

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 09 CR 002-2
v.)	Judge Glen H. Davidson
)	Magistrate Judge S. Allan Alexander
BOBBY B. DELAUGHTER,)	
)	
Defendant.)	

**DEFENDANT DELAUGHTER’S MOTION TO VACATE TRIAL
DATE OF APRIL 6, 2009, AND TO SCHEDULE STATUS CONFERENCE**

Defendant, **BOBBY B. DELAUGHTER**, by and through his attorneys, **THOMAS ANTHONY DURKIN** and **LAWRENCE L. LITTLE**, pursuant to the Due Process and Effective Assistance of Counsel provisions of the Fifth and Sixth Amendments to the Constitution of the United States, respectfully moves this Court to vacate the presently scheduled trial date of April 6, 2009, and to schedule a status conference on a date convenient for the Court and the parties subsequent to the filing of Defendant’s pre-trial motions on March 26, 2009.

In support of this motion, Defendant, through counsel, shows to the Court the following:

1. On February 12, 2009, a scheduling order was entered at the arraignment requiring Defendant’s pre-trial motions to be filed on or before March 5, 2009. At the time of the arraignment, Defendant was represented by Attorney Cynthia H. Speetjens.
2. Based upon a conflict of interest, on March 4, 2009, Ms. Speetjens filed a Motion To Withdraw and undersigned counsel Little entered his appearance. At the same time, Mr. Little filed a Motion To Appear *Pro Hac Vice* on behalf of undersigned counsel Durkin of Chicago, Illinois. This motion was granted on March 4, 2009.
3. On March 4, 2009, Mr. Little also filed a motion for an extension of time for the

filing of Defendant's pre-trial motions until on or before, March 26, 2009. This motion was granted by the Court on March 6, 2009. Due to the fact that undersigned counsel Durkin had not yet been granted leave to appear, no motion to vacate or continue the previously scheduled trial date of April 6, 2009, was filed. This trial date had been set by the Magistrate Judge at the arraignment while Ms. Speetjens was counsel of record.

4. In light of the use of the "honest services" mail fraud statute, 18 U.S.C. § 1346 as plead in this indictment, counsel anticipates the filing of several substantive pre-trial motions presenting complex issues of fact and law that may well require evidentiary hearings. These motions are expected to include, but will not necessarily be limited to, issues relating to the above mentioned statute and its use under the facts alleged in the indictment, discovery, the grand jury, venue, pre-trial publicity, and juror questionnaires. As the Court is no doubt aware, federal prosecutors' increased use of the "honest services" mail fraud statute in the arena of local governmental affairs is becoming a nationally controversial topic and, thus, will necessarily become a significant legal issue in this case. See, e.g., *Honest Services Fraud*, by Prof. Laurie L. Levenson, *The National Law Journal*, March 8, 2009, <http://www.law.com/jsp/nlj/id=1202428828967>, a copy of which is attached for the convenience of the Court. .

5. In that several of the aforesaid anticipated motions may well also require that the Court conduct an evidentiary hearing, and that counsel are still awaiting certain discovery materials the government has agreed to provide and are attempting to familiarize themselves with the complex factual and legal scenarios underlying this case, it is respectfully submitted that it would be in the interests of the parties and judicial economy merely to vacate the currently scheduled trial date of April 6, 2009, and schedule this matter for a status conference to

determine the scheduling of a realistic trial date after Defendant's pre-trial motions are filed. In this way, rather than prematurely schedule a trial date that will not be realistic for defense counsel to be prepared or for the Court to determine how it wishes to proceed on the pre-trial motions, the parties could then provide the Court with the progress of their pre-trial preparation and obtain the Court's input and direction with respect to the scheduling of both the trial and other pre-trial matters.

6. This motion to vacate the trial date and to schedule a status conference is made in good faith and not for purposes of delay. Counsel for Defendant are mindful of the government's desire to have this case tried promptly; and frankly, no one is more eager for a trial than Defendant so as to afford him the welcomed opportunity to clear his good name. Nevertheless, in light of the novel and unprecedented expansive use of federal criminal charges in these local matters, and the complex factual and legal scenarios related thereto, adequate time for pre-trial preparation is necessary to afford Defendant his right both to Due Process of Laws and the Effective Assistance of Counsel, guaranteed him under the Fifth and Sixth Amendments to the Constitution of the United States.

7. Undersigned counsel also represent to the Court that they will endeavor to work with both the Court and the government to prepare this case for trial at the earliest possible date. As the Court is aware from the indictment, Judge DeLaughter has been a public servant most all of his legal career and is not a man of substantial financial means. Thus, it is not in his – or his lawyers' – interest to prolong the pre-trial proceedings any more than is absolutely necessary.

Respectfully submitted,

/s/ Thomas Anthony Durkin

THOMAS ANTHONY DURKIN,

/s/ Lawrence L Little

LAWRENCE L. LITTLE, Attorneys for
the Defendant, Bobby B. DeLaughter.

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CERTIFICATE OF SERVICE

Thomas Anthony Durkin, Attorney at Law, hereby certifies that the foregoing Defendant DeLaughter's Unopposed Motion To Vacate Trial Date Of April 6, 2009, And To Schedule Status Conference was served on March 12, 2009, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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