

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

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**v.**

**CRIMINAL NO. 3:21-CR-62-DPJ-LGI**

**MIKE AUSTIN ANDERSON**

**DEFENDANT**

**ORDER DENYING DEFENDANT’S MOTION TO ORDER RECUSAL OF  
THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE SOUTHERN  
DISTRICT OF MISSISSIPPI FROM THE PROSECUTION OF THIS CAUSE**

Before the Court is the *Motion to Order Recusal of the Office of the United States Attorney for the Southern District of Mississippi from the Prosecution of this Case* [15] filed by Defendant Mike Austin Anderson (“Defendant” or “Mr. Anderson”), requesting that this Court disqualify Assistant United States Attorney Kevin Payne (“Attorney Payne”) and the Office of the United States Attorney for the Southern District of Mississippi from the prosecution of this case. The Government filed a *Response* [20] and Defendant submitted a *Reply* [22].

The parties appeared and participated in a motion hearing before the undersigned United States Magistrate Judge on July 30, 2021. The Court *sua sponte* granted the Government one (1) week to supplement its briefing on the *Motion* [15] to address new evidence produced at the hearing. *See* Minute Entry dated July 30, 2021. The Government timely submitted its *Supplemental Response* [29] to the Court. The Defendant filed a *Reply* [31] to the Government’s *Supplemental Response*, without leave of the Court.

Having considered the submissions, the record, and relevant law, the Court finds the *Motion to Order Recusal* [15] shall be DENIED.

**I. Relevant Procedural History**

Attorney Payne is currently employed as an Assistant United States Attorney in the Southern

District of Mississippi. *See* Doc. 20-4 at 1. Attorney Payne previously worked as a Staff Attorney with the Choctaw Legal Defense from August 2004 to September 2017. *Id.* at 2. Defendant’s motion to disqualify centers around Attorney Payne’s employment at the Choctaw Legal Defense, and the scope of Attorney Payne’s interactions with Defendant during his tenure there.

Defendant asserts that Attorney Payne “represented Mr. Anderson in the defense of criminal charges levied against him in the Choctaw Tribal Court in Philadelphia, Mississippi on multiple occasions.” *See* Doc. 15 at 1. Defendant contends three encounters created an attorney-client relationship between Attorney Payne and Mr. Anderson: a 2006 domestic violence matter in Choctaw Tribal Court (Doc. [30] at 15); a 2006 matter involving Defendant’s father, Mack Haze Anderson (Doc. [30] at 11-120; and a 2007 matter (Doc. [30] at 17-19).

The subject of the 2007 hearing and the extent to which confidential information was exchanged before and during the hearing is in dispute. Doc. [30] at 60. Attorney Payne’s signed declaration, supplemented by tribal court records, “reveal(s) that [Payne’s] only interaction with Mike Austin Anderson was during a tribal court arraignment proceeding on September 5, 2007, just five days prior to [Payne] leaving Choctaw Legal Defense.” *See* Doc. 20-4 at 2. Attorney Payne contends that he did not speak with Mr. Anderson “about the facts, parties, or other substantive details of his case during the arraignment proceeding. *Id.* at 3.

## **II. Standard**

“It is beyond dispute that lawyers are officers of the court and that the courts have the inherent authority to regulate their professional conduct.” *In re Gopman*, 531 F.2d 262, 266 (5th Cir. 1976). In the Fifth Circuit, disqualification cases are governed by state and national ethical standards adopted by the court. *FDIC v. United States Fire Ins. Co.*, 50 F.3d 1304, 1311-12 (5th Cir. 1995) (*quoting In re American Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir. 1992)); *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992). The relevant standards include (1) the Mississippi

Rules of Professional Conduct, (2) the Local Rules for the Southern District of Mississippi, (3) the American Bar Association's (ABA's) Model Rules of Professional Conduct, and (4) the ABA's Model Code of Professional Responsibility. *See Horaist v. Doctor's Hosp. Of Opelousas*, 255 F.3d 261, 266 (5th Cir. 2001); *see also Babineaux v. Foster*, No. 04-1679, 2005 U.S. Dist. LEXIS 4844 (E.D. La. Mar. 21, 2005) (applying Louisiana's relevant standards in disqualification contest). The Southern District of Mississippi has expressly adopted the State of Mississippi's Rules of Professional Conduct. L. U. Civ. R. 83.5; *see Owens v. First Family Fin. Servs.*, 379 F. Supp. 2d 840, 845 (N.D. Miss. 2005) ("Pursuant to Local Rule 83.5 of the Rules of the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi, the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi have adopted the Mississippi Rules of Professional Conduct."). The Court should also consider "the standards of the profession, the public interest, and the litigants' rights." *Hampton v. Daybrook Fisheries, Inc.*, No. 01-1913 2001, U.S. Dist. LEXIS 19028, 2001 WL 1444933 at \*2 (E.D. La. Nov. 14, 2001) (*citing In re Dresser Indus.*, 972 F.2d 540, 543 (5th Cir. 1992)).

The primary applicable rules in this instance are Mississippi Rules of Professional Conduct 1.9 and 1.11. Rule 1.9 states, in pertinent part:

A lawyer who has formerly represented a client in a matter shall not thereafter: (a) 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; or (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

MISS. RULES OF PRO. CONDUCT R. 1.9. Rule 1.11(c) states, in turn:

Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not: (1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may

be, authorized to act in the lawyer's stead in the matter[.]

MISS. RULES OF PRO. CONDUCT R. 1.11(c).

Application of ethical rules, such as those involved in the instant case, requires a “painstaking analysis of the facts and precise application of precedent.” *Brennan's, Inc. v. Brennan's Restaurants, Inc.*, 590 F.2d 168, 173-74 (5th Cir. 1979) (quoting *United States v. Standard Oil Co.*, 136 F.Supp. 345, 367 (S.D.N.Y. 1955)). “[A] district court’s ruling upon a disqualification motion is not a matter of discretion. Rather, the appellate court ‘review[s] findings of fact for clear error ‘while carefully examining the district court’s application of relevant ethical standards.’” *In re American*, 972 F.2d at 611. With regard to questions of law, however, a “district court’s interpretation of the state disciplinary rules [is] an interpretation of law, subject essentially to *de novo* consideration.” *Id.* at 605.

### **III. Analysis**

Defendant’s first argument is that Rule 1.9 precludes Attorney Payne from the prosecution of this case because he represented Mr. Anderson in the Choctaw Trial Court. Defendant’s next argument is that, under Rule 1.10, any disqualification of Attorney Payne should be imputed to the Office of the United States Attorney for the Southern District of Mississippi.<sup>1</sup>

#### **A. Applicability of Rule of Professional Conduct 1.9**

Rule 1.9 of the Mississippi Rules of Professional Conduct governs when an attorney may represent a client whose position is adverse to that of a former client. To determine whether a conflict exists under Rule 1.9, the Court must determine whether an actual attorney-client relationship exists between the movant and the attorney that is the subject of the motion as well as apply the “substantial relationship” test to the current and prior representations:

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<sup>1</sup> As discussed *infra*, Rule 1.11 is the operative rule with respect to an attorney presently or formerly employed by a government agency.

A party seeking to disqualify opposing counsel on the ground of a former representation must establish two elements: **1) an actual attorney-client relationship between the moving party and the attorney he seeks to disqualify and 2) a substantial relationship between the subject matter of the former and present representations** . . . the sole issue is whether these prior representations [of Defendants] are substantially related to the present case. Our inquiry may be narrowed to this single question because the substantial relationship test is governed by an irrebuttable presumption. Once it is established that the prior matters are substantially related to the present case, the court will irrebuttably presume that relevant confidential information was disclosed during the former period of representation. The test is categorical in requiring disqualification upon the establishment of a substantial relationship between past and current representations. But we have never applied the test in a mechanical way that might prevent [] an attorney from ever representing an interest adverse to that of a former client. Rather, a substantial relationship may be found only after the moving party delineates with specificity the subject matters, issues and causes of action common to prior and current representations and the court engages in a painstaking analysis of the facts and precise application of precedent. Finally, the party seeking disqualification bears the burden of proving that the present and prior representations are substantially related.

*Owens v. First Family Fin. Servs.*, 379 F. Supp. 2d 840, 845 (N.D. Miss. 2005) (emphasis added)

(internal citations omitted).

**1. As a Threshold Matter, the Court Must Determine Whether an Actual Attorney-Client Relationship Existed Between Mr. Anderson and Attorney Payne.**

The first question before the Court is whether an actual attorney-client relationship previously existed between the moving party and the attorney he seeks to disqualify, including whether the attorney’s involvement was “personal and substantial.” See *Hernandez v. Johnson*, 108 F.3d 554, 560 (5th Cir. 1997). The Fifth Circuit has suggested that if a lawyer is only “tenuously and nominally” connected to the prior case, then the personal and substantial requirement is not met. *Id.* “If the attorney can clearly and persuasively show that he was not privy to the confidences and secrets of the former client, a court will not be held to have abused its discretion in concluding that disqualification of the attorney from representing the former client’s adversary is unnecessary.” *United States v. Medina*, 161 F.3d at 871 (5th Cir. 1998) (*quoting La*

*Salle Nat'l Bank v. County of Lake*, 703 F.2d 252, 257 (7th Cir. 1983) (internal quotations omitted)).

As the moving party, Defendant bears the burden of proving the grounds for the disqualification. *In re American Airlines*, 972 F.2d at 614. Defendant submits to the Court three situations to prove that an actual attorney-client relationship between Attorney Payne and Mr. Anderson, and that the relationship was personal and substantial. The first situation was a 2006 domestic violence matter in Choctaw Tribal Court in which Attorney Payne represented Matilda King. The next situation was Mr. Payne's 2006 representation of Defendant's father, Mack Haze Anderson. The final situation was a 2007 appearance in Choctaw Tribal Court by Mr. Payne on behalf of Mr. Anderson.<sup>2</sup> However, Director of Choctaw Legal Defense Ashley Lewis explains that "Choctaw Legal Defense nor tribal court records indicate that Mr. Payne was ever formally assigned or engaged to represent Mike Anderson Austin in a criminal or civil matter in his capacity as an attorney with Choctaw Legal Defense." Doc. [20-2] at 2.

The Court examines the facts and circumstances of each situation below.

**a. Defendant Asserts that Attorney Payne Represented Him in 2006.**

During the July 30, 2021 motion hearing, Defendant testified that Attorney Payne represented him in Choctaw Tribal Court in 2006. Doc. [30] at 13-14. Defendant explained that he was unable to provide additional information because he did not receive the records he requested while incarcerated. Doc. [30] at 13. The government clarified in its Supplemental Response that tribal court records show that Attorney Payne represented Defendant's friend, Matilda King, beginning in July 2006. Doc. [29] at 2. Specifically, "a domestic violence incident occurred between Mr. Anderson and Matilda King during July 2006, resulting in charges filed against both

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<sup>2</sup> The government relies on tribal court records that clarify that the 2007 hearing was an arraignment proceeding, while Mr. Anderson testified that the 2007 hearing was for bond revocation.

Mr. Anderson and King in [Choctaw Tribal Court].” *Id.* The record as submitted is clear that Attorney Payne did not represent Mr. Anderson in the 2006 domestic violence matter. The undersigned finds that no attorney-client relationship existed between Attorney Payne and Mr. Anderson during the 2006 domestic violence proceedings, and further finds that no evidence exists that Attorney Payne received confidential communications from Mr. Anderson during the course of Attorney Payne’s representation of Matilda King.

**b. Defendant Asserts that Attorney Payne Represented His Father, Mack Haze Anderson, in 2006 and that Confidential Communications Were Exchanged Between Defendant and Attorney Payne.**

At the hearing, Defendant also asserted that Attorney Payne represented the Defendant’s father, Mack Haze Anderson. *See* Doc. [30] at 11. On or around July 26, 2006, Defendant alleges that he met with Attorney Payne on behalf of his father’s case and discussed confidential information related to his father’s July representation in the Choctaw Trial Court. *Id.* Defendant concedes that Attorney Payne has not represented him in any federal proceeding, but Mr. Anderson alleges that he paid Choctaw Legal Defense \$100 cash for Attorney Payne to submit a writ of habeas corpus in federal court on behalf of Mr. Anderson’s father. *See* Doc. [30] at 16-17. Defendant maintains that he paid for Attorney Payne’s services, but no such writ of habeas corpus was prepared for his father. *See* Doc. [30] at 17. The undersigned finds that Attorney Payne’s representation of Mack Haze Anderson did not create an attorney-client relationship between Attorney Payne and Mr. Anderson, and further finds that no evidence exists that Attorney Payne received confidential communications from Mr. Anderson as it relates to Mr. Anderson during the course of Attorney Payne’s representation of Mr. Anderson’s father, Mack Haze Anderson.

**c. Defendant Asserts that Attorney Payne Represented Him at a 2007 Hearing Related to Criminal Theft Charges, and that Confidential Communications Were Exchanged Between Defendant and Attorney Payne.**

The Choctaw Legal Defense records pertaining to Mr. Anderson list Attorney Payne as appearing for Mr. Anderson at an arraignment in a theft matter that was closed on September 10, 2007. Doc. [20-1] at 5. The sworn Declaration of Kevin J. Payne describes his 2007 interaction with Mr. Anderson while employed at Choctaw Legal Defense:

A review of tribal court records reveals that my only interaction with Mike Austin Anderson was during a tribal court arraignment proceeding on September 5, 2007, just five days prior to leaving Choctaw Legal Defense. According to the docket, there were eight people that day before the court for arraignment. During this brief interaction with multiple defendants during the arraignment process, I did not speak with Mike Austin Anderson about the facts, parties, or other substantive details of his case. Following his arraignment, the Honorable Joseph Kilgore was assigned by Choctaw Legal Defense to represent Anderson for the duration of his case. This representation is reflected in the tribal court record.

Doc. [20-4] at 2. During the September 5, 2007 arraignment, the government contends that “Payne stood in court, announced a plea of not guilty and then told each defendant to await contact from the Legal Defense lawyer who would be assigned to their particular cases” as he did for all defendants that he would cover for arraignment proceedings. Doc. [20] at 6. Payne maintains that he never met with or talked to Mr. Anderson after the arraignment and no confidential communications ever conveyed from Mr. Anderson to Payne. Doc. [20-4] at 3. The government further asserts that any details of the 2007 proceedings are now in the public domain. *See EEOC v. Exxon Corp.*, 202 F.3d 755, 759 (5th Cir. 2000) (“The ABA Model Rules and the corresponding state rules all permit a lawyer to use information that has become publicly known.”).

Defendant, however, contends that in 2007, Attorney Payne appeared on his behalf for a bond revocation hearing, not an arraignment. *See* Doc. [30] at 14-15. The Defendant claims that during the 2007 bond revocation hearing, Attorney Payne entered a plea on behalf of Defendant and “objected to hearsay with a brief summary which you drafted up and we talked about this brief summary when you were drafting it up.” *See* Doc. [30] at 16. The Defendant testified that, in

preparation for the 2007 hearing, he met with Attorney Payne on numerous occasions and discussed confidential information. Doc. [30] at 10.

The undersigned finds the Choctaw Legal Defense records credible and concludes, for purposes of this Order, that Attorney Payne appeared for Mr. Anderson at an arraignment, not a bond revocation hearing.

“[T]here is little doubt that the arraignment in a federal criminal prosecution is a vital part of the criminal process and consequently the accused is entitled to the assistance of counsel at that time.” *McConnell v. United States*, 375 F.2d 905, 909 (5th Cir. 1967). In the 2007 theft arraignment proceeding in Choctaw Tribal Court, the record reflects that Attorney Payne was appointed by Choctaw Legal Defense to appear on behalf of the Defendant. But the Fifth Circuit has declined to *presume* that an attorney receives confidential communications during the course of representing a client in the context of motions to disqualify counsel in criminal proceedings. *Cf. Losada v. Johnson*, 1996 U.S. App. LEXIS 43501 at \*16 fn. 2 (5th Cir. 1996) (emphasis added). In *Losada*, the court determined that the defendant’s affidavit testimony that he discussed the case with his attorney prior to an arraignment proceeding was insufficient to conclude that any confidences passed which would create a conflict. *Id.* at \*17.

The evidence in the instant matter suggests that, while Attorney Payne did indeed represent Mr. Anderson in a 2007 arraignment for theft, no confidential communications were exchanged during the representation. Further, the evidence suggests that Attorney Payne’s 2007 representation of Mr. Anderson did not extend beyond an appearance at Mr. Anderson’s arraignment, as Attorney Payne’s employment at Choctaw Legal Defense ended very shortly thereafter and another attorney was assigned to Mr. Anderson’s case. For these reasons, the Court finds that Attorney Payne’s connection to Mr. Anderson’s 2007 case in Choctaw Tribal Court was

tenuous and nominal, and that said representation did not rise to the level of personal and substantial participation in the case. *See* MISS. RULES OF PRO. CONDUCT R. 1.11(c) (“a lawyer serving as a public officer or employee shall not: (1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment”).

**2. The Court Must Next Determine Whether a Substantial Relationship Exists Between Attorney Payne’s 2007 Representation of Mr. Anderson and the Instant Case.**

The court has found that, while Attorney Payne indeed represented Mr. Anderson at a 2007 arraignment, said representation did not rise to the level of personal and substantial participation in the case. Even if Attorney Payne’s representation did rise to level of personal and substantial participation in the case, the Court finds that there is no substantial relationship between the subject matter of Attorney Payne’s former representation of Mr. Anderson at the 2007 arraignment and his present representation of the United States of America. A substantial relationship exists when “the prior representation concerns ‘the particular practices and procedures which are the subject matter of [the present] suit.’” *In re American Airlines*, 972 F.2d at 625. *Id.*

Defendant claims there may be a potential overlap in witnesses and victims due to the shared locality, in that all of Defendant’s alleged criminal offenses at issue occurred, at least in part, on the Mississippi Band of Choctaw Indians reservation lands. Doc. [22] at 2. Additionally, Defendant submits that “[Attorney] Payne’s contacts and previous information gathered about Mr. Anderson present a serious conflict of interest as this information could be used against him at trial, sentencing, and as previously shown, detention hearings.”

The government counters that the two matters at issue arose from independent and unrelated facts. Doc. [20] at 7. The Mississippi Band of Choctaw Indians prosecuted Mr. Anderson

in Choctaw Tribal Court on tribal law misdemeanor charges of Battery (Domestic), Trespass to Building, and Theft (Domestic) in 2007. Doc. [20-3] at 2. As noted above, Attorney Payne represented Anderson on a single arraignment proceeding in 2007 related to these misdemeanor theft charges. The present case before this Court charges Anderson with federal law felony offenses, in violation of 18 U.S.C. §§ 113 and 924(c). The government tenders that the criminal charges against Anderson at issue are brought by separate sovereigns in their respective and separate jurisdictions. Doc. [20] at 7. The government also submits that the time difference between the alleged representations and present matter spans over fourteen (14) years. *See NAACP v. State Dept. of Law*, 711 A.2d 1355, 1361 (N.J. Sup. A.D. 1998) (“The nine-year hiatus between [attorney’s government] employment...and [the motion to disqualify] certainly suffices to mitigate any concern that this former office holder might be seen to be taking advantage of information acquired in fresh government service”); *see also Babineaux v. Foster*, No. 04-1679, 2005 U.S. Dist. LEXIS 4844 (E.D. La. Mar. 21, 2005) (finding “that no conflict of interest exists because all of the events giving rise to the current allegations occurred after” attorney left prior job with the government agency).

The past criminal matters in tribal court form no basis of the present charges in federal court against Anderson. Therefore, this Court concludes there is no substantial relationship between the subject matter of Attorney Payne’s former representation of Anderson at Choctaw Legal Defense during the 2017 arraignment and his present representation of the United States of America in the present case. For these reasons, Attorney Payne’s assignment to the instant case at the United States Attorney’s Office is not substantially related to his prior work at the Choctaw Legal Defense and Attorney Payne is not barred by Rule 1.9.

**B. Inapplicability of Rule of Professional Conduct 1.10**

The Defendant incorrectly bases his motion to disqualify on Rule 1.10 of the Mississippi

Rules of Professional Conduct. Rule 1.10 states that:

(a) While 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.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

MISS. RULES OF PRO. CONDUCT R. 1.10.

Rule 1.10 addresses the imputation of any actual conflict that an attorney bears, to the disqualification of other attorneys who work alongside him or in the same *private* law office. MISS. RULES OF PRO. CONDUCT R. 1.10 (emphasis added); see *In re Grand Jury Investigation of Targets*, 918 F. Supp. 1374, 1378 (S.D. Cal. 1996) (finding “the imputed disqualification rule does not apply to government agencies.”). However, Rule 1.11 is the operative rule with respect to an attorney presently or formerly employed by a *government agency*. *Id.* R. 1.11 (emphasis added).

The Defendant argues that the Office of the United States Attorney must recuse itself from the prosecution of this case by misconstruing the Office of the United States Attorney to be a private firm. Attorney Payne is a government attorney at the Office of the United States Attorney for the Southern District of Mississippi, a government agency. Therefore, any conflict regarding the government agency is governed by Rule 1.11.

**C. Application of Rule of Professional Conduct 1.11**

Rule 1.11(c) “does not disqualify other lawyers in the agency with which the lawyer in question has become associated.” Miss. Rules of Pro. Conduct R 1.11, cmt. [9]. The Mississippi Supreme Court has addressed the present scenario and explained:

It is not uncommon for attorneys employed as public defenders to accept new

employment as prosecutors. When that happens, there necessarily will be some active cases in the district attorney's office which were active prior to the change in employment. No citation of authority is necessary for the obvious proposition that a conflict of interest will exist for a prosecutor who previously represented a particular defendant in a particular case. This is particularly true where, as here, the prosecutor gained actual knowledge of the defendant's confidential information. Under such circumstances, the lawyer has a conflict of interest and may not, after changing employment, begin to prosecute the former client. That did not happen - and is not an issue - in this case. The problem becomes more difficult, however, where the lawyer had no involvement in a particular case either while with the public defender's office or after joining the district attorney's office. . . [T]his Court squarely addressed the problem by stating: [I]f the State can meet the heavy burden of showing that the accused's confidentiality remained unscathed, then we will not require the district attorney to disqualify himself or his office. This burden, however, is great and is not to be treated lightly by trial courts. The State must show that the assistant district attorney had absolutely no participation in the case, from the time of withdrawal through adjudication; divulged no confidential information; and notified the other party promptly upon becoming aware of the conflict of interest.

*Ousley v. State*, 984 So. 2d 985, 987 (Miss. 2008) (*en banc*) (internal quotations and citations omitted). Thus, the burden remains for the government to show that Attorney Payne “had absolutely no participation in the case; (2) divulged no confidential information; and (3) notified the other party promptly upon becoming aware of the conflict of interest.” *Id.* (quoting *Aldridge v. State*, 583 So. 2d 203 (Miss. 1991)).

The undersigned determines the three requirements are unquestionably met. The uncontradicted evidence in the record is that Attorney Payne has had no meaningful participation, and no substantive communications with the defendant in any of the criminal matters submitted by Defendant. Moreover, during the pendency of the various criminal matters involving Anderson and his family and friends, no confidential information was divulged. Finally, the present Motion to Disqualify [15] displays prompt notification of a potential conflict. *See Ousley*, 984 So. 2d at 988 (The defendant's motion to disqualify filed more than two months before trial was “ample evidence that he received the required notice of the potential conflict.”). Therefore, the Court finds

that the Office of the United States Attorney for the Southern District of Mississippi shall not be disqualified from the prosecution of this case.

#### **IV. Conclusion**

The undersigned finds that the Defendant failed to establish that Attorney Payne personally and substantially participated in litigation involving the defendant when he worked for the Choctaw Legal Defense which would bar him from undertaking Mike Austin Anderson's prosecution. The undersigned further concludes that there is no substantial relationship between the prior cases and the present prosecution of the Defendant. Thus, the undersigned declines to disqualify Assistant United States Attorney Kevin Payne and the Office of the United States Attorney for the Southern District of Mississippi from the prosecution of this case.

IT IS THEREFORE ORDERED that the *Defendant's Motion to Order Recusal of the Office of the United States Attorney for the Southern District of Mississippi from the Prosecution of this Case* [15] is DENIED.

SO ORDERED this the 3rd day of November, 2021.

/s/ LaKeysha Greer Isaac  
UNITED STATES MAGISTRATE JUDGE