warnings, all Defendants have continued to maintain their desire to be represented by TLA. [Doc. 73, Ex. 1, pg. 4-21]. The Government filed a motion seeking the disqualification of counsel on March 12, 2019. [Doc. 70]. Prior to the filing of the Government's disqualification motion, TLA filed motions to vacate the Magistrate's detention orders on behalf of Lopez and Martinez: however, the motions were tabled until the disqualification issue could be decided. [Doc. 62, 63]. At the Rule 44 hearing on March 14, 2019, no evidence or testimony was presented by the Government to justify disqualification. Instead, the Magistrate relied on the allegations in the criminal complaint, the Government's briefs, TLA's response brief, sworn testimony of each of the six Defendants, the conflict waivers executed by the Defendants, and retainer agreements provided under seal. [Doc. 70, 72, 73, 75]. Lee and Bennet were disqualified on March 22, 2019. [Doc. 76].[3] Moreover, shortly thereafter, the

[3] At the Rule 44 hearing, the Magistrate requested that TLA provide records concerning the payment of Defendants' legal fees under seal. Later that afternoon, the Magistrate's request was modified to include affidavits identifying the persons who paid the fees, explaining their relationship to the Defendants, and disclosing the source of the funds used to pay the legal fees. However, before the Defendants' family members could even be contacted,

Magistrate entered the Order, requiring a deposit of $15,000 into the Court Registry and that newly appointed CJA counsel submit Motions for a Return of Fees.

ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review.

Under Rule 59(a) of the Federal Rules of Criminal Procedure, a magistrate judge may rule on any matter referred by a district judge that does not dispose of a charge or defense. If any party files objections to a magistrate judge's order on non-diapositive matters, "the district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous." Fed. R. Crim. P. 59(a).

B. Objection No. 1 – Neither the Defendants nor their Families Filed a Motion to Return Fees Prior to the Magistrate Ordering that Funds be Returned.

First and foremost, it must be noted that no Defendant, has requested or asked for fees to be returned for work not performed, and in fact, the Magistrate

---

the disqualification order was entered. [Doc. 76]. The Magistrate then scheduled a second *ex parte* hearing to *further* inquire into the attorney-client relationship between TLA and Defendants. [Doc. 77]. After considerable efforts to comply with the Magistrate's request, TLA provided the requested affidavits on March 29, 2019 in a show of good faith, despite having no legal or ethical obligation to do so.

Court ordered that fees be returned, *sua sponte*, without any hearing or determination of what fees, if any should be returned. In addition, upon appointment of CJA counsel, the Magistrate Court ordered new CJA to file Motions to Return Fees. After a thorough search of case law across all federal circuits, there does not seem to be any justification or authority allowing a magistrate judge to *sua sponte* decide to return fees in a criminal setting.

C. Objection No. 2 – No Hearing was held or ordered to determine whether or not what money, if any should be returned.

Second, the Magistrate Court not only ordered fees returned *sua sponte*, it made the determination to seize funds paid to the Defendants' prior counsel without any hearing to determine what work had been done or exactly how much the Defendants had paid to TLA. Such a blatant seizure clearly requires that the minimum requirements of due process be adhered to and that Defendants' counsel are entitled to notice, a hearing and review.

D. Objection No. 3 – The Engagement Agreements Specifically Limits Fee Disputes to The State Bar or Arbitration.

Paragraph 15 of the Engagement Agreement specifically sets arbitration with the Georgia Bar or private arbitration as the sole jurisdictions in which fee disputes between the parties may be resolved.

Accordingly, because there is an arbitration clause in the Engagement Agreements, the Magistrate Judge does not have the authority to address any fee dispute, if one even existed between the parties.

E. Objection No. 4 – Most of the Defendants Already Hired New Private Counsel.

To the extent that the Order is based on CJA concerns and certain requirements that indigent defendants provide for their own defense to the extent that they are able, at least three, or half, of the Defendants and their families immediately made arrangements to hire new retained counsel. Accordingly, most of the Defendants have already moved to provide for their own defense, rendering any concerns regarding reimbursement under the CJA for indigent defense moot.

F. Objection No. 5 – Lee and Bennett are Not in Possession of any Fees.

Lastly, the Order and several of the subsequent orders proceed as if the Engagement Agreements were between the Defendants and Lee and/or Bennett. Lee and Bennett are merely employees of the Taylor Lee & Associates LLC, and TLA is the actual holder of the fees. Lee and Bennett do not possess the funds that the Order is even seeking to have returned and deposited into the Court Registry.

CONCLUSION

The Order is improper for the various reasons set forth above and should therefore be vacated.

Respectfully submitted this 7th day of May, 2019.

TAYLOR, LEE & ASSOCIATES, LLC.

/s/ Jerome D. Lee
Jerome D. Lee, Esq.
Georgia Bar No. 443455

6855 Jimmy Carter Boulevard
Building 2100, Suite 2150
Norcross, Georgia 30071
Telephone: (770) 650-7200
Facsimile: (678) 735-4512
Email: criminal@htlweb.com

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	
v.	
FREDRICO PACHECO-ROMERO, ***et al.*****,**	**1:19-cr-00077**
Defendants.	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Objections to the Magistrate's Disqualification Order on the Office of the U.S. Attorney for the Northern District of Georgia by electronic delivery via the Court's CM/ECF filing system.

This 7th day of May, 2019.

/s/ Jerome D. Lee
Jerome D. Lee, Esq.
Georgia Bar No. 443455