

DECLARATION OF ALAN J. BAVERMAN

I, Alan J. Baverman, make this Declaration based upon my personal knowledge of facts contained herein.

1. I am a United States Magistrate Judge in the Northern District of Georgia and have been since February 1, 2001.

2. In late 2000, when I still was in the private practice of law, Paul Morochnik, who is married to my wife's niece and who also is a practicing attorney, asked me, through my wife, Elida, for names of criminal defense lawyers who were capable of representing a client of his who was under federal investigation for mortgage fraud. Mr. Morochnik did not represent persons in criminal cases. Although I was a criminal defense attorney at the time, I had been selected as a federal magistrate judge and was awaiting completion of my background check before I could be sworn in. As a result, I was in the process of closing out my law practice and was not accepting new clients in matters which could not be resolved in a relatively short period of time. I gave my wife three names of respected criminal defense attorneys in the Atlanta legal community, Don Samuel, Bruce Maloy, and Bruce Morris, lawyers whose names I frequently gave out whenever I was unable to represent a client.

3. I did not give my wife the name of Mark Kadish, because I did not know

at that time whether Mr. Kadish was taking any clients as a result of his serious heart condition. I was not aware of the identity of Mr. Morochnik's client, nor do I have any personal knowledge of how Scott Hintz came to be represented by Mr. Kadish in Case No. 1:03-CR-131-CC.

4. I did not contact Mr. Kadish, or any other person, to determine whether they were interested in representing Mr. Hintz. I did not have any conversations with any lawyers about representing Mr. Hintz, the manner in which they should represent Mr. Hintz, the legal positions they should take, or information they should disclose or not disclose to third persons, including but not limited to law enforcement or the court. While Mr. Kadish represented Mr. Hintz, I had no conversations with Mr. Kadish about the subject matter of the representation, the legal positions he should take, or information he should disclose or not disclose to law enforcement or the court. Furthermore, I never suggested in any way to Mr. Kadish that he should keep Mr. Hintz from revealing any information, including but not limited to any criminal activity, to law enforcement or the court.

5. I have known Mark Kadish for over 25 years. I became aware of him in the early 1980s when he represented a criminal defendant in a case pending in front of the District Judge for whom I was a law clerk. When my clerkship ended in August

1983, I was hired by him as an associate in the law firm of Kadish & Kadish, P.C. I worked with Mr. Kadish in that law firm, or its successor firm, until April 1986, during which time I assisted him in the representation of clients in civil and criminal matters. When I started my own law firm in February 1989, I rented office space and shared a secretary with Mr. Kadish for approximately 20 months. While renting office space from Mr. Kadish, he referred criminal and civil matters to me. After I moved out of Mr. Kadish's office space into different offices in late 1990 or early 1991, for several months, I probably continued to receive referrals of civil and criminal cases from him and work on criminal and civil matters which he had previously referred to me. To the best of my recollection, I have not worked on any cases with him or referred from him since the very early 1990's.

6. Also, at some point, most likely after Mr. Kadish's divorce from Rosalyn Kadish in 1986 or 1987, Mr. Kadish asked me, and I agreed, to be named in his last will and testament as the executor of his estate in the event of his death. Obviously, since he still is alive, I never performed any functions as his executor, other than to review copies of any updated wills or amended asset schedules that he would send me from time to time. I resigned this position upon my selection as a magistrate judge, since I was prohibited from acting as an executor of a non-family member's estate as

a result of my appointment.

7. Since I stopped practicing law with Mr. Kadish, in the past 18 years I have attended three or four parties at his home or on his behalf, and gone out to eat at restaurants with him and his spouse on perhaps two or three other occasions, usually with another couple in attendance as well. Also, after I became a magistrate judge, Mr. Kadish asked me, and I agreed, to act as an adjunct professor at Georgia State University Law School in a civil litigation trial advocacy class which he supervised. I acted in this role for two years (however, in the second year, I believe Mr. Kadish was on medical leave and thus was not supervising the class).

8. To my knowledge, I have never met or spoken to Scott Hintz. I never told Mr. Hintz that he had to use Mr. Kadish to represent him in Case Number 1:03-CR-131-CC, nor did I do anything that would force or coerce him into using Mr. Kadish to represent him. I did not select Mr. Kadish as Mr. Hintz's lawyer, nor did I cause or direct any other person to select Mr. Kadish as Mr. Hintz's lawyer.

9. One of the duties of a magistrate judge in this judicial district is to appoint counsel for indigent criminal defendants in proceedings in this court and, on occasion, appoint counsel for indigent criminal defendants appealing their convictions and/or sentences to the United States Court of Appeals of the Eleventh Circuit.

10. I was the criminal-duty magistrate judge in April 2004 when District Judge Clarence Cooper's courtroom deputy requested (either through a telephone call or e-mail) that I appoint counsel to represent Mr. Hintz on appeal of his conviction and sentence. Since Mr. Hintz's case was initiated in this court as a guilty plea, no magistrate judge previously had been assigned to handle pretrial matters in his case or determine whether he desired or qualified for court-appointed counsel. Therefore, Judge Cooper's request for appointment of new counsel was referred to me as the magistrate judge on criminal duty.

11. In Mr. Hintz's case, I specifically remember looking at the docket of the case (at the time, via the WinDocs program to access the Clerk's docket) to see which lawyers, if any, including the Federal Defender Program, might be conflicted from representing Mr. Hintz. I recall seeing that Mr. Kadish represented Mr. Hintz in front of Judge Cooper. (In fact, it was Mr. Kadish's representation of the defendant which caused me to recall the case at a later date, after Mr. Hintz started making his complaints about me and others. Seeing Mr. Kadish as the lawyer of record was not that common, since he had not represented many people in federal court after 1998 or so because he was teaching and/or on medical leave.) I have no specific recollection of contacting the U.S. Attorney's Office to determine whether the Federal Defender

Program was conflicted from representing Mr. Hintz on appeal (due to having represented another defendant or witness in the same investigation or series of transactions), as would be my usual course of action in such a case. I ordinarily would appoint the Federal Defender to represent an indigent defendant on appeal if that organization did not have a conflict, so as to not additionally burden the federal treasury by appointing a Criminal Justice Act (CJA) panel attorney, who is compensated on an hourly basis.

12. From reviewing the Clerk's docket and the minute sheet of a hearing held before Judge Cooper on April 20, 2004, [Doc. 30 in No. 1:03-cr-131-CC], I interpreted Judge Cooper's delegation of authority to me to be limited to appointing appellate counsel, rather than also making an independent determination into whether the person to be represented qualified for court appointed counsel under the CJA. As a result of Judge Cooper's office request, I appointed attorney Lynn Fant to represent Mr. Hintz.

13. I appointed Ms. Fant because she is a very capable, diligent and talented lawyer and because she also was one of the few CJA panel lawyers of whom I was aware that sought out and gladly accepted appellate case appointments. I had known Ms. Fant for a number of years before I took the bench, both during her two terms as a staff attorney at the Federal Defender's Office and as a lawyer in private practice.

I had absolutely no knowledge of the specifics of Mr. Hintz's case, the factual or legal issues presented to Judge Cooper, or the nature of any claims to be raised on appeal. However, after practicing criminal defense in federal court for almost two decades and as a result of being a judge, I recognized that any appeal after a guilty plea - - particularly where, as here, it appeared from the docket that the defendant appeared in this court, waived indictment, and was assigned a District Judge for a guilty plea - - likely involved, in whole or in part, Sentencing Guideline issues. Based on her experience as an assistant federal defender and private appellate lawyer, I expected Ms. Fant to be intimately familiar with the guidelines and their application, which can involve very technical issues of federal criminal practice. Therefore, I considered her to be a more than appropriate choice to represent a defendant on appeal under these general circumstances. To this day, I know of no connection between Mr. Kadish and Ms. Fant, either socially, academically or professionally.

14. I instructed either my judicial assistant or courtroom deputy clerk to contact Ms. Fant and see if she was willing to be appointed to represent Mr. Hintz on appeal, and Ms. Fant subsequently accepted the appointment. Since that term of criminal duty was exceptionally busy, according to the docket of Mr. Hintz's case, a CJA voucher apparently was not sent to Ms. Fant until June 23, 2004. Appointing Ms.

Fant was the only official act as a United States Magistrate Judge which I undertook in Criminal Indictment No. 1:03-cr-131-CC.

15. I had no other contact with Judge Cooper or his chambers concerning Mr. Hintz's case.

16. I had no discussions at any time with Ms. Fant regarding the manner in which she was to represent Mr. Hintz in the appeal of Mr. Hintz's conviction and sentence in Case No. 1:03-CR-131-CC. Specifically, I never directly or indirectly, ordered, directed, threatened, or intimated in any way that she should file an *Anders* brief in the case.

17. I never told Mr. Hintz, nor directed another person to tell Mr. Hintz, to withhold information from the FBI, any law enforcement authority, or the court about Paul Morochnik or Elida Baverman's (my wife) involvement in real estate transactions involving the following properties or any other transaction:

10790 Glenbarr Drive
Duluth, GA

1548 Planter's Ridge Lane
Alpharetta, GA

1549 Planter's Ridge Lane
Alpharetta, GA

228 Warm Springs Circle
Roswell, GA

311 Warm Springs Circle
Roswell, GA 30075

326 Warm Springs Circle
Roswell, GA

505 Warm Springs Circle
Roswell, GA

18. Furthermore, I never threatened Mr. Hintz, or caused or directed another person to threaten Mr. Hintz, in any way in relation to the disclosure of Paul Morochnik's purchase or sale of these properties, or Elida Baverman's later involvement as a real estate agent on the sale of some of these properties by Mr. Morochnik and his wife.

19. I had no personal, contemporaneous knowledge of Paul and Halley Morochnik's purchase of the seven (7) properties listed above from Scott and Andrea Hintz, other than that my wife, Elida Baverman, was not the listing agent or selling agent in any transaction between Paul and Halley Morochnik and Scott and Andrea Hintz. I never witnessed any extortionate act by Paul or Halley Morochnik or Elida Baverman toward Scott Hintz in reference to these properties, any personal property, or anything whatsoever, nor am I aware of any extortionate act by them towards the

Hintzes ever occurring. As a result, there was no attempt to “cover up” these real estate transactions. I never did or said anything to conceal or silence anyone regarding these real estate transactions or any subsequent sale of one or more of the aforementioned pieces of real property.

20. I did not direct or order, directly or indirectly, any person or entity to purchase or obtain any real or personal property from Mr. Hintz or his family.

21. I did not profit in any way from the sale of the above-described real property from Scott and Andrea Hintz to Paul and Halley Morochnik.

22. At the time that Paul and Halley Morochnik obtained the real properties in the transactions about which Mr. Hintz complains, I had no involvement, direct or indirect, in the transactions, nor did I have any knowledge of the locations or values of the properties at issue. I did not receive \$1,000,000 of real and/or personal property from Scott Hintz, Andrea Hintz or any person related to them, for my own personal gain or benefit, not did I direct or cause another person or entity to obtain any such property for my gain or benefit.

23. I am aware that on or about January 15, 2001, my wife purchased a mirror from Andrea Hintz for \$75.00 when she went to an estate/garage sale at the Hintzes’ residence. Other than that mirror, neither I nor my wife purchased or received any

personal or real property from Scott Hintz, his family or any person acting on his behalf. At the time of the transaction discussed in this paragraph, I did not know who either Scott or Andrea Hintz were, nor that Mr. Hintz was the person about whom Paul Morochnik asked my wife for a criminal defense lawyer referral, nor whether the Morochniks had purchased the seven (7) properties described above from the Hintzes.

24. I never visited, nor was I present, at Scott Hintz's residence for any purpose.

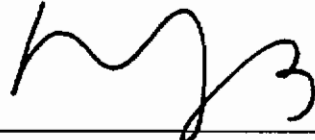
25. I never (a) provided Scott Hintz with any instruction or legal advice on any topic, including but not limited to regarding the FBI investigation of his real estate activities, the disposition of real properties, or his case and charges against him in the Northern District of Georgia; (b) witnessed anyone else providing him with such instruction; or (c) caused or directed another person to provide Mr. Hintz with instruction or advice regarding those topics.

26. Other than the ministerial act of appointing Ms. Fant as Mr. Hintz's appellate counsel, I did not direct or instruct, directly or indirectly, any individual to act or not act to either the benefit or detriment of Mr. Hintz, his family, or his legal or financial interests.

In accordance with Title 28, United States Code, Section 1746, I declare, certify,

verify, and state under the penalty of perjury that the foregoing is true and correct.

Executed this the 9th day of June, 2008 in Fulton County, State of Georgia.



ALAN J. BAVERMAN