

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

JOHN SUPLIZIO

Criminal No. 23-19

**UNITED STATES' MOTION FOR HEARING
REGARDING CONFLICTS OF INTEREST**

The United States, through undersigned counsel, hereby seeks a hearing regarding conflicts of interest faced by defendant John Sulpizio's recently retained defense counsel, William A. Shaw, Jr. ("Attorney Shaw"). If the Court determines there are conflicts of interest, the government moves to disqualify Attorney Shaw. In support of this motion, the government states the following:

I. FACTS

This case began as an investigation by 48th Statewide Investigating Grand Jury led by the Pennsylvania Office of the Attorney General ("PA OAG") and the Pennsylvania State Police ("PSP"). On April 9, 2020, near the beginning of the investigation, PSP conducted an interview of Suplizio at the DuBois Area United Way. The investigation continued after the meeting and search warrants were executed on April 6, 2022, at Suplizio's residence and the offices of Suplizio and Roberta Shaffer at the DuBois Area United Way and the City of DuBois.

Shortly after the search warrants, Suplizio retained Michael A. Comber and Alyssa R. Angotti of the Comber Miller law firm. Suplizio also retained Attorney Shaw, and plea negotiations commenced. On December 20, 2022, the 48th Statewide Investigating Grand Jury issued a presentment, and plea negotiations continued until Suplizio was charged in Clearfield

County, Pennsylvania on March 20, 2023, with a criminal complaint that included the negotiated charges: Theft by Unlawful Taking, Restricted Activities-Conflict of Interest, Fraudulent Returns-PA Tax, and Misapplication of Entrusted Property. Suplizio remained in his position as City Manager until shortly after the charges were filed.

After the negotiated charges were filed, investigators learned that on May 2, 2023, DuBois Solicitor Toni Cherry brought a gift bag containing \$93,920 that she received from Suplizio to Interim City Manager Chris Nasuti and then Chief of Police Blaine Clark. Clark was interviewed regarding the incident on June 16, 2023. The report of interview is attached as Government Exhibit 1. Clark will be subpoenaed as a fact witness for the government at trial in this federal case.

On August 16, 2023, in the state court case, Suplizio requested to withdraw his negotiated plea agreement and proceed to trial. On October 4, 2023, Suplizio's charges were refiled to add the following: one count of Theft by Unlawful Taking, graded as a Felony 2; three counts of Theft by Deception, graded as a Felony 2; one count of Failure to Make Required Disposition of Funds, graded as a Felony 2; three counts of Dealing in Proceeds, graded as a Felony 1; and Obstruction, graded as a Misdemeanor 2. The criminal complaint for the charges is attached as Government Exhibit 2.

Around that time, PA OAG investigators learned that Attorney Shaw had attended an Executive Session of DuBois City Council, a closed-door session of Council, and recorded the meeting. The purpose of the meeting was to discuss the \$93,920 delivered by City Solicitor Cherry to City Manager Nasuti and Chief of Police Clark. Assistant Chief Deputy Attorney General Summer Carroll, a Special Assistant United States Attorney on the instant case, sent a letter, dated October 3, 2023, requesting that Attorney Shaw preserve the recording and withdraw his

representation under Rule 3.7 as he was now a necessary witness in the criminal case. The letter is attached as Government Exhibit 3.

On November 14, 2023, a federal grand jury in the Western District of Pennsylvania charged Suplizio and Shaffer with Conspiracy to Commit Federal Program Theft, from February 2014 to February 2022, in violation of 18 U.S.C. § 371 (Count One) and Federal Program Theft, in the years 2018, 2019, 2020, and 2021, in violation of 18 U.S.C. §§ 666(a)(1)(A) and 2 (Counts Two through Five). (Doc. No. 3.)

Attorneys Comber and Angotti of the Comber Miller law firm immediately entered appearances on the case, but Attorney Shaw did not. A federal grand jury subpoena was issued to Attorney Shaw for the recording of the Executive Session on August 23, 2024, and around September 18, 2024, the government received a copy of the recording.

On September 24, 2024, the grand jury returned a Superseding Indictment against Suplizio and Shaffer. (Doc. No. 62.) Regarding Count One (Conspiracy to Commit Federal Program Theft), the Superseding Indictment expanded the timeframe of the conspiracy (May 2008 to March 2022) and looped in the money misapplied by the defendants with respect to Company 2 and 3 (the Indictment had only focused on Company 1). (*Id.* ¶ 60.) The Superseding Indictment left Counts Two through Five (Federal Program Theft, in 2018, 2019, 2020, and 2021) essentially unchanged, except for fact that the new allegations in Count One will be used to prove those counts as well. (*Id.* ¶¶ 93-108.) Counts Two through Five expressly incorporate by reference the allegations from Count One. (*Id.*)

The Superseding Indictment also added money laundering charges. Count Six charges Suplizio and Shaffer with conspiracy to engage in monetary transactions over \$10,000 with criminally derived property, in violation of 18 U.S.C. § 1956(h). (*Id.* ¶¶ 109-113.) Counts

Seven through Ten charge the defendants with engaging in monetary transactions over \$10,000 with criminally derived property, in violation of 18 U.S.C. §§ 1957(a) and 2. (*Id.* ¶¶ 114-115.)

On September 25, 2025, Attorney Shaw entered his appearance on the instant case. On October 22, 2025, this Honorable Court held a status conference via telephone. Shortly before the status conference, the government learned of another potential conflict for Attorney Shaw (explained immediately below). All potential conflicts were raised by the government at the status conference and this Honorable Court invited motions by the parties.

After the status conference, the government confirmed that Attorney Shaw is counsel of record for former Chief of Police Blaine Clark in a civil lawsuit filed in Clearfield County. The Complaint was filed by Clark on October 3, 2024, and is related to Clark's termination of employment from the City of DuBois. The Complaint is attached as Government Exhibit 4. The employment agreement at issue in the civil case was executed on November 7, 2022. (*Id.* ¶ 10.) According to the Complaint, Clark was sent a "Loudermill letter," which is a formal, written notice sent by public-sector employers to employees, detailing proposed disciplinary actions—such as suspension, demotion, or termination—along with the evidence against them. (*Id.* ¶ 33.) The Complaint alleges that the Loudermill letter stated that Clark failed to perform his job responsibilities in an appropriate manner when former DuBois Mayor Schmidt was accused of stealing from Sheetz, as was set forth in a separate criminal complaint against "another individual." (*Id.* ¶ 34.) The person referred to as "another individual" is Suplezio. (*See* Gov. Ex. 2, at 32-33.)

On October 22, 2024, the City of DuBois filed Defendants' Preliminary Objections to Plaintiff's Complaint (Government Exhibit 5), wherein the City cited that under Third Class City Code, "the Chief of Police serves at the pleasure of the Manager and Council...and may be removed from the Chief of Police position by the Manager and Council at any time..." (*Id.* ¶ 4 &

19.) Additionally, the City noted that pursuant to the City of DuBois's plan of government, "[t]he City Manager shall...[a]ppoint and have power to remove department heads [such as the Chief of Police]." (*Id.* ¶ 32.)

On August 7, 2025, Clark filed an Amended Complaint (Government Exhibit 6) and acknowledged that, "[t]he City Manager of DuBois was at all relevant times Mr. Clark's supervisor." (*Id.* ¶ 15.) Therefore, during the negotiation and formation of the employment agreement at issue in the civil case, as well as the incident referenced in the Loudermill letter, Suplizio was Clark's direct supervisor.

The Amended Complaint also notes several instances where Clark claimed to report information regarding Councilwoman Jackson to Suplizio. (*Id.* ¶¶ 21, 23.) A date for these reports is not noted in the filing, but presumably it was when Suplizio was Clark's supervisor.

Given this, it seems extremely likely that Suplizio is a necessary fact witness in Clark's civil case as he was both his direct supervisor and involved with the incident cited multiple times as a reason for termination in his civil filings. The civil matter is pending in Clearfield County Court of Common Pleas and Attorney Shaw remains counsel of record.

II. APPLICABLE PRINCIPLES OF LAW

The Sixth Amendment grants a criminal defendant the right to counsel, and, in the case where counsel is retained, to representation by counsel of his choice. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006). The Supreme Court held in *Gonzalez-Lopez* that an erroneous deprivation of defendant's choice of counsel is a structural error, requiring a new trial. *Id.* at 149-151. However, the holding of the Court was limited in *Gonzalez-Lopez*, with the Court noting that the error of the disqualification was not in dispute in that case and that "[n]othing we have said today casts any doubt or places any qualification upon our previous holdings that limit

the right to counsel of choice and recognize the authority of trial courts to establish criteria for admitting lawyers.” *Id.* at 151-152. The Court reiterated that the right to counsel of choice must be balanced against the trial court’s “independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” *Id.* (citing *Wheat v. United States*, 486 U.S. 153, 160 (1988)).

Therefore, the trial court need not tolerate participation by a defense attorney who suffers from a conflict of interest. *Id.* In *Wheat*, the Supreme Court explained:

[W]hen a trial court finds an actual conflict of interest which impairs the ability of a criminal defendant’s chosen counsel to conform with ABA Code of Professional Responsibility, the court should not be required to tolerate an inadequate representation of a defendant. Such representation not only constitutes a breach of professional ethics and invites disrespect for the integrity of the court, but it is also detrimental to the independent interest of the trial judge to be free from future attacks over the adequacy of waiver or the fairness of the proceedings in his own court and the subtle problems implicating the defendant’s comprehension of the waiver.

Wheat, 486 U.S. 153, at 162 (quoting *United States v. Dolan*, 570 F.2d 1177, 1184 (3d Cir. 1978)).

Additionally, the Court held in *Wheat* that there need not be an *actual* conflict, but the *potential* for a serious conflict may also suffice to disqualify counsel, even in the case where a defendant purports to waive the conflict. The Court explained that, “the district court must be allowed substantial latitude in refusing waivers of conflicts of interest not only in those rare cases where an actual conflict may be demonstrated before the trial, but in the more common cases **where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses.**” *Wheat*, 486 U.S. at 163 (emphasis added).

This premise was reiterated by the Third Circuit in *United States v. Voigt*, where the court noted, “[c]learly the potential for serious conflicts is a consideration of judicial administration that can outweigh a defendant’s right to counsel of choice.” 89 F.3d 1050, 1075

(3d Cir. 1996). Additionally, the trial court is given much deference in this determination and, “[a]s long as the court makes a reasoned determination on the basis of a fully prepared record, its decision will not be deemed arbitrary.” *Id.* (quotation marks omitted). Indeed, the Third Circuit held in *United States v. Stewart* that where the decision of the district court is not arbitrary, it is subject to review only for abuse of discretion. 185 F.3d 112, 120 (3d Cir. 1999).

Importantly, the *Stewart* court—relying on an earlier Third Circuit decision in *United States v. Moscony*, 927 F.2d 742 (3d Cir. 1991)—held that conflicts may exist in situations beyond the typical scenario of co-defendants in criminal case, recognizing that, “conflicts arise where a ‘defendant seeks to waive his right to conflict-free representation in circumstances in which the counsel of his choice may have divided loyalties due to concurrent or *prior* representation of another client who is a co-defendant, a co-conspirator **or a government witness.**” *Id.* at 121 (italics in original; bold emphasis added) (citing *Moscony*, 927 F.2d at 749).

The court in *Moscony* held that, “[c]onflicts of interest arise whenever an attorney’s loyalties are divided, **and an attorney who cross-examines former clients inherently encounters divided loyalties.**” *Moscony*, 927 F.2d at 750 (emphasis added) (internal citations omitted).

More recent case law has affirmed the premise that cross-examination of a former client creates an actual conflict of interest. In *United States v. Moses*, the Third Circuit noted, “It was established during the hearing that Pagano’s former client (Whitfield) was going to be called to testify on behalf of the government during his current client’s (Moses’) trial and that Pagano would have to cross-examine Whitfield. Thus, it was clear that, if this case proceeded to trial, Pagano’s loyalties would have been divided and there would have been an actual conflict of interest.” 58 F. App’x 554 (3d Cir. 2003).

Similarly, in *United States v. Puryear*, this Court opined that,

Far more noxious to trial proceedings than the impeachment by prior conviction (a small, though damaging, slice of the entire line of questioning) **is the very cross-examination itself, wherein the former attorney would be pitted against the former client. With or without impeachment by prior conviction, ‘an attorney who cross-examines former clients inherently encounters divided loyalties’.**” *Moscony*, 927 F.2d at 750. **That is the critical conflict of interest that overcomes the Defendant’s presumptive right to counsel of choice.**

719 F.Supp.2d 571, 574 (W.D. Pa. 2010) (emphases added).

III. CONFLICTS OF INTEREST FACED BY ATTORNEY SHAW

Attorney Shaw faces an actual conflict of interest based on his current representation of former Chief of Police Blaine Clark. The Pennsylvania Rules of Professional Conduct, which apply in this Court (*see* W.D. Pa. LCvR 83.3), are consistent with the American Bar Association Model Rules of Professional Conduct. **Rule 1.7: Conflict of Interest: Current Clients** provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

Pennsylvania Rules of Professional Conduct Rule 1.7 (Pa.R.P.C. 1.7) (2024).

Former Chief of Police Blaine Clark is a fact witness for the government in the instant case and will be subpoenaed to testify for the government. If Attorney Shaw is not disqualified as counsel, he and/or his co-counsel will have to cross-examine Clark, a *current* client of Attorney Shaw. This would clearly be a situation described in the case law of having “inherently divided loyalties.” *Moscony*, 927 F.2d at 750.

Moreover, most of the cases cited above discussed cross-examining *former* clients. In the case of former clients, disqualification will be deemed appropriate due to the continuing duty of the attorney to maintain confidences of her former client. Nevertheless, in those cases, an argument could be made that since the representation has ceased, no additional confidential information will be obtained. That is not the case here; Clark is a *current* client.

The *Stewart* case is the only case cited above wherein an attorney sought to represent a defendant and government witness concurrently. Stewart was involved with facilitating a series of fraudulent financial transactions involving various insurance companies and shell corporations. A civil RICO action against several of his associates was brought by the Pennsylvania Insurance Commissioner in the same district. *Stewart*, 185 F.3d 112, at 119-121.

Four of Stewart’s associates—an officer of one of his companies, his live-in girlfriend, his son, and his step-son—were all government witnesses in the criminal case. One of Stewart’s attorneys in the criminal case represented all four in the civil case. The government filed

a motion to disqualify and at the hearing, Stewart and all four witnesses stated that he or she waived any conflict. *Id.* at 120.

Despite the waivers, the Court disqualified the firm, noting that the firm defending Stewart was “‘directly adverse’ to its representation of the four individuals, and thus placed the attorneys of the [Christie, Parabue, Mortenson and Young law firm] in the ‘unenviable position of cross-examining their own clients with the help of attorney-client communications’.” *Id.* The Court went on to note that the relationships between the parties influenced whether the waivers were truly voluntary. The Court also recognized that it had an “‘independent responsibility to uphold the ethical precepts of the legal profession as well as the public interest in the judicial process’.” *Id.*

The same concerns are present in the instant case. Clark is a fact witness for the government who will be subpoenaed for trial. In addition to the incident regarding the cash provided by Toni Cherry, the government may also seek to include the Sheetz incident as Rule 404(b) evidence/relevant conduct at trial.

Attorney Shaw may argue that he will not participate in the cross-examination of Clark, that he will leave that to the attorneys from the Comber Miller firm. But that argument is unavailing. Indeed, in *Stewart*, the disqualified law firm of Christie, Parabue, Mortenson and Young **had** co-counsel, who was free from a conflict of interest. Nevertheless, the court disqualified the firm because the attorneys, “‘would have been part of **a team of attorneys required to cross-examine the four individuals testifying for the government.**” *Stewart*, 185 F.3d at 121 (emphasis added). Here, as in *Stewart*, Attorney Shaw will be part of the team of attorneys required to cross-examine Clark, even if he does not personally perform the cross-examination.

In addition, Attorney Shaw may have to cross-examine Suplizio in the Clark case. Attorney Shaw represents former Chief of Police Clark in a civil case claiming wrongful termination from the City of DuBois. Suplizio was his direct supervisor at the time that the contract at issue was formed and Clark even alleges that he reported several of the instances at issue directly to Suplizio. Additionally, one of the reasons provided by the City for termination was an incident directly involving Suplizio. Suplizio is clearly a potential fact witness in Clark's civil case.

In *Stewart*, the Court also noted that there was no evidence that the defense attorney's absence would prejudice Stewart's right to a fair trial. *Id.* So too here. Suplizio will experience no prejudice if Attorney Shaw is disqualified. Attorneys Comber and Angotti are extremely competent counsel and have represented Suplizio throughout the entirety of the case.

In addition to the Rule 1.7 concerns, Attorney Shaw is also a potential witness in the instant case, which would implicate Rule 3.7. **Rule 3.7: Lawyer as Witness** provides:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer will work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Pennsylvania Rules of Professional Conduct Rule 3.7 (Pa.R.P.C. 3.7) (2024).

Attorney Shaw created a recording of the Executive Session of City Council in May of 2023. The purpose of the meeting was to discuss the money that was recently delivered to

Interim City Manager Chris Nasuti and then Chief of Police Blaine Clark. The recording was produced by Attorney Shaw after the government issued a subpoena.

Counsel for Suplizio has stated that they are willing to stipulate to the authenticity of the recording. Provided the government accepts this stipulation, a situation could still arise—during trial preparation or during the trial itself—where the government wishes to call Attorney Shaw as a witness regarding the incident that led to the recording. Defendant Shaffer would also have to stipulate the authenticity of the recording.

IV. CONCLUSION

For the reasons stated above, the government respectfully requests that the Court hold a hearing to address the conflicts of interest in the representation of John Suplizio by Attorney William A. Shaw, and if the Court determines that a conflict of interest exists, disqualify Attorney Shaw.

Respectfully submitted,

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