IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

DIVISION III

FILED 11-10-97
WILLIAM B. KEY, CLERK
BY _____ D.C.

STATE OF TENNESSEE

VS. **INDICTMENT NO: B-16645**

JAMES EARL RAY

APPLICATION FOR INTERPRETATION OF SUPREME COURT RULE 8, DR 9-101
AND
SUGGESTION OF RECUSAL
WITH
MEMORANDUM IN OPPOSITION TO RECUSAL

COMES NOW, James Earl Ray ("Defendant"), by and through his counsel Andy Hall, Esq. ("Hall") and Mike Roberts, Esq. ("Roberts"), collectively ("Counsel") and says:

APPLICATION FOR INTERPRETATION OF RULE 8, DR 9-101

INTRODUCTION

This Defendant, by and through his counsel, seeks an interpretation of Tennessee Supreme Court Rule 8, DR 9-101, concerning the question of whether Roberts, previously the Special Master to this Court, may represent Defendant in other proceedings involving Defendant. Defendant is preparing to file pleadings in this Court attempting to obtain a new trial from his plea of guilty to an Indictment for the killing of Dr. Martin Luther King, Jr.

ARGUMENT

Based upon the attached documentation, letters and a newspaper article, counsel for Defendant argue that Roberts is not disqualified under Supreme Court Rule 8, DR 9-101 or otherwise from representing Defendant in this Court. Additionally, counsel would point out that the Office of the District Attorney General, by Assistant District Attorney John Campbell ("Campbell"), has admitted there exists no conflict or ethical violation, under Rule 8, DR 9-101 or otherwise, from such representation of Defendant by Roberts "provided the case is not heard in Division III [this Court]". Mr. Campbell also made the same statements to Roberts in discussions intended to resolve all ethical disputes before filing these pleadings. No other pleadings have been filed by counsel in this cause.

In point of fact, the District Attorney has admitted no conflict or violation of the ethical rule(s) exists or will occur but apparently claims this Court should recuse on grounds of bias, predisposition or other alleged basis.

Counsel for Defendant request this Court review Attachments A-H hereto, being individually: A: Request for Formal Ethics Opinion; B: Notice to the District Attorney General; C: Supplement to the Request for Ethics Opinion; D: Second Supplement as in "C"; E: Letter from Board of Professional Responsibility declining to issue requested Formal Ethics Opinion and referring matter back to this Court; F: Letter from Roberts to Campbell; G: Excerpt from Commercial Appeal, November 6, 1997 paraphrasing Mr. Campbell; H: Letter from Roberts to Campbell.

CONCLUSION

Counsel for Defendant accept the admission by the District Attorney that no violation of Supreme Court Rule 8, DR 9-101 will result from Robert's representation of the Defendant. Counsel for Defendant argue no such violation will result from Roberts representing Defendant in this Court on claims expected to be filed immediately upon this Court's ruling on both this issue and on the Defendant's Suggestion of Recusal.

SUGGESTION OF RECUSAL

INTRODUCTION

Assistant District Attorney Campbell admits Roberts' representation of Defendant will not violate Rule 8, DR 9-101 but claims Roberts cannot represent the Defendant in this Court, the court of original jurisdiction and sentencing. Counsel for Defendant must file certain motions in this sentencing court either under the Tennessee Post-Conviction Procedure Act or other Tennessee common law, statutes or acts, or under the respective Constitutions of Tennessee or the United States. These motions are essential to provide access by counsel's expert witnesses for testing and evaluation of the Defendant, among other things. Counsel believe only this Court can grant such necessary Orders directing the Tennessee Department of Corrections to cooperate in allowing counsel's scientific experts [one being the co-recipient of the Pulitzer Prize and both being recognized as the leading scientific experts in their respective fields] reasonable and proper access to Defendant for testing and evaluation. Without such reasonable and appropriate access for scientific experts, counsel cannot adequately represent Defendant.

The District Attorney General claims this Court should not rule on such motions. Counsel anticipates the District Attorney will move to disqualify this Court.

ARGUMENT AND MEMORANDUM IN OPPOSITION TO RECUSAL

Recusal or disqualification of a trial judge is left to the sound discretion of that judge. State v. Patton, 817 S.W.2d 28 (Tenn. Crim. App. 1991)(discretion to be exercised solely by trial judge). While every litigant in entitled to an impartial judge, Marress v. Carolina Direct Farms, Inc., 785 S.W.2d 121 (Tenn. Ct. App.), the Courts of Appeal will not interfere with the exercise of judicial discretion except for clear abuse of discretion on the Record, Caruthers v. State, 814 S.W.2d 64 (Tenn. Ct. App. 1991).

Even in a startling case where the trial judge previously acted as a prosecuting attorney and obtained a criminal conviction of the defendant, the trial judge was not required to recuse. The

prior prosecutor, and current trial judge, [being the very same person] was not required to recuse where there was no factual basis in the Record supporting disqualification. State v. Smith, 906 S.W.2d 6 (Tenn. Crim. App. 1995). Mere allegations or opinions are insufficient for recusal or disqualification.

General allegations or affidavits claiming a judge is biased or predisposed in hearing a case are not enough to recuse a trial judge. If the judge denies bias or predisposition and the Record does not specifically and clearly support such allegations, then recusal or disqualification cannot be pursued and the question is not appropriate for appeal. In re Murphy, 726 S.W.2d 509 (Tenn. 1987). If the trial judge denies bias or predisposition the controversy is ended. In re Cameron, 115 S.W.2d 64 (Tenn. 1912).

The test to be applied by the trial judge considering a Suggestion for Recusal is an objective, not subjective analysis: whether the judge has doubts about his or her impartiality to preside over the proceedings; whether, knowing all the relevant judicial facts, the judge would be predisposed; and whether, due to personal prejudice or knowledge gained from an extra-judicial source, the judge would render an opinion based upon facts the judge did not learn from participation in the case. Alley v. State, 882 S.W.2d 810 (Tenn. Crim. App. 1994). To disqualify a Tennessee trial judge, the Record must show, beyond any doubt, satisfaction of the Alley test, supra, and further show the judge has not denied bias or predisposition, In re Cameron, supra. Emphasis added. The Record must contain facts supporting disqualification which the judge has not denied, In re Murphy, supra.

The Record in this matter shows this Court entered an Order on August 18, 1997, to specifically prevent the Court from learning any information about this case or about allegations that some other person(s) killed Dr. Martin Luther King, Jr. by directing the then Special Master take by ex parte testimony and preserve evidence from persons claiming other person(s) conspired to kill Dr. King. Emphasis added. That Order specifically directed the Special Master to seal such recorded testimony and file the sealed transcript with the Clerk of the Court. The Order provided that Judge Colton "shall not see the testimony taken". All Parties have a copy of this Order. This Court received no information about these proceedings, either from the Special Master, Roberts, then acting pursuant to the Judge's Order, or to the knowledge of counsel, from any other extra-judicial source.

Even if the Judge had some knowledge about the Defendant or the Defendant's prior litigation or conduct, that knowledge would not be enough to justify recusal or disqualification of this Court. Grey v. State, 542 S.W.2d 102 (Tenn. Crim. App. 1976)(a judge's knowledge of defendant's other criminal and anti-social behavior not sufficient to show bias or partiality to justify recusal).

The State of Tennessee has expended very considerable effort and talent keeping this Defendant from taking the witness stand in an evidentiary hearing. In point of fact, a motion to recuse or disqualify should not be used by the government for judge or forum shopping. United States v. Baker, 441 F. Supp. 612 (M.D. Tenn. 1977).

The widow and son of Dr. Martin Luther King, Jr., have previously testified in this courthouse that they support an evidentiary hearing so Defendant can tell his story. The Defendant is slowly dying of liver disease. History counsels against the suppression of controversial facts for the benefit of transitory societal benefits.

CONCLUSION

For all these reasons this Court should not order recusal or disqualify itself when on the clear Record there are no facts to show bias or predisposition. In point of fact, the Record clearly shows the Court to be unaware of the facts and allegations which will become at issue in these proceedings. The Record shows this Court has no bias or predisposition.

Respectfully submitted,

Mike Roberts, Esq.
BPR # 000001
195 South Goodlett
Memphis, Tennessee 38117
901-761-3784

Andrew N. Hall, Esq.
BPR # 013481
505 Main Street, P. O. Box 345
Wartburg, Tennessee 37887
423-346-7750

CERTIFICATE OF SERVICE

I certify that I hand delivered a true copy of this pleading to Assistant District Attorney John Campbell on Monday, November 10, 1997 and previously informed counsel, by mutual agreement, of the time and date of the hearing on this application.

By Priority Mail

September 11, 1997

Lance B. Bracy, Esq.
Chief Disciplinary Counsel
Board of Professional Responsibility
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217

RE: REQUEST FOR FORMAL ETHICS RULING: STATE OF TENNESSEE vs. JAMES EARL RAY

Dear Mr. Bracy:

Enclosed my request for a Formal Ethics Opinion in the referenced case.

Thank you.

Sincerely,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Russell C. Winston, Esq.

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A.

PART I: INTRODUCTION

I am licensed to practice law in Tennessee and make application for a Formal Ethics Ruling.

With this letter I am requesting a Formal Ethics Ruling on questions which I have been unable to resolve after talking with a judge, a number of trial attorneys and Professor Ernest Lidge who teaches Professional Responsibility at the University of Memphis School of Law.

I request the ruling be especially well researched, deliberative and fully explained with references to the **Code of Judicial Conduct** and the **Code of Professional Responsibility** or other

controlling authority wherever possible. I believe very serious ethical and legal questions are at issue and want to completely and entirely comply with all relevant and applicable legal and ethical standards.

Under the facts, as set out below, the answers to my questions may depend upon the application of one or both of the referenced Codes and/or upon statutes or common law. I have been unable to resolve these complex issues and no person with whom I have consulted is confident of the ultimate answer.

PART II: FACTS

I believe the following are relevant and applicable facts, among other facts, and will provide more information if requested.

On July 24, 1997, the Honorable John P. Colton, Jr., Judge of Criminal Court, Division III of the Thirtieth Judicial District at Memphis, Tennessee appointed me a Special Master to the Court. Judge Colton believes his court has original and continuing jurisdiction in **State of Tennessee vs. James Earl Ray**. A copy of that Order is attached as Exhibit A.

On August 18, 1997, Judge Colton issued an Order directing the Special Master to take and preserve certain evidence of an alleged conspiracy to kill Dr. Martin Luther King, Jr. The Order provided that the Special Master could issue subpoenas, take ex parte testimony before a court reporter and promptly seal such testimony and file the sealed transcript with the Clerk of the Criminal Court. The Order provided that Judge Colton "shall not see the testimony taken". A copy of that Order is attached as Exhibit B.

Judge Colton issued the Order of August 18, 1997, in response to individuals appearing at the Chambers of the Judge and attempting to tell Judge Colton about an alleged conspiracy to kill Dr. King. The Statute of Limitations on Murder and Conspiracy to Murder never tolls in Tennessee. Judge Colton refused to speak with each of these persons and directed them to the Special Master. Judge Colton received no information about the alleged conspiracy.

The Special Master was contacted by various individuals who made statements about two topics:

1) an alleged conspiracy to assassinate Dr. Martin Luther King, Jr.; and,

2) complaints the Office of the District Attorney General and investigator(s) working with that office had refused to interview individuals who offered information relevant to the alleged conspiracy and refused to investigate the alleged conspiracy and had allegedly harassed and intimidated individuals attempting to provide information about the alleged conspiracy.

It is important to note that in my opinion certain of these individuals feared retaliation from the District Attorney and his investigator(s).

It is important to note that no sworn depositions were taken, sealed and filed with the Clerk in accordance with the August 18, 1997, Order, Exhibit B, because the Attorney General of Tennessee filed an Extraordinary Appeal and Application for Stay which was granted on August 29, 1997. This application for extraordinary appeal and stay was filed within hours of my being given subpoena powers under Judge Colton's Order of August 18, 1997. Upon receiving notice of the filing by the Attorney General of Tennessee representing the District Attorney, I took no further action to issue subpoenas and take sworn statements. A copy of the Opinion of the Court of Criminal Appeals is attached as Exhibit C.

It is important to note that while acting as the Special Master, I was unable to make any determination about the truth or accuracy of the allegations being made to me, and I was unable to judge the character and credibility of individuals making complaints about numbers 1 and 2 above. I cannot represent any person was telling the truth or lying. Nor can I represent the accuracy of any statement made to me. I can say I believe certain of these persons have genuine fears of retaliation from the Office of the District Attorney General but cannot say whether that fear is rational or grounded in fact.

It is important to note that the individuals who came to me with information about an alleged conspiracy to kill Dr. King did so only after I was named a Special Master by Order of Division III of the Criminal Court. These people talked to me in my status as an appointee of a judge and a perceived judicial officer designated by the Court and not as an attorney who is, by nature of practicing law before a court, also a non-judicial officer of that court. In my opinion, this is an important and operative distinction.

In my opinion and based upon my observations, these individuals believed their statements to me would be held in confidence and would not be disclosed to any person or party except the Court. I did not tell these people I was acting as their attorney or that they had an attorney-client privilege with me while I was Special Master. I did tell these people I was appointed by the Court and ordered to listen to the information which they had attempted to communicate directly to Judge Colton.

In my opinion and based upon my observations, these people, as lay persons, believed they had an privileged relationship with me or that there was a judicial privilege extending to them and that what they told me would never be disclosed to any person or party other than Judge Colton and certainly not to a party to litigation such as the District Attorney General or the State of Tennessee.

In my opinion and based upon my observations, these people believed they were making statements of fact or opinion to the judicial branch of government and not to the executive branch and this is particularly my impression concerning their allegations the Office of the District Attorney General was not properly investigating the alleged conspiracy and had harassed individuals attempting to provide information about the killing of Dr. King.

In my opinion and based upon my observations, these lay persons would have made no

statements to me if they had any inkling their communications would be reported to or be discoverable by the District Attorney General because their statements about an alleged conspiracy to commit murder were so intertwined with their complaints about alleged harassment and the conduct of the investigation.

On September 8, 1997, I received a letter from the District Attorney General asking me to provide information which I learned about the alleged conspiracy to kill Dr. King. A copy of that letter is attached as Exhibit D. I responded and told the representative of the Attorney General I would provide the information after obtaining permission from Judge Colton and obtaining an ethics opinion from the Board of Professional Responsibility.

PART III: ETHICAL QUESTIONS OR ISSUES

Based upon the facts set forth herein, I have questions about my ethical duties and responsibilities to divulge information set out in Part II at 1 and 2, specifically: 1) facts about the alleged conspiracy and 2) the identity of individuals who complained to me that the Office of the Attorney General would not properly investigate the alleged conspiracy and allegedly harassed and intimidated individuals attempting to provide information to the District Attorney and his investigator(s).

In point of fact, I do not know if any statement or complaint which I was told is true and correct. I do believe certain of these persons had a genuine fear of retaliation but do not know if that fear was rational and grounded in experience, or conjecture or paranoia.

I have reviewed the **Code of Judicial Conduct**, Sections 3(B)(11) and 3(C)(2) and 3(C)(4) and the **Code of Professional Ethics**, Canon 4, and Ethical Consideration 4-2, 4-3, 4-4 as well as Disciplinary Rule 4-101(A).

In Disciplinary Rule 4-101(A), I paid particular attention to the distinction between what is the subject of the attorney-client privilege and the concept of a separate class or category of information designated as a "secret" which might not fall under the attorney-client privilege but still be protected as a "secret" told to an attorney or to an attorney acting as an appointed judicial officer under the **Code of Judicial Conduct.**

From my research and consultations I conclude that a number of ethical questions arise from these facts and that most, if not all, are issues of first impression.

These facts, in my opinion, raise ethical questions about the separation of powers between and among the Executive and Judicial branches of Tennessee government; the power of the Judiciary to appoint individuals to carry out ministerial, non-adjudicative duties; the integrity and secrecy of the judicial process and the question of a "judicial privilege" to receive information when that

information concerns allegations the Executive branch of government is purportedly not performing its prosecutorial role and/or abusing authority by allegedly harassing individuals attempting to provide information about a crime.

These facts, in my opinion, raise ethical questions about the expectations of lay person citizens who attempt to report a crime to a prosecutor and additionally, with intertwined facts, allege to an appointee of the judiciary, harassment by the prosecutor to whom they attempted to report a crime.

In my opinion, these facts raise serious ethical questions about the expectations of lay persons concerning the sanctity of the judiciary and its deliberative functions and the integrity of expected confidential communications to the judiciary or an appointee of the judiciary.

These are but a few of the many ethical questions and issues which I have considered and which a judge, a number of trial lawyers and Professor Lidge have raised. I doubt I have expressed each question in the best possible characterization and with exquisite definition. I simply ask for a through analysis from the Board and stand willing to supplement this request with facts or opinion, if requested.

Additionally, I want to assure the Board this request is made in good faith and in a genuine and sincere attempt to avoid any kind of confrontation with the Office of the District Attorney.

Respectfully submitted,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Russell C. Winston, Esq.

By U.S. Mail

September 11, 1997

Honorable Bill Gibbons
District Attorney General
Thirtieth Judicial District of Tennessee
201 Poplar Avenue, Suite 301
Memphis, Tennessee 38103-1947

RE: Further response to your letter dated September 5, 1997, concerning any information I have about an alleged conspiracy to kill Dr. Martin Luther King, Jr.

Dear Attorney General Gibbons:

The attached letter to Lance B. Bracy, Esq., Chief Disciplinary Counsel of the Tennessee Board of Professional Responsibility, evidences the fact I have made a formal request for an Ethics Opinion.

I now ask that all further communication be through my counsel, Messrs. Emmons and Winston. Thank you.

Respectfully,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Wayne Emmons, Esq.
Russell C. Winston, Esq.

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B.

October 1, 1997

Lance B. Bracy, Esq.
Chief Disciplinary Counsel
Board of Professional Responsibility
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217

RE: REQUEST FOR FORMAL ETHICS RULING: STATE OF TENNESSEE vs. JAMES EARL RAY: Response to your letter of September 23, 1997

Dear Mr. Bracy:

Responsive to your requests in the referenced letter:

I have no "memorandum or brief" on the issues presented.

I certify, to the best of my knowledge at the date of this letter, these issues are not before any court.

I received no "summaries of authorities or opinions" from the judge, lawyers or the Professor with whom I consulted prior to writing a request for a Formal Ethics Opinion. To my knowledge these issues are a matter of first impression. There may be precedent in Tennessee from the use, by a Chancery Court, of an appointed "master", or by the function of the Clerk of the Chancery Court as a "Clerk and Master".

Trusting this is responsive, please let me know if I can be of assistance.

Thank you.

Sincerely,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Russell C. Winston, Esq.

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C.

October 13, 1997

Lance B. Bracy, Esq.
Chief Disciplinary Counsel
Board of Professional Responsibility
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217

RE: REQUEST FOR FORMAL ETHICS RULING: STATE OF TENNESSEE vs. JAMES EARL RAY: Response to your letter of October 3, 1997

Dear Mr. Bracy:

Responsive to your requests in the referenced letter:

Prior to drafting my September 11, 1997, request for a Formal Ethics Opinion, I met with Judge Colton and the Judge instructed me to draft the request for an ethics opinion.

After receiving your letter of October 3, 1997, I met with Judge Colton and the Judge again directed me to obtain a Formal Ethics Opinion before speaking to the Shelby County District Attorney General.

I believe the questions raised in my September 11, 1997, request for a Formal Ethics Opinion are so complex and serious that they can only be resolved by your office rendering the requested opinion.

Trusting this is responsive, please let me know if I can be of assistance.

Thank you.

Sincerely,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Russell C. Winston, Esq.

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D.

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

LANCE B. BRACY
CHIEF DISCIPLINARY COUNSEL

LAURA L. CHASTAIN
DEPUTY CHIEF DISCIPLINARY COUNSEL

1101 KERMIT DRIVE, SUITE 730
NASHVILLE, TENNESSEE 37217
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WILLIAM W. HUNT, III
CHARLES A HIGH
SANDY GARRETT
JESSE D. JOSEPH
JULIANNE H. WAGNON
JAMES A. VICK
DISCIPLINARY COUNSEL

October 20, 1997

Mike Roberts, Esquire
Professor of Law
Cecil C. Humphreys School of Law
Campus Box 526513
Memphis, TN 38152-6513

Re: State of Tennessee v. James Earl Ray

Dear Mr. Roberts:

Extensive consideration has been given to your request for an ethics opinion relating to what response you, as Special Master of the Criminal Court, should make to the request of the District Attorney General to be provided with information you received, as Special Master, about the alleged conspiracy to kill Dr. Martin Luther King, Jr.

This is a legal issue which should be resolved by Judge Colton, who appointed you as Special Master, and/or any other appropriate forum having authority to address the legal issue, and/or related legal issues.

Sincerely,

Lance B. Bracy
Chief Disciplinary Counsel

LBB:cj

E.

Hand Delivered

November 5, 1997

Honorable Bill Gibbons, District Attorney General
Honorable John Campbell, Assistant District Attorney General
Thirtieth Judicial District of Tennessee

RE: Tennessee v. Ray: Request by Defendant Mr. James Earl Ray for representation.

Dear Attorney General Gibbons and Assistant Attorney General Campbell:

I am writing you both directly because my attorneys, Russell C. Winston, Esq. and Wayne Emmons, Esq., cannot immediately address this issue and time is of the essence due to Mr. Ray's illness. Thus, I waive the privilege of their representation and ask you to respond to me by fax.

I recently received a notarized letter from Mr. Ray asking me to join his attorney, Andy Hall, Esq., in representation. I have met with Mr. Hall and discussed, among other things, Tennessee Supreme Court Rule 8, DR 9-101(A). I have discussed DR 9-101 with Richard Glassman, Esq., whom I consider to be the leading ethics expert in Tennessee. I have discussed the ethical issues with a professor of legal ethics. Mr. Glassman has advised me to deliver this letter to you and Judge Colton.

I expect to file pleadings on behalf of Mr. Ray on Monday morning, November 10th. In anticipation of that filing, I have obtained for Mr. Ray the uncompensated services of the leading experts in the United States in two specific scientific disciplines. One of these experts was awarded the Pulitzer Prize. These experts will not make requests for reimbursement from State or County funds.

After consulting with Richard Glassman, Andy Hall and others, I conclude my work for Judge Colton did not fall within the scope of DR 9-101. My work for Judge Colton involved reviewing the physical condition of otherwise public files, kept in the Chambers of Judge Brown, and listening to three citizens who alleged the existence of a conspiracy, by other persons, not Mr. Ray, to kill Dr. King. Your office has now interrogated these people and thus you would not be prejudiced by any knowledge I have about their allegations. Further, their allegations involve

F.

other alleged conspiracies to kill Dr. King and not the conduct of or plea entered by Mr. Ray.

When your office requested to interview me, I submitted to the Tennessee Board of Professional Responsibility ("Board") a request for a Formal Ethics Opinion. The Board has declined to render an opinion and returned the matter to Judge Colton. Judge Colton now has the matter under advisement. A copy of the Board's letter is attached hereto. The Board's letter says, in part: "This [my questions and request for a Formal Ethics Opinion] is a legal issue which should be resolved by Judge Colton,.... ".

Based upon my research and understanding of DR 9-101 and upon the opinion of Mr. Glassman and others, I conclude DR 9-101 does not apply to me because while serving as Special Master to Judge Colton, I did not in any way act in a judicial capacity upon the merits of any issue related to the claims or anticipated claims of Mr. Ray. My service to Judge Colton was limited to reviewing public files in the Chambers of Judge Brown and interviewing individuals, whom you have now interrogated, claiming that other persons formed a conspiracy to kill Dr. King and such alleged conspiracy(s) had not been investigated. None of my functions as Special Master in any way passed or opined upon the merits of Mr. Ray's past or anticipated claims.

As you know time is of the essence due to Mr. Ray's illness. I am prepared to file pleadings on behalf of Mr. Ray on Monday morning. I am politely requesting you not object to my representation since the Disciplinary Rule will not be violated and because Mrs. Coretta Scott King and her son Mr. Dexter King have both recently testified they want Mr. Ray to take the witness stand and tell his story. I believe Memphis will be a better place for the truth coming out and am willing, along with Mr. Hall, to give Mr. Ray pro bono representation in an effort to obtain a hearing allowing Mr. Ray the opportunity to tell his story.

I would very much appreciate your professional courtesy in this matter. Please fax your prompt response to 901-763-0935 at 195 South Goodlett, Memphis, Tennessee 38117. Thank you.

Sincerely,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Richard Glassman, Esq.
Russell C. Winston, Esq.
Wayne Emmons, Esq.

Lawyers strategize to win freedom for James Earl Ray

By Marc Perrusquia
The Commercial Appeal

Attorneys are preparing another legal salvo in the continuing effort to win freedom for James Earl Ray.

Lawyer Andrew Hall said Wednesday he plans to file a new motion next week to set aside Ray's 1969 guilty plea for the assassination of Dr. Martin Luther King Jr. Hall said he will argue Ray was mentally incompetent when he pleaded, suffering from isolation and harassment in the Shelby County Jail.

Hall, who has represented Ray in a variety of civil matters for eight years, may be joined by University of Memphis law professor Mike Roberts.

Roberts said he'll represent Ray provided he has no ethical conflicts. Roberts briefly served this summer as a special master appointed by Criminal Court Judge John P. Colton Jr. to investigate a possible conspiracy in King's murder.

Mike Roberts

Roberts met Wednesday with prosecutor John Campbell, who said he sees no conflict for Roberts provided the case is not heard in the court's Division 3, where Colton serves.

Roberts said he's hired an ethics attorney for guidance.

Ray, 69, is slowly dying of liver disease, and lawyers have made several recent bids to win a trial and at least temporary freedom for a possible liver transplant. Recent bids include arguments that the murder rifle found with Ray's fingerprints on it was planted and that he was improperly blocked from retracting his plea in 1969.

To reach reporter Marc Perrusquia call 529-2545 or E-mail perrusquia@gomemphis.com

G.

Hand Delivered

November 6, 1997

Honorable John Campbell
Assistant District Attorney General
Thirtieth Judicial District of Tennessee

RE: Tennessee v. Ray: Request by Defendant Mr. James Earl Ray for representation.

Dear John:

I am writing to express my surprise at being called by a reporter for the **Atlanta Constitution** and told you apparently have altered our agreement reached just before noon today. This reporter asked me to comment in rebuttal to your statements. I declined to comment because I have too much respect for you as a lawyer and prosecutor to engage in debate through the press.

Let me set out what I understood our agreement to be: I hand delivered a letter dated November 5th to you and we then discussed the issues raised in that letter. I understood both you and I agreed my service as Special Master to Judge Colton did not fall within the prohibitions of Supreme Court Rule 8, DR 9-101. I understood my review of the files in Judge Brown's chambers and my listening to individuals claiming, among other things, that other persons conspired to kill Dr. King did not create any conflict with the disciplinary rule.

According to the reporter, you made the statement this afternoon that you had no problem with my representing Mr. Ray "as long as the matter does not end up in Judge Colton's court". I was so surprised by the reporter's claim I refused to comment.

You agreed with me that my acting as a Special Master does not constitute a violation of DR 9-101. Once that factual agreement was reached, the question of any particular judge hearing the case is, in my opinion, irrelevant. I think it is unfair to imply Judge Colton would not be fair and objective in his rulings if the case came before him. Perhaps you had some other basis for your distinction. Whatever your position, I remain unwilling to debate the merits in the newspapers and certainly hope the **Atlanta Constitution** does not print your comments. I urged

H.

the reporter to refrain from opening the issue. I wish you had raised this objection with me in our conversation.

Based upon my present understanding of your objections, Mr. Hall and I will file on Monday morning an Application for Interpretation of DR 9-101 and ask for a setting and hearing. Additionally, you should know Mr. Hall and I have preliminary and procedural motions to file which, in my opinion, can only be addressed by the sentencing court. Further, I believe the October 20, 1997, letter to me from the Board of Professional Responsibility returns all these questions to Judge Colton. However, if the Judge is unwilling to rule, I will ask the Board to reconsider their previous refusal to render an opinion.

Again, I respectfully request your professional courtesy in this matter. Thank you.

Sincerely,

Mike Roberts
Professor of Law

cc: Honorable John P. Colton, Jr.
Richard Glassman, Esq.
Russell C. Winston, Esq.
Wayne Emmons, Esq.

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