

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 3:21CR62DPJ-LGI

MIKE AUSTIN ANDERSON

**MOTION TO ORDER RECUSAL OF THE OFFICE OF
THE UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
FROM THE PROSECUTION OF THIS CASE**

COMES NOW Defendant Mike Austin Anderson and moves for an Order requiring recusal of the Office of the United States Attorney for the Southern District of Mississippi from the prosecution of this case. In support of this Motion, Mr. Anderson presents the following.

Applicable facts.

AUSA Kevin Payne represented Mr. Anderson in the defense of criminal charges levied against him in the Choctaw Tribal Court in Philadelphia, Mississippi on multiple occasions. AUSA Payne was then the Director of the Choctaw Legal Defense. He has also represented Mr. Anderson's family members. In the course of his duties, AUSA Payne was privy to confidential information about Mike Anderson and his family. AUSA Payne is now an Assistant United States Attorney with the United States Attorney's Office for the Southern District of Mississippi.

Legal Analysis.

Under 28 U.S.C. §530B(a), "[a]n attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such

attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State." Under the plain language of §530B, the Mississippi Rules of Professional Conduct apply the Office of the United States Attorney.

Rule 1.9 of the Mississippi Rules of Professional Conduct states in part "[a] lawyer who has formerly represented a client in a matter shall not thereafter ... represent another in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation[.]" Also applicable to this case are the provisions of Rule 1.10(a), which states "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), **1.9** or 2.4." (Emphasis added).

AUSA Payne is currently assigned to the prosecution of Mr. Anderson. Based on the provisions of Rules 1.9 and 1.10, the issue before the Court is whether the Office of the United States Attorney must recuse itself from the prosecution of this case because of AUSA Payne's prior representation of Mr. Anderson in the defense of criminal charges.

Conclusion.

The combined effect of the above stated law counsels in favor of requiring the Office of the United States Attorney for the Southern District of Mississippi to recuse itself from prosecution of the charges against Mr. Anderson.

WHEREFORE, Defendant Mike Austin Anderson respectfully prays for this Court to render an Order requiring recusal of the Office of the United States Attorney for the Southern District of Mississippi from the prosecution of this case.

Respectfully submitted this 24th day of June, 2021.

MIKE AUSTIN ANDERSON, Defendant

By: */s/Jacinta A. Hall*
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CERTIFICATE OF SERVICE

I, Jacinta A. Hall, do hereby certify that on the 24th day of June, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all parties of record.

s/ Jacinta A. Hall
Assistant Federal Public Defender