

Firm Disqualified From Arguing Motion

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The firm of Newman & Greenberg was retained to represent one of the defendants against a federal indictment for money laundering and conspiracy to launder money. The firm submitted a bail motion supported in part by a letter ostensibly signed by two Panamanian prosecutors .

The government objected that the letter was a forgery and offered to prove that the Panamanian prosecutors had never signed the letter. Newman & Greenberg withdrew the bail motion, acknowledging that events had “undermined our confidence in the validity of the document.”

The government moved to disqualify Newman & Greenberg as defendant’s counsel. The law firm immediately withdrew and another attorney was substituted. The court was then advised that the new attorney intended to designate Richard Greenberg, a partner in Newman & Greenberg, to argue a motion to dismiss the indictment and that the government would move to disqualify Greenberg from arguing the motion. The court ordered the disqualification of Newman and Greenberg.

The court said, “A defendant has no absolute right to be represented by the attorney of his or her preference...some conflicts of interest between attorney and client are considered serious enough that defendant’s waiver will not cure them. For example, an attorney should be disqualified any time he or she might be called as a witness for his or her client, or if there is a risk the attorney could become an unsworn witness for the client at trial.” (The court cited *United States v. Locascio*, 6 F.3d 924, 932-34 (2d Cir. 1993).

The court was guided by New York’s DR 5-102(C), which provides that a lawyer may not serve as an advocate on issues of fact if the lawyer knows or it is obvious that the lawyer “ought to be called as a witness on a significant issue on behalf of the client.”

Because the government had stated that it would continue to investigate whether the Panamanian letter was a forgery, it was foreseeable that Greenberg would be called as a witness or act as an unsworn= witness on behalf of his client. *U.S. v. Speed Joyeros*, East. Dist., NY; Judge Eugene Nickerson.