

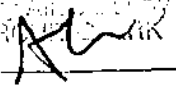
IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

v.

RICHARD SCRUGGS, Individually;
DON BARRETT, Individually;
SCRUGGS LAW FIRM, P.A.;
BARRETT LAW OFFICE, P.A.;
NUTT & McALISTER, PLLC; and
LOVELACE LAW FIRM, P.A.

LAFAYETTE COUNTY
FILED CIVIL ACTION NO. L07-135
APR 08 2008
BY  D.C.

DEFENDANTS

SCRUGGS DEFENDANTS' MOTION TO CONTINUE HEARING

Defendants Richard Scruggs and the Scruggs Law Firm, P.A. ("the Scruggs Defendants") request this Court to continue the hearing on Plaintiff's Motion for Sanctions currently set for April 15, 2008. In support of their Motion, the Scruggs Defendants state as follows:

1. The Court has set an evidentiary hearing for April 15, 2008 for the purpose of addressing the factual allegations contained in Plaintiff's Motion for Sanctions.
2. Plaintiff has subpoenaed Richard Scruggs, Zach Scruggs, and Sidney Backstrom, members of the Scruggs Law Firm, to give testimony regarding the allegations in the Motion for Sanctions at the hearing. These parties are currently awaiting sentencing in the federal criminal matter from which Plaintiff's Motion for Sanctions arose. The district court has not yet informed these parties when the sentencing hearings will be held.
3. In light of the pending sentencing proceedings, Richard Scruggs, Zach Scruggs, and Sidney Backstrom will likely assert their Fifth Amendment right not to testify at the sanctions hearing. Many of the issues upon which Plaintiff will undoubtedly seek to elicit testimony at the hearing – such as the role of each witness in the events at issue, the manner in

which certain acts were carried out, and the potential gain to the witnesses as a result of certain acts – correspond to certain factors in the Federal Sentencing Guidelines to which the district court may look in imposing sentences. Because these witnesses possess information necessary for an appropriate response to Plaintiff’s Motion for Sanctions and necessary for a complete understanding of the facts underlying Plaintiff’s Motion, all Defendants in this matter will be prejudiced if these parties are unable to testify.

4. Furthermore, if these witnesses are forced to appear and invoke their Fifth Amendment rights, their failure to testify could be viewed as a failure to take responsibility, another factor contemplated by the Guidelines. They should not be made to choose between exercising their constitutional rights and risking increased criminal sentences.

5. Furthermore, if the Court does not accept the U.S. Attorney’s recommendation as to sentencing in his case, Sidney Backstrom could withdraw his plea and proceed to trial. Because the final status of the criminal proceeding against Mr. Backstrom will not be known until the completion of the sentencing hearing, he will likely invoke his Fifth Amendment rights at the April 15 hearing. Because Mr. Backstrom possesses information necessary to a full and accurate response to the Motion for Sanctions, all Defendants will be prejudiced if he is unable to testify.

6. Once sentencing in the criminal matter is complete, certain of the subpoenaed parties could be in a better position to offer testimony to assist the Court in properly evaluating the merits of the Motion for Sanctions.

7. Steve Patterson, a co-defendant in the federal criminal matter who has pled guilty, also may have information relevant to the Court’s consideration of Plaintiff’s Motion. Defense counsel has contacted counsel for Mr. Patterson, who advises that Mr. Patterson will not testify

prior to his sentencing hearing.

8. The Scruggs Defendants are also unable to respond to the Interrogatories and Requests for Production of Documents propounded by Plaintiff. Based on his Fifth Amendment rights, Richard Scruggs can neither respond to interrogatories under oath nor authenticate documents sought through Plaintiff's requests for production. Similarly, because all the corporate representatives of the Scruggs Law Firm, P.A. with knowledge of the matters in Plaintiff's discovery requests intend to invoke their Fifth Amendment rights, the Scruggs Law Firm, P.A. can neither respond to interrogatories under oath nor authenticate the documents Plaintiff seeks. The Scruggs Defendants and the Scruggs Law Firm will be in a better position to respond to Plaintiff's discovery after sentencing occurs.

10. Plaintiff will suffer absolutely no harm from a continuance. In fact, if the hearing is held after sentencing, the witnesses Plaintiff has subpoenaed may be able to offer more complete testimony.

WHEREFORE, PREMISES CONSIDERED, the Scruggs Defendants request this Court to continue the hearing currently scheduled for April 15, 2008 until after the trial and/or sentencing proceedings are completed in the federal criminal matter. The Scruggs Defendants seek such other relief as the Court deems appropriate.

THIS, the 8th day of April, 2008.

Respectfully submitted,

RICHARD SCRUGGS AND
SCRUGGS LAW FIRM, P.A.



J. CAL MAYO, JR. (MB NO. 8492)
POPE S. MALLETTE (MB NO. 9836)
PAUL B. WATKINS (MB NO. 102348)

ATTORNEYS FOR THESE DEFENDANTS

OF COUNSEL:

MAYO MALLETTE PLLC
5 University Office Park
2094 Old Taylor Road, Suite 200
Post Office Box 1456
Oxford, Mississippi 38655
Tel: (662) 236-0055

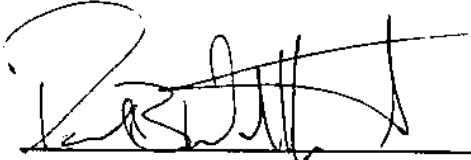


NOTICE OF HEARING

TO: All Counsel of Record

Please be advised that this matter will come on for hearing at the Lafayette County Chancery Building in Oxford, Mississippi, before Honorable William Coleman, Circuit Judge, as soon as counsel may be heard.

THIS, the 8th day of April, 2008.



PAUL B. WATKINS, JR.

CERTIFICATE OF SERVICE

I, Paul B. Watkins, Jr., one of the attorneys for Defendants Richard Scruggs and Scruggs Law Firm, P.A., do certify that I have this date delivered, by mail and by electronic means, a true and correct copy of the above and foregoing document to the following attorneys:

Grady F. Tollison, Jr., Esq.
Tollison Law Firm, P.A.
100 Courthouse Square
Post Office Box 1216
Oxford, Mississippi 38655

ATTORNEY FOR PLAINTIFF

Larry D. Moffett, Esq.
Wilton V. Byars, III, Esq.
Daniel, Coker, Horton & Bell, P.A.
Suite R, 265 North Lamar Boulevard
Post Office Box 1396
Oxford, Mississippi 38655-1396

ATTORNEYS FOR DEFENDANTS DON BARRETT, INDIVIDUALLY, BARRETT LAW OFFICE, P.A., NUTT & MCALISTER, PLLC, AND LOVELACE LAW FIRM, P.A.

THIS, the 8th day of April, 2008.


PAUL B. WATKINS, JR.

