

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

PAUL RAE,  
KEVIN A. TUCK, and  
NATHANIEL A. TUCK,

*Defendants.*

Criminal Action No. 21-378-2, 4, 5 (TJK)

**ORDER**

Federal Rule of Criminal Procedure 44(c) directs courts to “promptly inquire about the propriety of joint representation and . . . personally advise each defendant of the right to the effective assistance of counsel, including separate representation.” The Court began an inquiry under that rule because, at one time, Attorney John Pierce simultaneously represented Defendants Paul Rae, Kevin Tuck, and Nathaniel Tuck. *See* ECF Nos. 6, 32, 33. To aid its assessment of whether Pierce’s representation of three codefendants raised actual or potential conflicts of interest, the Court appointed Santha Sonenberg as conflicts counsel. *See* Min. Order of Jan. 21, 2022. She submitted a report and recommendation *ex parte* and under seal, which the Court has reviewed.

Defendants’ representation has changed since then. Shortly after Sonenberg submitted her report and recommendation, Attorney William Shipley, Jr., began representing Kevin Tuck and Arthur Tuck, and Pierce withdrew from representing those defendants. *See* ECF Nos. 89–91. Sonenberg then submitted a supplemental report and recommendation, again *ex parte* and under seal, analyzing how those representation changes affected potential conflict-of-interest and confidentiality issues. The Court also appointed individual conflicts counsel for Rae, Kevin Tuck, and Nathaniel Tuck. *See* Min. Orders of July 19, 2022; July 29, 2022; Aug. 30, 2022.

The Court held a hearing on Defendants’ representation. *See* Min. Entry of Oct. 6, 2022. There, it conducted colloquies under seal: one with Rae and his conflicts counsel, one with Kevin Tuck and his conflicts counsel, one with Nathaniel Tuck and his conflicts counsel, one with Pierce, and one with Shipley. The Court’s goals were to advise Defendants about their rights to effective assistance of counsel, including separate representation, and to determine whether Defendants have provided informed consent to any risk of conflict under the D.C. Rules of Professional Conduct and whether they have knowingly and voluntarily waived their rights to conflict-free counsel.

Later, the Court permitted Pierce to withdraw from representing Rae. *See* Min. Order of Dec. 9, 2022; ECF No. 118. Pierce thus no longer represents any defendant, mooting some of the potential prospective conflicts issues. Still, issues related to Shipley’s simultaneous representation of Kevin Tuck and Nathaniel Tuck remain.

Shipley’s representation of Kevin Tuck and Nathaniel Tuck implicates two sets of rules: the D.C. Rules of Professional Conduct and the Tucks’ Sixth Amendment rights to conflict-free counsel. Several rules of professional conduct bear on these circumstances, but Rules 1.6 and 1.7 predominate. Broadly, Rule 1.6 would prohibit Shipley from revealing or otherwise using “a confidence or secret” of either Tuck in his defense of the other—unless the other gives informed consent. *See* D.C. R. Prof’l Conduct 1.6(a), (e)(1). And Rule 1.7, the general conflicts rule, would prohibit Shipley from representing the Tucks if his “professional judgment on behalf of [either] will be or reasonably may be adversely affected by [his] responsibilities to [the other]” unless the Tucks give informed consent and Shipley “reasonably believes that [he] will be able to provide competent and diligent representation.” *See id.* 1.7(b)(4), (c). Under both rules, “informed consent” means the clients’ agreement “to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available

alternatives to the proposed course of conduct.” *See id.* 1.0(e).

Turning to the Sixth Amendment, a criminal defendant’s right to counsel includes the “right to representation that is free from conflicts of interest.” *Wood v. Georgia*, 450 U.S. 261, 271 (1981). Although courts “must recognize a presumption in favor of [Defendants’] counsel of choice, . . . that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict.” *Wheat v. United States*, 486 U.S. 153, 164 (1988). Yet a conflict of interest “will not violate the Sixth Amendment[ ] if the conflict does not adversely affect counsel’s performance.” *United States v. Lorenzana-Cordon*, 125 F. Supp. 3d 129, 135 (D.D.C. 2015). And a defendant may waive his right to conflict-free counsel if the waiver is knowing and voluntary *See id.*

Here, based on the Court’s colloquies with Kevin Tuck, Nathaniel Tuck, and Shipley, and on the representations by Defendants’ conflicts counsel, the Court resolves that Shipley may proceed with his representation of both Tucks consistent with the D.C. Rules of Professional Conduct and the Sixth Amendment. On this record, Rule 1.6 does not bar the representation. And the Court finds that both Kevin Tuck and Nathaniel Tuck have provided informed consent to the continued joint representation despite the possibility that future conflicts issues may arise. In any event, based on the current record, that possibility appears unlikely. So the risk of future conflicts of interest is not so “serious” as to “overcome” the “presumption” in favor of recognizing the Tucks’ choices of counsel. *See Wheat*, 486 U.S. at 164. And even if a conflict arises, the Court’s colloquies satisfy it that the conflict would not so “adversely affect counsel’s performance” as to raise constitutional concerns. *See Lorenzana-Cordon*, 125 F. Supp. 3d at 135; *see also* D.C. R. Prof’l Conduct 1.7(c)(2). Finally, the Court finds that both Kevin Tuck and Nathaniel Tuck have knowingly and voluntarily waived their constitutional rights to conflict-free counsel.

For all the above reasons, the Court finds that the record in this matter does not require Shipley's disqualification from representing Kevin Tuck and Nathaniel Tuck. Still, in an abundance of caution, it is hereby

**ORDERED** that Shipley shall regularly review his ethical obligations to Kevin Tuck and Nathaniel Tuck, including but not limited to those imposed by Rules 1.6 and 1.7 of the D.C. Rules of Professional Conduct, as this case proceeds.

**SO ORDERED.**

/s/ Timothy J. Kelly  
TIMOTHY J. KELLY  
United States District Judge

Date: July 17, 2023