

From: Wade Smith
To: Jlbwriter@aol.com
Date: 9/21/05 12:17PM
Subject: Waiver

Dear Jim:

Thank you very much for the meeting today to discuss a waiver of any conflict associated with my representation of Dr. Jeffrey MacDonald. I write this note to memorialize that conversation and to ask you to put in writing your position on the waiver of any conflict.

Here are the facts which give rise to my concerns about the need for a meeting with you and my feeling that I should not go forward with my representation of Dr. MacDonald without a waiver from you.

1. In 1979 I represented Dr. MacDonald and you were the prosecutor in that case which was tried in Federal Court in Raleigh.
2. Thereafter you asked me to assist you in a legal matter and I did so and worked as your attorney.
3. My work for you was concluded long ago and our relationship was no longer that of attorney and client.
4. Then, Jeffrey MacDonald asked me to assist him again in matters relating to possible DNA evidence evaluation and further with respect to his possible parole. I agreed to do this. While I was working for Dr. MacDonald in these matters a person came forward with information relating to conversations you may have had with Helena Stoeckley during the course of the MacDonald case.
5. I had a duty to inform my client, Dr. MacDonald, about this information and I did so.
6. Dr. MacDonald and his attorneys have concluded that a motion should be filed in his behalf setting forth the information concerning your conversations with Helena Stoeckley.
7. Therefore, a question arose as to whether, having represented you at one time, I could properly serve as counsel to Dr. MacDonald in a matter alleging action on your part which might give Dr. MacDonald the right to another trial and which would test the propriety of your conversation with Helena Stoeckley.
8. I have sought legal advice on this matter from counsel outside my firm and believe that it would be proper for me to proceed if there is a waiver by you of any conflict which might arise, real or perceived, by my assisting Dr. MacDonald in a matter asserting that you in some way may have made a threatening statement to Helena Stoeckley while you were in the midst of the MacDonald case.
9. You have told me that you will be willing to waive any conflict which may arise from my participation in the advancement of Dr. MacDonald's motion or legal actions relating to the Helena Stoeckley discussions.

Accordingly, here is what I request. Would you please review the following statement and if you agree with it, would you please send me an email message confirming that you do agree with the statement and would you please then, after you send the statement, come by and sign the waiver.

Thanks very much for considering this matter and for your assistance.

Here is the statement:

"I am James Blackburn. I have met with Wade Smith and reviewed the circumstances he has set forth above concerning his representation of Dr. Jeffrey MacDonald. I hereby waive any conflict which may

arise from his representation of Dr. Jeffrey MacDonald based upon his service to me as an attorney during legal proceedings involving me. These proceedings are well known to the legal community and the people of this region. I want to give Wade Smith my full and complete assurance that I waive completely and entirely any conflict which exists based upon his representation of me. I give him complete permission to serve as counsel for Dr. MacDonald and to take such action as he deems appropriate. It is my understanding that he will sign any motion which he believes is appropriate as North Carolina counsel for Dr. MacDonald and I consent to this entirely."



James Blackburn
September 21, 2005

WMA

23-215

I have read this email to my co-counsel, Tim Junkin, and he agrees entirely with it.

If this is approved by you, would you please acknowledge that you approve it and then, when you get a moment, come by and sign it I will be very grateful.

Wade Smith
September 21, 2005

Subj: **Waiver**
Date: 9/29/05 1:57:56 PM Eastern Daylight Time
From: Jlbwriter
To: wsmith@tharringtonsmith.com

Wade, Thanks for the note of September 21, 2005 and the attached waiver regarding the Jeffrey MacDonald matter. As you know, we have spent a good deal of time discussing this issue of waiver since you represented me some years ago as well as having been Jeffrey MacDonald's lawyer since at least 1979.

First, let me say that I agree to give you a waiver in this matter and will sign the one that you have proposed. My only concern is that in the body of the note that you wrote to me, you reference my conversations with Helena Stoeckley.

The one time that I had a conversation with Helena Stoeckley was in the office of the United States Attorney at a court approved meeting that was attended by other counsel for the government at that time. While I did talk with Ms. Stoeckley during that meeting, I want to say again in this email to you, as I have done in all our conversations, that at no time did I have any conversation with her or make any statement to her that was inappropriate, and so I want to make sure that by agreeing to the waiver, I am not agreeing with any suggestion, however implied, in your initial note to me that there was any impropriety in any of my comments to her.

I am agreeing to this waiver with you because I believe you are an attorney of the utmost integrity and an outstanding advocate for your client. I do not wish to stand in the way in your representation of Jeffrey MacDonald and your obligation to represent your client to the best of your ability.

Jim

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