

Fumo's lawyer fights move to disqualify him

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Richard A. Sprague, lawyer for State Sen. Vincent Fumo.

Defense attorney Richard A. Sprague yesterday urged a federal judge to conduct an evidentiary hearing on a prosecution motion to disqualify him and his firm from representing State Sen. Vincent J. Fumo, calling the move tactical, prejudicial, and part of an effort to "smear defense counsel."

Sprague's 22-page response to the government's April 5 motion to disqualify him and lawyers for a codefendant did not specifically rebut the conflict-of-interest allegations of Assistant U.S. Attorney John J. Pease.

Sprague discounted the allegation's merit and argued that Fumo had a constitutional right to be defended by a lawyer of his choosing and could waive his right to any possible prejudice because of the purported conflicts.

"While Sen. Fumo takes issue with the timing, motivation and factual basis of the government's motion," Sprague's response reads, "he nevertheless recognizes that a court's determination on conflict-of-interest issues is necessarily fact-intensive and that courts must examine the particular circumstances of each case."

Sprague added that "counsel has become accustomed to the government's ongoing efforts to smear defense counsel. We are confident that once all the facts are adduced, the government's irresponsible allegations will be shown to be nothing more than just that."

U.S. District Judge William H. Yohn Jr. has not set a date for a hearing on the prosecution motion, and it was unclear whether such a hearing might delay the scheduled Feb. 25 start of Fumo's trial on mail fraud, conspiracy, obstruction of justice, and tax charges.

Just scheduling the hearing could be problematic. Sprague's motion said Fumo has hired New Jersey lawyer Glenn A. Zeitz to independently advise the South Philadelphia state senator about the pros and cons of waiving his right to a "conflict-free counsel."

Zeitz, however, wrote in a declaration attached to the response that he was on trial until at least Friday and would need 30 more days to review the numerous documents in the Fumo case before he would be ready

for a disqualification hearing.

Pease declined to comment on Sprague's filing. Defense attorney Mark B. Sheppard, a lawyer with Sprague's firm who has spoken for the firm on the issue, could not be reached yesterday for comment.

Pease has asked Yohn to consider removing Sprague from the case, noting that Sprague also represented the alleged victims in the case - and could even be called as a witness himself at next year's trial.

The three "victims" are the state Senate and two charities, Citizens' Alliance for Better Neighborhoods and the Independence Seaport Museum. Sprague's firm has been paid more than \$1.3 million for its work.

The massive 267-page indictment accuses Fumo, a veteran Democratic legislator and power-broker, with defrauding a multimillion-dollar charity, using Senate staff for personal and political errands, and engaging in a cover-up after the FBI and IRS began to investigate him.

Three of Fumo's former aides - Ruth Arnao, Mark C. Eister and Leonard P. Luchko - are also charged.

Lawyers for Arnao and Luchko yesterday also filed responses yesterday challenging the government's motion.

Unlike Sprague, neither defendant's lawyers commented on whether to hold a hearing.

But both stressed the prejudicial effect of any further delay in the Feb. 25 trial date.

Arnao's attorneys, Joel L. Frank and William H. Lamb, of the West Chester firm of Lamb McErlane P.C., argued in their response that prosecutors waited too long to try to disqualify them.

"Given the length of delay . . . the only question remaining is whether disqualification would result in prejudice to . . . Arnao. The answer to this question is a resounding "yes," wrote Frank.

Frank wrote that the firm began representing Arnao three years ago, at the beginning of the federal probe in which she was charged in 45 counts.

"In light of the magnitude, severity and factually intensive nature of this case," Frank added, "asking . . . Arnao to locate new counsel she will be comfortable with to defend her liberty in a trial that is to take place in less than one year is prejudicial indeed."

Pease has argued that Arnao's lawyers were paid by one of the scheme's alleged victims and that they have also represented potential prosecution witnesses in the case.

Although the government has not sought to disqualify Luchko's attorney, defense attorney James C. Schwartzman yesterday filed a response asking Yohn to expedite any hearing to avoid delaying the trial.

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