

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
No. 08-CR-364 (RHK/AJB)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

**MOTION TO RENEW PRETRIAL
MOTIONS REGARDING
GOVERNMENT MEDDLING,
AKE v. OKLAHOMA,
ATTORNEY WITHDRAWAL, AND
CONTINUANCE OF TRIAL**

Defendant Thomas Joseph Petters, by and through his undersigned attorneys, hereby renews his prior motions, filed on March 16, 2009, to dismiss because of Government meddling with defense funds, and the concomitant Ake v. Oklahoma violation. Alternatively, the undersigned attorneys renew the motion to withdraw, and for a continuance of trial.

Our reasoning may be found in the attached motions, [Exhibits B, C, D, E], and reply brief, [Exhibit F]. We emphasize the following:

1. Since last October, Mr. Petters has been stripped of his freedom and assets. The Government took the former in this criminal matter (“Petters I”) and the latter in the parallel civil action, No. 08-CV-5348 (ADM/JSM) (“Petters II”).

2. Mr. Petters has a Sixth Amendment right to choice of counsel. There is ample precedent that he—a man who stands accused but has had no opportunity to put the question to a jury—may withdraw attorney fees from his frozen assets. E.g., United States v. Payment Processing Ctr., LLC, 439 F. Supp. 2d 435, 440-441 (E.D. Pa. 2006).

3. We relied on this precedent. And the USAO's promises. And the December 2008 payment authorized by Judge Montgomery in Petters II.

4. This Court made clear that trial was scheduled to begin in June. The date was firm. The defense was to be ready.

5. The Government entered no objection to the December 2008 payment, said nothing to this Court about fees and costs when the trial date was set. Without a thought of defense costs, the Government supplied over 200 data discs, in turn containing hundreds of documents, often in a format that was difficult to read. The United States knew full well the defense experts were reviewing the discovery and computers and did not say a peep about their costs.

6. The case timeline spans more than a decade, the discovery documents number more than one million. We thus began our work in earnest. Our investigator (a former IRS agent) reviewed thousands of documents, our computer expert extracted computer files from workstations and the PCI/PGW server. They do not work for free. The Felhaber Law Firm incurred thousands in costs. A line of credit used.

7. The attorneys spent hundreds of hours interviewing witnesses, reviewing the discovery, writing briefs, preparing for the June trial. Encouraged by the Government's approval in the past, we applied to the Receiver for payment.

8. The Government filed its pleading on March 13. For the first time, it told the Court that defense fees should be capped, and then clawed back. [Exhibit A.]

9. We responded with motions to Magistrate Judge Boylan, who asked the Government if it actually intended to claw back defense fees and costs. The AUSA

demurred. The Magistrate Judge denied our motions without prejudice pending Judge Montgomery's decision in Petters II, and granted us leave to renew.

10. Judge Montgomery entered an order granting our application, but declining to shield us from a Government claw back, continued interference and meddling. [Exhibit G.]

11. The cost of defense will run into the millions of dollars. We cannot advance costs and time of this magnitude, with the Government continuing to lurk.

12. We now accept Magistrate Judge Boylan's invitation. We renew our motions, and seek a hearing.

Dated: March 30, 2009

s/ Jon M. Hopeman

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