Ca	e 2:08-cv-00635-PMP-GWF Document 27	1 Filed 01/29/10 Page 1 of 6
1 2 3	JAMES KIMSEY Post Office Box 8147 Naples, Florida 34101 Tele: 239-352-0841 Interested Party	2010 JAN 29 A 9: 02
4		
5	UNITED STATES	DISTRICT COURT
6		OF NEVADA
7	KIRK and AMY HENRY,	CASE NO. 2:08-CV-00635-PMP-GWF
8	Plaintiffs, vs.	PRE-HEARING BRIEF STATEMENT
9	vs. RICK RIZZOLO, et al.,	Date of Hearing: January 29, 2010
10	Defendants.	Time of Hearing: 09:30 a.m.
11	Detendants.	
12		
13		arty in this matter, having accepted service of the
14	Order to Show Cause (#242), on January 21, 20	
15		
16	NATURE OF THE ACTION	
17		Common Law Fraud and Violation of Uniform
18	-	Agreement in an underlying criminal case, Case
19		nation does not seek to set aside any provision of
20	•	to seek payment and right of enforcement of the
21		e abandoned state court action by redetermination
22		ants and the reallocation of the property and assets
23		t Lisa Rizzolo has answered and filed cross-claim
24	against Defendant Rick Rizzolo for Indemnificat	
25	Defendant Rick Rizzolo has not answere	
26		Show Cause (#242) was entered pertaining to
27		law by the Interested Party allegedly acting as
28	"ghost writer" for unrepresented Defendant Rich	k Rizzolo.

1	П.	
2	STATEMENT OF JURISDICTION	
3	The Order (#242) references jurisdiction pursuant to 28 U.S.C. §636(e)(6), and	
4	Fed.R.Crim.Pro 42.	
5	Local Rules, IA 10-7(f) providing for alleged unauthorized practice of law as contempt of	
6	court refers only to certain attorneys.	
7	The Interested Party, incorporating the documents and pleadings of the record of the Court,	
8	further objects to and disputes jurisdiction on several grounds:	
9	1. The primary underlying cause of action is predicated on a valid <i>Decree of Divorce</i>	
10	over which this Court cannot exercise jurisdiction. If subject matter jurisdiction is not present, this	
11	individual case for contempt cannot proceed.	
12	2. Subject matter jurisdiction is also not present as Plaintiffs waived certain remedies	
13	of collection by executing an agreement (#68) with the Government in the related criminal case, an	
14	agreement entered as an order (#70). Plaintiffs, in that criminal case stated (Docket 191, pg. 3, lns.	
15	19-24):	
16	The bargain struck by Docket #68 is simple. In order to clear the way for the Government's sale of the property and remove any clear title issues,	
17	"The Henrys knowingly and voluntarily agree to the abandonment, the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the	
18 19	property" (p.3, ¶9). What the Henrys receive in return:	
20	"After the property is forfeited with the final Order of Forfeiture the United States knowingly and voluntarily	
21	agrees the Henrys will be the first to receive payment from the proceeds of the sale." $(p.4, \P40)$.	
22	As a result of that agreement, the Government, with the consent and agreement of	
23	the Plaintiffs, expressly cited to 28 U.S.C. §3001, et seq., for the purpose of obtaining "assets	
24	owned by defendants for the payment of forfeiture, restitution, assessments, fines, etc." (Exhibit No.	
25	1 Docket No. 59, pg. 2, lns. 15-16), and obtained property valued in excess of \$30,000,000.00	
26	towards that obligation. and all other fines and forfeitures, thus satisfying the obligation.	
27		
28		

-

1	Consequently, this Court maintains subject matter jurisdiction only in the underlying		
2	criminal case where the obligations of Defendant Rizzolo have been satisfied. If subject matter		
3	jurisdiction is	not present, this individual case for contempt cannot proceed.	
4	3.	Defendant reserves the right to state additional objections as same become known	
5		III.	
6		FACTS ADMITTED	
7	1.	Defendant Rizzolo's prior counsel withdrew on January 7, 2009 (#55)	
8	2.	On June 30, 2009, according to the Magistrate Judge (#136, pg. 1, ln. 28, pg. 2, lns	
9	1-5): "Rick Ri	izzolo is not currently represented by counsel in this action, although there appears	
10	to be an ongoing informal attorney-client relationship between Mr. Rizzolo and Patti, Sgro & Lewis		
11	in relation to th	his lawsuit. Mark Hafer of Patti, Sgro & Lewis has, for example, communicated with	
12	Lionel Sawyer	& Collins regarding Mr. Rizzolo's position on the production of records by that law	
13	firm to Plaintiffs. See Lionel Sawyer & Collins' Response to Plaintiffs' Motion to Compel (#133),		
14	filed June 22, 2009.		
15	3.	On July 13, 2009, the Interested Party was present at a hearing before the Magistrate	
16	Judge attended by Defendant and his attorney, Mark Hafer, who entered appearance on behalf of		
17	Defendant.		
18	4.	On September 15, 2009, the Interested Party was present at a hearing before the	
19	Magistrate Judge attended by Defendant and his attorney, Mark Hafer, who entered appearance on		
20	behalf of he D	efendant.	
21	5.	On October 7, 2009, the Interested Party was present outside the courtroom at a	
22	hearing before	e the Magistrate Judge attended by Defendant and his attorney, Ken Frizzell, who	
23	entered appea	rance on behalf of the Defendant.	
24		IV.	
25		FACTS NOT ADMITTED BUT UNCONTESTED	
26		None.	
27			
28			

•

1	V.	
2	CONTESTED FACTS	
3	1. Whether purported non-attorney committed any act which could result in a finding	
4	of contempt.	
5	2. Whether purported non-attorney entered any appearance in court, executed a notice	
6	of appearance or otherwise attempted to conduct hearing or trial as stated in the Magistrate Judge's	
7	citation to United States v. Marthaler, 571 F.2d 1104 (9th Cir. 1978).	
8	2. Whether Defendant directed research and exercised controlling judgment as to any	
9	submission sufficient to dispel unauthorized practice of law by purported non-attorney.	
10	3. Whether alleged actions by purported non-attorney were permissible clevical actions	
11	common in the local jurisdiction.	
12	4. Whether any form of attorney supervision and communication was present sufficient	
13	to dispel unauthorized practice of law by purported non-attorney.	
14	5. Whether purported non-attorney is a "non-attorney" or otherwise authorized to	
15	practice law within the meaning of NRS 7.285 and/or definition as stated in 20 C.F.R. §802, et seq.	
16	such as with a tribal court or similar entity.	
17	6. Whether purported "non-attorney" is presently involved in any manner with the	
18	underlying case, and if so, whether that involvement is under attorney supervision.	
19	7. Interested Party, as the purported non-attorney, reserves the right to submit	
20	additional contested facts as may be discovered on reasonable due diligence.	
21	VI.	
22	ISSUES OF LAW	
23	1. Whether Court has subject matter jurisdiction in the underlying case, without which	
24	a contempt cannot proceed.	
25	2. Whether Defendant, while in constructive custody of supervised release, was entitled	
26	to rely on non-attorney assistance to protect First Amendment access to the judicial process.	
27	3. If the alleged acts involving contemptuous conduct occurred in view of the Court,	
28	and if so, whether the Court is disqualified from hearing the matter.	

Case 2:08-cv-00635-PMP-GWF Document 271 Filed 01/29/10 Page 5 of 6

-

1	4	Whether the matter is more appropriately a civil v. criminal contempt, and if civil,	
2	whether the conduct has already been addressed and corrected by the fees and costs under		
3	consideration by the Magistrate Judge.		
4	5 Whether alleged 1987 convictions which resulted in 1996 release as submitted to		
5	the Court are stale, outside the scope of permissible evidentiary standards, and violate the		
6	restoration in AB55 (Nev. Leg.2003).		
7	6. Whether evidence is sufficient to find guilt beyond a reasonable doubt of criminal		
8	contempt.		
9	7.	Interested Party, as the purported non-attorney, reserves the right to submit	
10	additional co	ntested facts as may be discovered on reasonable due diligence.	
11	VII.		
12		EXHIBITS AND WITNESSES	
13	1.	<u>Exhibits</u>	
14		(A) Any exhibit as necessary for impeachment or rebuttal.	
15		(B) Interested Party will reserve the right to use or present any exhibit listed by	
16	the prosecution	on and to present rebuttal evidence, as well as to challenge any exhibit or evidence	
17	presented by	the prosecution on the basis of foundation, relevance, hearsay, and other objections	
18	necessary to	protect the rights of the Interested Party.	
19	2.	Witnesses	
20		(A) Eric Christensen	
21		(B) Hon. George Foley	
22		(C) Kenneth Frizzell	
23		(D) Marc Hafer	
24		(E) Steve Miller	
25		(F) Rick Rizzolo	
26		(G) Carrie Geer Thevenot	
27		(H) Hon. B. Zvenia	
28		(I) Any witness as necessary for impeachment or rebuttal.	

.

l

1	(J) Interested Party will reserve the right to call any witness listed by the	
2	prosecution and to present rebuttal witnesses, as well as to challenge any witness presented by the	
3	prosecution on the basis of foundation, relevance, hearsay, and other objections necessary to	
4	protect the rights of the Interested Party.	
5	Accordingly, the Interested Party prays this matter be dismissed.	
6	DATED this 28th Day of January, 2010.	
7	INTERESTED PARTY	
8	(2)	
9	JAMES KIMSEY	
10	CERTIFICATE OF SERVICE	
11		
12	The Undersigned, an individual not a party to the within cause of action, pursuant to Fed.R.Civ.P. 5, did serve a true and correct copy the foregoing document by:	
13		
14	in a sealed envelope in a designated area for outgoing United States Mail, addressed as set forth below.	
15	[] Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.	
16 17	[X] Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the	
18	Hon. Phillip Pro, J. United States Attorney	
19	United States District CourtAttn: Phillip LevittFax: (702) 464-5511Fax: (702) 388-6418	
20	DATED this 28 th Day of January 2010.	
21	INTERESTED PARTY	
22		
23	JAMES KIMSEY	
24		
25		
26		
27		
28		