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MAR 19 1999

*Juliano*  
Clerk

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-3215-9875  
CASE NO. 98-0489

REC'D  
APPELLATE DIVISION

MAR 19 1999

STATE OF NEW JERSEY, :  
Plaintiff-Appellant, :  
v. :  
GREGORY S. BRUNO, :  
Defendant-Respondent. :

CRIMINAL ACTION

ON APPEAL FROM AN ORDER  
DENYING DISQUALIFICATION OF  
COUNSEL FROM CONTINUED REPRESENTATION OF DEFENDANT IN THE  
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

SAT BELOW: Honorable James A. KENNEDY, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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A-3215-9876

FILED  
APPELLATE DIVISION

MAR 19 1999

*John Kaye*  
Clerk

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-3215-9876  
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APPELLATE DIVISION

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

GREGORY S. BRUNO,

Defendant-Respondent.

CRIMINAL ACTION

ON APPEAL FROM AN ORDER  
DENYING DISQUALIFICATION  
COUNSEL FROM CONTINUED REPRISAL  
SENTATION OF DEFENDANT IN THE  
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STATEMENT OF PROCEDURAL HISTORY

On January 18, 1998, Robert James Gelhaus, Jr.'s dead body was discovered in a taxicab in Middletown. Pa 15, ¶ 2. On February 1, 1998, defendant Gregory S. Bruno was charged by complaint, numbers 1998-000043-1331 and 1998-000044-1331, with murder, felony murder, armed robbery, and possession of a weapon for an unlawful purpose. Pa 15, ¶ 5; (2T:2-6 to 2-10).<sup>1</sup>

On February 10, 1998, a Substitution of Attorney was filed to replace Giordano, Halleran & Ciesla ("the firm") as counsel of record for the Monmouth County Trial Region of the Public Defender's Office. Pa 27, ¶ 21.

On July 16, 1998, the Monmouth County Prosecutor's Office filed a Notice of Motion to Disqualify Counsel, on the ground that the firm's representation of defendant posed a conflict of interest and created an appearance of impropriety. Pa 1-2; (2T:4-9 to 4-18). The firm opposed the State's motion and cross-moved for discovery and a speedy trial. Pa 24-25.

On September 11, 1998, the Honorable James A. Kennedy,

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<sup>1</sup> 1T refers to the transcript of the proceedings of September 11, 1998.

<sup>2</sup>T refers to the transcript of the proceedings of December 11, 1998.



J.S.C. heard the State's motion, (1T), then denied it on December 11, 1998. (2T). An order was signed to this effect on December 15, 1998. Pa 91.

On December 21, 1998, a Monmouth County Grand Jury handed up Indictment No. 98-12-2324, charging defendant Gregory S. Bruno with murder, N.J.S.A. 2C:11-3a, felony murder, N.J.S.A. 2C:11-3c, armed robbery, N.J.S.A. 2C:15-1, and possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4. Pa 107-09.

On December 22, 1998, the defense made a motion to compel discovery under R. 3:13-3. Pa 92-94.

On December 31, 1998, the State moved before this Court for leave to appeal the interlocutory order denying disqualification of the firm. Pa 95-96.

On January 11, 1999, the State responded to the defense's motion for discovery by cross moving for a stay of pre-trial proceedings pending disposition of the disqualification issue on appeal. Pa 97-98. On January 19, 1999, the defense filed its opposition to the State's motion for a stay and simultaneously cross-moved for a reduction in bail. Pa 99-100.

On February 5, 1999, the trial court granted the defendant's motion for discovery, denied the State's motion for a stay, and denied the defendant's motion for a bail reduction. Discovery was to be provided to defendant within twenty (20)

days of the order. Pa 101-103.

On February 11, 1999, this Court granted the State leave to proceed with its interlocutory appeal of the order denying disqualification. Pa 104.

On February 26, 1999, the State moved for reconsideration of the order denying a stay of pretrial proceedings on the ground leave had been granted to appeal the December 15 order. Pa 105-06. On March 1, 1999, the trial court denied the State's motion for reconsideration. Thereafter, on the same day, defendant was arraigned, discovery was provided, and no notice of aggravating factors was served. A status conference has been scheduled for June 14, 1999.

STATEMENT OF FACTS

On or about October 1992, Ronald D. Ohnmacht, a Middletown police officer, retained Giordano, Halleran & Ciesla ("the firm") to defend him against a civil rights complaint filed in a federal district court. Pa 36, ¶ 4; see Pa 16, ¶ 9.

Ohnmacht contacted Norman M. Hobbie, Esq., a member of the firm, because of Hobbie's reputation and a personal friendship Ohnmacht had with him. Pa 17, ¶ 10. The firm assumed representation, and Michele Querques, Esq. and Guy P. Ryan, Esq. were assigned to handle the "day-to-day defense" of Ohnmacht against the allegations. Pa 40, ¶ 1; see Pa 38, ¶¶ 1, 2; Pa 36, ¶ 5.

The civil rights complaint sued Ohnmacht in both his individual and official capacities, alleging Sixth Amendment violations arising out of several police interviews Ohnmacht had conducted in July 1989. Pa 16, ¶ 9. Brief discovery was had and motions were filed. Pa 40, ¶ 2. Ultimately, the matter was resolved in Ohnmacht's favor in 1993. Pa 36, ¶ 6; Pa 17, ¶ 10.

In 1996, Ohnmacht suffered a work-related injury and sought to file a worker's compensation claim. Pa 36, ¶ 7; Pa 17, ¶ 11. Ohnmacht again contacted Hobbie, who referred the case to M. Scott Tashjy, Esq., a member of the firm who handles worker's

compensation matters, Pa 36, ¶ 7; Pa 30-31, ¶ 4.

On June 24, 1997, the worker's compensation claim was "settled." Id. ¶ 4; Pa 17, ¶ 12. At the time the settlement order was entered, Ohnmacht and Tashjy discussed the possibility of filing a "re-opener claim" in the event Ohnmacht's injury worsened. Id. ¶ 12; see N.J.S.A. 34:15-27. On June 26, 1997, Tashjy sent Ohnmacht a letter confirming their conversation regarding the re-opener and advising that Ohnmacht should watch the passage of time so that his opportunity for an amended award would not expire. Pa 19.

On September 29, 1997, Tashjy sent Ohnmacht another letter enclosing three blank Applications for Review of Modification of Formal Award. The letter instructed Ohnmacht to "sign where indicated and return same to me." Pa 20.

On October 13, 1997, Tashjy sent Ohnmacht another letter, which read in full:

Please be advised that we have filed a Reopener Claim Petition with regard to your Workers' Compensation Claim. Please contact my office and advise me specifically the complaints you have with regard to your leg and your neck. As you will recall, when we originally settled this matter, we reserved the right to reopen this claim, but we must indicate to the Court how your injuries have "worsened" since the date of the last Order in this matter. Thus, your input is essential. Please contact me at your convenience so we may discuss these issues.

Thank you for your attention.

Pa 21.<sup>2</sup> The letter (as were each of them) was personally addressed to Detective Ohnmacht and personally signed by Scott Tashjy. See Pa 19-23.

A fourth letter followed on January 6, 1998. In this letter, Tashjy again instructed Ohnmacht to "contact my office to schedule an appointment . . . regarding the reopening of your Worker's Compensation claim." Tashjy offered to meet Ohnmacht "at headquarters" if it was inconvenient for Ohnmacht to come to the firm's office. Pa 22.

On January 18, 1998, a Middletown police officer was on routine patrol when he discovered Robert James Gelhaus, Jr.'s dead body in a station wagon taxicab. Ohnmacht was designated by the department to serve as lead detective in connection with the homicide investigation. Pa 15, ¶ 2. Consequently, Ohnmacht has served as the affiant for several search warrants, and has given twenty or more formal statements, in connection with the

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<sup>2</sup> The firm certified that the first sentence of this letter contained a typographical error: it should have read the firm had not yet filed a Reopener Claim Petition. Pa 31, ¶ 6. Of course, regardless of the "truth" of the representation in the letter, Ohnmacht would be entitled to rely on the fact his reopener petition had been filed, because lawyers are "obligated to establish an office procedure so that . . . his clients are kept informed of pending matters." Matter of Schwartz, 99 N.J. 510, 518 (1985) (citing State v. Palmieri, 75 N.J. 488, 489 (1978)).

homicide investigation. Id. ¶ 4; (1T:5-25 to 6-2) (numbering statements at "closer to 30"). The only statement defendant gave (at which time he denied any involvement in the homicide and advanced an alibi) was witnessed by Detective Ohnmacht. See (1T:5-18 to 6-11; :37-1 to 37-4).

On January 26, 1998, Tashjy sent Ohnmacht a fifth letter reading,

Please contact me at your earliest possible convenience so that we may schedule a mutually agreed upon date and time for an appointment so that we may discuss reopening your claim. In the alternative, please advise me as to your availability at Headquarters, and I will be happy to meet you there.

Pa 23.

On February 1, 1998, defendant Gregory S. Bruno was charged with Gelhaus' murder, as well as with felony murder, armed robbery, and possession of a weapon for an unlawful purpose. Pa 15, ¶ 5; (2T:2-6 to 2-10). Defendant's family then engaged in a (three-day) "extensive search and interview process" to find counsel for defendant. Pa 45, ¶ 2. As of February 4, 1998, the family retained the firm to defend Bruno on the charges. Pa 27, ¶ 20. A substitution of attorney form was filed with the court as of February 10, 1998. Id. ¶ 21.

When Ohnmacht learned that the firm had entered its appearance on behalf of defendant, he contacted Tashjy to

inquire about the status of his worker's compensation claim, and he communicated his objection to the firm's representation of defendant in the criminal proceeding. Pa 16, ¶ 8.

Ohnmacht had intended to pursue his re-opener opportunity and, up until that February 13, he believed the firm was representing him in this regard. Pa 17, ¶ 12. Ohnmacht never intended to "switch lawyers" in what he perceived to be the middle of the worker's compensation proceeding; rather, he consistently had assumed the firm, which handled the initial "phase" of the litigation, Pa 17, ¶ 12, would "continue" and handle the re-opener. Pa 52, ¶ 3.

On February 13, 1998, Tashjy "advised Detective Ohnmacht that our firm could not represent him in the re-opener of his Worker's Compensation matter because . . . of the representation of Gregory Bruno by Norman Hobbie and Edward Bertucio of my office." Pa 31, ¶ 5. At the same time, Tashjy gave Ohnmacht a list of other attorneys who practiced worker's compensation law. Pa 31, ¶ 5; Pa 89, ¶ 5. February 13 likewise marked the date Tashjy informed Ohnmacht "our firm ended our representation of him with the settlement of his Workers' Compensation case on or about June 24, 1997." Pa 89, ¶ 5. Tashjy certified before the court below that he "took no affirmative action after . . . February 13, 1998 . . . to pursue a re-opener or any other claim

for Workers' Compensation benefits on behalf of Detective Ohnmacht." Pa 31, ¶ 5.

The firm never sought Ohnmacht's consent when it was retained by the Brunos' and, on his own initiative, Ohnmacht advised Tashjy that he objected to said representation. Pa 18, ¶ 14. Ohnmacht was told that the firm intended to represent defendant Bruno whether or not Ohnmacht objected. Pa 16, ¶ 8; see (1T.23-10 to 23-12).

On May 6, 1998, Monmouth County Assistant Prosecutor Peter E. Warshaw, Jr. mailed a letter advising the firm of the apparent conflict and inviting the firm to review the matter with defendant Bruno. Pa 10. The letter further notified the firm a formal motion would be filed if the firm intended to remain as counsel for defendant. Pa 10-11. In reply, the firm indicated it would "not remove itself as counsel in this case," Pa 13; Ohnmacht was not a present client, because his worker's compensation case was closed in September 1997, and defendant Bruno and his family "have instructed us to remain as counsel." Pa 12.

Consequently, the State made an application for disqualification of Giordano, Halleran & Cielsa on the ground that representation of defendant Bruno contravened RPC 1.7(a) and presented an impermissible appearance of impropriety. Pa 1-



2. The State also requested a testimonial hearing, as well as discovery of a list of Middletown police officers the firm had represented in the past, to determine whether the firm's representation in the Bruno matter would present an appearance of impropriety. Pa 5-6, ¶¶ 10, 11.

The trial court denied the State's motion by determining that (1) the letters the firm sent to Ohnmacht were merely "good practice letters," (2T:8-18 to 8-21), Ohnmacht was a past client, and, therefore, RPC 1.9 applied and RPC 1.7 did not, (2T:8-11 to 9-4); (2) the prior matters for which the firm represented Ohnmacht were not "substantially related" to the criminal case involving defendant Bruno, (2T:8-8 to 8-10); and, therefore, (3) the firm's continued representation of defendant would not be improper, (2T:10-17 to 10-19).

LEGAL ARGUMENT

POINT I

THE FIRM SHOULD BE DISQUALIFIED  
BECAUSE IT ACCEPTED DEFENDANT  
BRUNO'S CASE IN VIOLATION OF RPC  
1.7 (a)

Respectfully, the court below erred when it characterized Ohnmacht as a "former client" and consequently applied RPC 1.9 instead of RPC 1.7. Ohnmacht was a present client at the time the firm accepted the retainer from the Bruno family. By accepting said retainer and then terminating representation of Ohnmacht, the firm violated RPC 1.7 and disregarded the duty of loyalty it owed Ohnmacht. The firm should be disqualified from continued representation of Bruno.

"A lawyer may not represent the adversary of one of his present clients," e.g., Gray v. Commercial Union Ins. Co., 191 N.J. Super. 590, 599 (App. Div. 1983), even if the two matters are "wholly unrelated." ABA Model Rules of Professional Conduct Rule 1.7 comment (1989). RPC 1.7(a) provides,

A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless:

(1) the lawyer reasonably believes that representation will not adversely

affect the relationship with the other client; and

(2) each client consents after a full disclosure of the circumstances and consultation with the client, except that a public entity cannot consent to any such representation.

RPC 1.7 protects the duty of loyalty and recognizes that "[f]rom that duty issues the prohibition against representing clients with conflicting interests." In re Opinion No. 653, 132 N.J. 124, 129 (1993). The Rule's applicability in this case is straightforward.

First, in the pending criminal matter, the statuses of Gregory Bruno, as the defendant, and Ohnmacht, as a key witness for the State, place them in "directly adverse" positions. See In the Matter of Garber, 95 N.J. 597, 604 (1984); In the Matter of Cohn, 46 N.J. 202, 212-13 (1966); State v. Morelli, 152 N.J. Super. 67, 73-74 (App. Div. 1977); State v. Catanoso, 222 N.J. Super. 641, 645-47 (Law Div. 1987); cf. State v. Needham, 298 N.J. Super. 100, 103 (Law Div. 1996).

Second, the condition for exemption in subsection (1) is not satisfied. It appears undisputed that the firm did not "reasonably believe" that continued representation of Ohnmacht would not "adversely affect" the relationship with Bruno. For this reason, the firm terminated the relationship it had with Ohnmacht as of February 13, 1998. See Pa 31, ¶ 5; (1T:22-14 TO

22-17).

Third, the condition for exemption in subsection (2) is not satisfied. It is undisputed that Ohnmacht never consented to the firm's joint representation of himself and Bruno, and he never consented to termination of his relationship with the firm so that the firm could accept Bruno's case. Moreover, Ohnmacht, on his own initiative, approached Mr. Tashjy immediately after learning the firm accepted the Bruno retainer and voiced his objection. See Pa 16, ¶ 8; Pa 18, ¶ 14.

The issue is whether Ohnmacht was a "client" within the meaning of RPC 1.7 at the time the firm accepted the retainer from the Bruno family. The firm urged below that RPC 1.7 did not apply, because the worker's compensation "matter was closed in June of 1997," and the firm had submitted no documents or paperwork to the courts to reopen Detective Ohnmacht's claim. (1T:20-13 to 20-19; :21-16 to 21-19). The trial court agreed and applied RPC 1.9. The court held:

The Giordano firm's representation of Detective Ohnmacht terminated on or shortly after June 24, 1997 coincidentally with the settlement of the workers compensation claim. The good practice letters cited by the State . . . do not change my opinion.

(2T:8-15 to 8-21). This determination was wrong. As a matter of law, the firm had an affirmative, ongoing relationship with Ohnmacht as of February 4, 1998; this triggered applicability of

RPC 1.7 and precluded the firm from ousting Ohnmacht in order to accept Bruno's case.<sup>3</sup>

The trial court's erred in its conceptualization of what "representation" means under the Rules of Professional Conduct. The Supreme Court has rejected a "narrow [] understanding of what 'representation' entails in assessing the application of the ethics governing conflicts." In the Matter of Berkowitz, 136 N.J. 134, 144-45 (1994). See generally Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 214 (1988) (instructing that the Rules "presuppose a larger legal context shaping the lawyer's role," and such context should be viewed in defining "representation").

Representation has been defined as "inherently an aware consensual relationship," founded upon the lawyer affirmatively accepting a professional responsibility. In re Palmieri, 76

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<sup>3</sup> The facts establishing the relationship of Ohnmacht and the firm are undisputed. These are reflected by the firm's prior handling of the civil rights suit and the worker's compensation matter, as well as by the nature of the repeated letters Tashjy sent Ohnmacht. Because the facts are undisputed, the determination whether Ohnmacht was the firm's "client" at the time Bruno's case was accepted is one to be made as a matter of law. As such, this Court's review of the lower court's ruling is plenary. E.g., Manalapan Realty v. Township Committee, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

N.J. 46, 58 (1978). The relationship "need not necessarily be articulated in writing but may, under certain circumstances, be inferred from the conduct of the parties." Id. at 58-59.

The existence of an attorney-client relationship does not rest on whether the lawyer submits a bill, Herbert v. Haytaian, 292 N.J. Super. 426, 436 (App. Div. 1996), or whether the client pays a retainer or fee, Matter of Schwartz, 99 N.J. 510, 516-17 (1985); In re Netchert, 78 N.J. 445, 451, 453 (1979); In re Makowski, 73 N.J. 265, 269 (1977). Compare with (1T:20-17 to 20-18). It is not necessarily co-extensive with initiation or termination of litigation in a court. In the Matter of Berkowitz, supra, 136 N.J. at 144-45; In the Matter of Garber, supra, 95 N.J. at 605-06. Compare with (1T:20-13 to 20-19; :21-16 to 21-19).

For example, in Berkowitz, supra, the Court rejected a firm's position that it was not "actually" representing a given client, because the client "had not yet decided to oppose" a particular zoning ordinance. 136 N.J. at 144. The Court found an attorney-client relationship and, consequently a conflict of interest, by appreciating (1) the firm's otherwise established relationship with the client, (2) the firm's indication to the client that it would "look into" the zoning matter, and (3) the client's reliance upon the anticipated advice. Id. at 144-45.

Similarly, in In the Matter of Garber, supra, the Court rejected the position that a client/State's witness became a "former client" merely because the State had dismissed the indictment in connection with which the client promised to be a witness. Again, the Court examined the circumstances surrounding the representation and concluded that the attorney "knew or should have known" of another pending indictment and the witness-client's continuing need for advice and undivided loyalty. 95 N.J. at 605-06.

Analyzing these two cases together, it becomes clear that whether an individual is a "client" does not necessarily turn upon the filing of a complaint, the dismissal of a suit, or the settlement of a claim. In Berkowitz, the Court determined that RPC 1.7 applied, even though the "client" had not yet made a decision to pursue the zoning issue. Consistent with this rationale, Ohnmacht could well have been (and, in fact, was) the firm's client as of February 4, 1998, even though he had not yet communicated his desire to file the re-opener. In Garber, the Court determined that (the predecessor to) RPC 1.7 applied, even though the indictment implicating the "client" had been dismissed at the time the adverse representation was accepted. Consistent with this rationale, Ohnmacht could well have been (and, in fact, was) the firm's client as of February 4, 1998,

even though the worker's compensation claim had been settled June 1997. It follows that the trial court erred when it viewed the date of settlement as automatically indicating the date Ohnmacht became a former client.

In Berkowitz and Garber, the Supreme Court examined the nature of the relationship between the attorney and client, the communications between them, and the reasonable reliance engendered in the client by the attorney's conduct. See also Matter of Schwartz, supra, 99 N.J. at 514-16; In re Netchert, supra, 78 N.J. at 453. The lower court here should not summarily have discounted the circumstances surrounding the firm's relationship with Ohnmacht and the significance of the numerous communications post-June 1997.

The Rules of Professional Conduct allow an attorney and client to define the scope of representation in a given matter and to limit such representation if the client consents after consultation. RPC 1.2. The Rules also require a lawyer to communicate with his client about the status of a matter and explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation. RPC 1.4. Finally, the Rules require that, "upon termination of representation," the lawyer give the client reasonable notice. RPC 1.16(d).



First, the scope of this firm's representation of Ohnmacht extended to the handling of the re-opener claim. RPC 1.2. Whatever scope of representation is intended in a given case, "both the client and the attorney must achieve clear understanding and agreement" from the outset of the relationship. N.J. Advisory Committee on Professional Ethics Opinion 671 (Apr. 5, 1993). The law holds that any "[d]oubt about whether a lawyer-client relationship . . . exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so." ABA Model Rules of Professional Conduct, R. 1.3 comment (1989) (emphasis added).

When the lawyer fails to directly tell the client that limitations, conditions, or qualifications attend the scope of representation and, as a result, the client relies upon the lawyer for continuing representation on a given matter, a present attorney-client relationship will be found. In In the Matter of Schwartz, supra, the attorney who handled his client's legal matter at the trial level told her he also would handle her appeal, but only if she paid a fee of \$200. The attorney filed a notice of appeal only "to protect [the client's] rights." No written retainer existed between the parties. The

attorney repeatedly told the client he would not pursue the appeal unless and until he received a \$100 retainer. He had several telephone conversations with her and wrote her two letters. In one of those letters, he indicated his firm was "in the process of preparing the brief and appendix for your appeal." In both letters, however, he related he had not yet received the retainer. In the latter communication, he wrote "[w]e are running out of time to perfect your appeal and you still have not retained this firm to represent you . . . . You must act soon or the appeal will be dismissed." 99 N.J. at 513-14.

One of the issues before the Supreme Court was when representation commenced, whether at the time the notice of appeal was filed, or the time the attorney received the retainer. The Court found the former, reasoning,

[A]lthough respondent did not believe he was representing Ms. Schulz until he received the \$100 retainer, the record is clear that he never directly told her that he would not handle her case. In his November 28, 1979 letter, for example, he sought to convey this by inference. He informed her that he was "in the process of preparing the Brief and Appendix" for the appeal and "send us \$100.00 for the retainer, so that we can continue working on your appeal." (Emphasis added). Even in his January letter in which he states "you still have not retained this firm to represent you," he added "it is just not fair for us to work on this appeal without having been retained."

Id. at 517 (first emphasis added). The Court recognized the client relied upon the attorney to handle the appeal. Id. The Schwartz decision clearly places upon the attorney the obligation to dispel the client's reliance if it is unjustified, and it imposes upon the attorney the ethical liability for not sufficiently dispelling that reliance.

The facts of this case are more compelling than Schwartz. As in Schwartz, this firm "never directly told" Ohnmacht that representation was limited to the first phase of the worker's compensation litigation -- that is, not until February 13, 1998. Pa 89, ¶ 5; accord (1T:53-6 to 53-11). While Tashjy certified that reopening a claim does not require the participation of the attorney who handled the original claim, Pa 89, ¶ 6, this fact was not communicated to Detective Ohnmacht. He is a detective, not a lawyer; he does not practice worker's compensation law.

Ohnmacht and Tashjy discussed the possibility of a re-opener immediately upon settlement of the original claim. Pa 17, ¶ 12. The nexus between the original proceeding and the reopening of the award thus was made apparent. Ohnmacht viewed retaining a new attorney to reopen the claim as "switch[ing] lawyers"; he assumed the firm, which handled the "initial phase" of the claim, would "continue" and handle the re-opener. Pa 52, ¶ 3; Pa 17, ¶ 12. Ohnmacht's assumption was not unreasonable,

because reopening a worker's compensation award necessarily involves review of the original award, thus, necessarily is intertwined with the prior litigation. N.J.S.A. 34:15-27; Yeomans v. Jersey City, 27 N.J. 496, 507-08 (1958); Hopler v. Hill City Coal & Lumber Co., 5 N.J. 466, 471 (1950). It is entirely reasonable for a non-lawyer/client to believe his attorney is going to handle to completion (what inherently appears to be) a single, ongoing matter. The simple fact is the firm never explained or indicated to Ohnmacht anything to the contrary. It never "directly told him" that its representation of him ceased upon settlement of the first phase of the litigation. Compare Matter of Schwartz, supra, 99 N.J. at 517 with Pa 89, ¶ 5. Consequently, Ohnmacht had every intention to pursue his re-opener opportunity and, up until February 13, 1988, he believed the firm was representing him in this regard. Pa 17, ¶ 12.

Furthermore, up through February 13, 1998, the firm affirmatively impressed upon Ohnmacht that representation was ongoing and the firm would assist him in filing the reopener claim. See Pa 20 (instructing Ohnmacht to fill out requisite re-opener forms and "return same to me"); Pa 22-23 (offering to meet at headquarters to discuss reopening the claim). The letter most probative in this regard:

Please contact my office and advise me specifically the complaints you have with regard to your leg and your neck. As you will recall, when we originally settled this matter, we reserved the right to reopen this claim, but we must indicate to the Court how your injuries have "worsened" since the date of the last Order in this matter.

Pa 21 (emphasis added). The letter literally presumes the existence of a present, ongoing relationship. It encourages that relationship. It incorporates personal information, suggests the detective and firm are a team, and implies the previous worker's comp claim and the pending re-opener are a single, ongoing proceeding. This correspondence places no qualifications, conditions, or limitations, express or implied, upon present and ongoing representation.

Moreover, the October 13, January 6, and January 26 letters were precisely the sort of communications in which a lawyer "shall" engage with his client under RPC 1.4. That Rule states, "A lawyer shall keep a client reasonably informed about the status of a matter . . . [and] shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The correspondence in this case did precisely this. It explained the status of the worker's compensation matter. Pa 19, 21. It advised Ohnmacht to be cognizant of the deadline for reopening the claim. Pa 19. It informed Ohnmacht of the type of

information that would be required to bring the claim. Pa 21. And, it unequivocally urged further communication with the firm in order to file the reopener. Pa 20-23. The letters communicated legal advice and they promised continued legal assistance with respect to the pending re-opener claim. See In re Makowski, 73 N.J. 265, 269 (1977) ("Whether or not a fee is paid, one who assumes to give legal advice takes on the role of an attorney"); accord State v. Morelli, 152 N.J. Super. 67, 74 (App. Div. 1977). Consistent with RPC 1.4, the letters treated Ohnmacht as a client and fortified that an attorney-client relationship indeed existed between Ohnmacht and the firm.<sup>4</sup>

As in Schwartz, this firm cannot avoid application of the ethics rules, specifically RPC 1.7, by asserting it did not think it presently was representing Detective Ohnmacht on February 4, 1998 when it accepted the Bruno retainer. Assuming this were true (which, by all indications, it is not, see Pa 31-32, ¶¶ 5-6; Pa 20-23), the firm did not communicate its private thoughts to Detective Ohnmacht until February 13, 1998, Pa 89, ¶

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<sup>4</sup> At one point at oral argument, the firm characterized Detective Ohnmacht as "a former client that want[ed] to be a future client." (1T:30-25 to 31-1). It bears emphasizing the series of letters Tashjy sent Ohnmacht cannot be deemed letters to a future or "prospective client," because they do not conform to RPC 7.3(b)(5).

5. Prior to the 13th, the firm gave Ohnmacht every indication representation was ongoing. Ohnmacht reasonably relied on the firm's representations in this regard and, consequently, experienced the betrayal coincident to violation of RPC 1.7 when Bruno's case was accepted on February 4, 1998 and Ohnmacht was ousted on February 13, 1998. See Pa 4, ¶ 2.

Incidentally, February 13, 1998 was the date the firm "terminated" its relationship with the detective. The relationship was not "terminated" on June 27, nor, as the letters and certifications reflect, did it naturally end on June 27. In his certification, Tashjy candidly admitted the firm did not terminate its efforts with respect to the re-opener until after Bruno became a client and after the conflict became apparent. Pa 31, ¶¶ 5-6.

Consider, for example, the September 29, 1997 letter that advised the detective to sign three blank "applications for Review or Modification of Formal Award" and resubmit them to the firm. Pa 20. Upon "termination" of a relationship, the attorney is required to return papers and property to the client, not to continue collecting information from him. RPC 1.16(d). Indeed, Tashjy admitted that he "was attempting to get information from Detective Ohnmacht to determine a basis for filing a Reopener Petition," Pa 31-32, ¶ 6, and that he

continued taking such "affirmative action . . . on behalf of Detective Ohnmacht" until February 13, 1998, Pa 31, ¶ 5.

Similarly, the events of February 13 precisely match up with the events that constitute "termination" of a representation. February 13 marked the first time Ohnmacht ever received "notice" the firm was not representing him on the pending reopener. Compare RPC 1.16(d) with Pa 31, ¶ 5 and Pa 89, ¶ 5. It was on the 13th that Ohnmacht was given a list of other attorneys to contact for assistance in reopening the claim. Compare RPC 1.16(d) (requiring, upon termination, facilitation of employ of other counsel to protect client's interests) with Pa 31, ¶ 5 (certifying Tashjy provided Ohnmacht with a list of other worker's compensation attorneys on February 13, 1998). Compare also RPC 1.16(b) (allowing an attorney to "withdraw" from representation so long as client's interests are not adversely affected) with (1T:23-5 to 23-10) (arguing that termination on February 13 gave Ohnmacht "plenty of time" to seek other counsel and protect his rights). All of the facts surrounding the instant relationship between Ohnmacht and the firm mark February 13 as the date representation was terminated.

The court below seemed to deem material to the "representation" issue the fact that Ohnmacht did not respond to the firm's letters prior to February 13. (2T:5-8 to 5-13; :8-22



to 9-1). This was wrong for two reasons.

First, attaching significance to whether Ohnmacht responded to the letters presumes representation terminated in June 1997, i.e., on the date of settlement. This follows because, only if representation had terminated would formation of a "second" relationship require Ohnmacht (again) to manifest his intent that the firm provide him legal services, and thereby initiate another "consensual" attorney-client relationship. Herbert v. Haytaian, supra, 292 N.J. Super. at 436-37 (citing The Restatement of the Law Governing Lawyers (Proposed Final Draft No. 1.) § 26 (1996)). As discussed above, the relationship between the firm and Ohnmacht was ongoing; it did not end in June 1997. The firm never limited the scope of representation, and in fact, by its conduct, maintained, encouraged, and fortified a present attorney-client relationship by representing the relationship was ongoing. The firm terminated the relationship on February 13, 1998. Pa 31, ¶ 5; Pa 89, ¶ 5. It was unnecessary that Ohnmacht respond to the letters to trigger a (nothe:) attorney-client relationship, because the one evolving from litigation of the worker's comp claim was not limited in scope, nor was it terminated prior to February 13.

Second, and consistent with the foregoing, the court failed to recognize that the firm itself advised Ohnmacht that his

opportunity to re-open the claim would not expire until "two years from the date you receive your last disability benefit." Pa 19. The claim only settled in June 1997. Pa 30-31, ¶ 4. According to his lawyers' advice, therefore, Ohnmacht knew, as of February 1998, that he had more than enough time to re-open the claim. Ohnmacht's lack of immediate response cannot be indicative of any delinquency or disinterest on his part, because it was consistent with his own lawyer's advice. Moreover, Ohnmacht did want to pursue the claim, he communicated his desire to Tashjy on February 13 -- shortly after he received the last letter -- and only at that time was he abandoned by the firm. Pa 17, ¶ 12; Pa 31, ¶ 5. Reasonably believing he was engaged in a present and ongoing relationship with Tashjy, Ohnmacht acted in consideration of the legal advice in the letters that described the time requirements governing his claim, confident he presently had an attorney and his legal interests were secured. See Pa 4, ¶ 2; Pa 17, ¶ 12.

Application of Schwartz, RPC 1.2, RPC 1.4, RPC 1.16(d), ABA Model Rules of Professional Conduct, R. 1.3 comment (1989), and all of the Supreme Court precedent defining the concept of "representation" render Detective Ohnmacht a present client up through and until February 13, 1998. Considering the nature of the relationship between Ohnmacht and the firm, the

communications between them, and the reasonable reliance engendered as a result thereof, see In the Matter of Berkowitz, supra, 136 N.J. at 144-45; Matter of Schwartz, supra, 99 N.J. at 514-16; In the Matter of Garber, supra, 95 N.J. at 605-06; In re Netchert, supra, 78 N.J. at 453, the conclusion is compelled that the firm was engaged in a present relationship with Ohnmacht on February 4, 1998 when it accepted Bruno's case. The firm therefore accepted the Bruno retainer contrary to RPC 1.7(a) and should be disqualified from further representation.

The facts of Manior-Electroalloys Corp. v. Amalloy Corp., 711 F. Supp. 188 (D.N.J. 1989), are materially analogous to the ones presented here, and the same result should obtain. In Manior-Electroalloys, the firm of Hannoeh Weisman represented a client, Carmelo Iacono, in several personal matters. These included the drafting of his and his wife's wills and establishment of a trust for the couple's children (1976), and the rendering of legal advice in connection with provisions of an employment contract Iacono was negotiating (1983-84). 711 F. Supp. at 190.

In 1983, one of the members of Hannoeh wrote Iacono a letter informing him of recent changes in the tax laws and suggesting that Iacono contact him to update his will. Iacono did not respond to this letter. On July 22, 1988, however,

Iacono visited the firm office and discussed the possibility of updating his will. Noting that Iacono never responded to the firm's letters, the Hannoch attorney nevertheless indicated that updating the will would be "a good idea." The discussion ended "without either party making a commitment to get back to the other." Id. at 190.

Meanwhile in 1986-1988, several corporations were negotiating the sale of certain assets of a foundry in Ohio. Id. at 189. Iacono was the president of one of these corporations and eventually became one of the plaintiffs in litigation that evolved from the negotiated sale. Id. Hannoch Weisman was representing one of the defendant companies in the same matter. On November 23, 1988, the defendants filed an answer and a thirteen-count counterclaim charging the plaintiffs with fraud connected to the asset purchase agreement. The third-party complaint was served on Iacono on December 2, 1988. Id. at 19.

Also on December 2, Hannoch sent a letter to Iacono and his wife, suggesting they call Hannoch to arrange a meeting to discuss changes in the laws and the impact on Iacono's retirement benefits. Id. The letter noted the changes in the tax laws and concluded,

This subject must be dealt with before year end. Thus, you should accumulate the

appropriate information as soon as possible so we have sufficient time to properly deal with this important matter.

Id. at 191. On December 8, 1988, Iacono contacted the firm to reiterate his desire to update his will. Several days later, the firm indicated to Iacono that it could not provide him further services due to its involvement in the other litigation.

Id.

On March 15, 1989, the plaintiffs filed a motion seeking disqualification of the Hannoeh firm from representing the defendants in the asset purchase litigation, on the ground that said representation presented a conflict of interest. Id. at 192. The United States District Court agreed and disqualified the firm under Model Rule 1.7.

The analysis in Manoir-Electroalloys is particularly apposite here, because the court had to address the threshold issue of whether Iacono was a present versus a former client of the Hannoeh firm at the time the third-party complaint was filed. Id. at 193. As a preliminary step toward resolving this issue, the court established,

The fact that Iacono was told [on December 8, 1988] that Hannoeh could not represent him . . . does not convert Iacono into a former client, and I do not understand Hannoeh to so argue. Certainly a firm may not circumvent Model Rule 1.7 by dropping a present client or characterizing him as a former client in order to take on a

conflicting and, quite possibly, more  
lucrative client. Were it otherwise, both  
the duty of undivided loyalty to the client  
and public confidence in attorneys and the  
legal system would be undermined.

Id. at 193 n.7 (emphasis added) (citing Picker Int'l, Inc. v.  
Varian Assoc, Inc., 670 F. Supp. 1363 (N.D. Ohio 1987), aff'd,  
869 F.2d 568 (Fed. Cir. 1989); Etinger v. Cranberry Hill Corp.,  
665 F. Supp. 368 (M.D. Pa. 1986); Harte Biltmore Ltd. v. First  
Pennsylvania Ban', 655 F. Supp. 419 (S.D. Fla. 1987)).

Application of the court's reasoning to the instant case means that Tashjy's rejection of Ohnmacht on February 13, 1998 did not convert Ohnmacht to a "former client" for purposes of RPC 1.7 versus 1.9 applicability. Rather, if Ohnmacht was a present client as of the time the firm accepted the retainer from Bruno, then the firm violated RPC 1.7 and must be disqualified.

In arguing that Iacono was merely a former client, Hanoach asserted that "the last time the firm performed legal services for Iacono was in 1983-1984, when it undertook the 'limited' task of issuing a legal opinion in connection with the renegotiation of Iacono's employment contract." 711 F. Supp. at 193. Moreover, Hanoach contended, the letters it sent Iacono merely were "standard law firm follow-up letters" or "standard form letters," and thus should be characterized as letters "to a

former client." Id.

The Manoir-Electroalloys Court disagreed and viewed the letters as proving that Hanoach "believed that a continuous relationship existed, and, in fact, encouraged that relationship." Id. at 194. The court rejected the urged "form letter" characterization, appreciating that the letters (1) personally addressed Iacono and were personally signed by one of the firm's members, and (2) urged Iacono to "prepare materials and get in touch" with the firm so that "we" could deal with the "important matter." The court rejected the urged "former" status of Iacono, noting the communication to Iacono was made recently -- at the same time the third-party complaint pertaining to the other matter was filed. Id.

The Manoir-Electroalloys analysis compels the same result here. First, note that, unlike Manoir-Electroalloys where the firm reviewed an employment contract four years earlier for Iacono, the firm here handled Ohnmacht's worker's compensation claim a mere seven months earlier and treated the matter as continuing. Moreover, unlike Manoir-Electroalloys, the June 1997 litigation and the pending reopener substantively were interrelated. Reopening a worker's compensation award necessarily involves review of the original award, thus, necessarily is intertwined with the prior litigation.

Like Manoir-Electroalloys, the letters mailed to Ohnmacht were sent right up until the time the conflict with Bruno presented itself. The murder occurred on January 18, Pa 15, ¶ 2; the last letter is dated January 26, Pa 23; and, the Bruno family retained the firm on February 4, Pa 27, ¶ 20. Also like Manoir-Electroalloys, the correspondence mailed to Ohnmacht cannot be characterized merely as "form letters" or "good business letters." Compare (1T:8-18; 2T:20-9 to 20-12; :20-20 to 21-13). The letters were repetitive, four within four months' time. Pa 20-23. Tashjy personally addressed Ohnmacht and personally signed the communications. Id. Indeed, Tashjy even personally extended himself to come down to headquarters to discuss the pending re-opener. Pa 22 & 23.

Additionally, the letters repeatedly urged Ohnmacht to get in touch with the firm with the relevant factual information because "we reserved" the right to reopen this claim and "we" must indicate to the court how your injuries have worsened. Pa 21; compare RPC 1.2. The letters advised Ohnmacht with respect to the pending legal matter, the information that would be required, and the time restraints that applied. Pa 19, 21; compare RPC 1.4. Tashjy admits he affirmatively urged handling the re-opener up through and until February 13, 1998, i.e., until the time he learned of the conflict introduced by Bruno.



Pa 31, ¶ 5; compare RPC 1.2; RPC 1.16(d). Inescapably, the letters reflect that the firm itself "believed that a continuous relationship existed, and, in fact, encouraged that relationship." Manoir-Electroalloys, supra, 711 F. Supp. at 194.

In finding a continuing relationship, the Manoir-Electroalloys court also recognized that Hanocho's relationship with Iacono dated back to 1976 and the firm provided Iacono legal services "whenever required." Based upon this recognition, and its appreciation of the letters, the court held that Iacono was a present client at the time the third-party complaint was filed. The court stated, "the mere fortuity that [Iacono] did not require more extensive or frequent services than he did cannot be the escape hatch Hanocho would have it be." 711 F. Supp. at 194.

In this case, Ohnmacht has had a relationship with the firm since 1992, when he retained the firm to defend him against the civil rights complaint. In the last six years, Ohnmacht has had the firm represent his interests on two entirely independent matters, Pa 36, ¶¶ 4 & 7, one of which has (up until February 13, 1998) consistently been treated as continuing, Pa 31-32, ¶¶ 5-6; Pa 89, ¶ 5. Ohnmacht perceived the members of the firm as "his lawyers," Pa 17, ¶ 12, and the letters Tashjy sent Ohnmacht

supported the reasonableness of this belief. Like Hannoeh, the firm here should not be permitted to rely on the fortuity that Ohnmacht did not require more frequent services, or that the timeframe governing the re-opener did not require Ohnmacht to react sooner.

In the context of attorney ethics, the Supreme Court has characterized its "overriding concern" as "maintaining public confidence in the integrity of the legal profession." Inquiry on Index No. 58-9(b), 130 N.J. 431 (1992); State v. Galati, 64 N.J. 572, 576-77 (1974). Likewise, the Court has recognized that "[o]ne of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients." In re Opinion No. 653, 132 N.J. 124, 129 (1993); accord In re Dolan, 76 N.J. 1, 9 (1978) (describing the duty owed by an attorney to his client as "complete and undivided loyalty"); Bartels v. Romano, 171 N.J. Super. 23, 29 (App. Div. 1979) ("An attorney owes his client an unswerving allegiance.").

"Both the duty of undivided loyalty to the client and public confidence in attorneys and the legal system [are] undermined," when a firm is permitted to "drop[] a present client or characteriz[e] him as a former client in order to take on a conflicting and, quite possibly, more lucrative client." Manior-Electroalloys Corp. v. Amalloy Corp., supra, 711 F. Supp.

at 193 n.7.

The trial court's order poses precisely this threat to the public confidence in both individual attorneys and the legal profession as a whole. The clear message conveyed is that a lawyer will establish, then go to all lengths to facilitate, a relationship until a more lucrative opportunity arises, at which time the attorney's allegiance will shift 180 degrees -- regardless of whether the object of the initially sought representation was achieved.

Most illuminating is the firm's description of how it viewed the "duty of loyalty" owed Detective Ohnmacht:

Now comes this motion, where the application is made, well, Judge, a police officer, who had a Worker's Compensation case on one side of the balance wants to come in here and dictate to the Court and to the law firm how the firm should ethically discharge its duties and to step aside on a murder case where somebody is on trial for their life, for the sake of a reopener on a Worker's Compensation case. That's where the balance is here, Judge.

\* \* \* \*

He was told we'll give you a reference. We can give you two, three, four different attorneys who can go and handle your rather routine reopener case and protect your rights. But you, Detective Ohnmacht, have no legal right to dictate how we are to discharge our ethical responsibilities.

(1T:19-14 to 19-22; :23-8 to 23-12) (emphasis added); see also

(1T:40-11 to 40-15). The "undivided loyalty" owed a client is

not proportional to the relative importance or triviality of the client's case. Likewise, the duty of loyalty does not permit abandonment of one client to take on another conflicting representation because the latter seems more important or interesting, affords a firm greater notoriety, or promises to be more financially lucrative. The sliding-scale approach to attorney-client loyalty the firm applied to legitimize ousting Detective Ohnmacht flatly undermines both the letter and spirit of RPC 1.7(a).

The State respectfully requests that the trial court's order sanctioning the firm's continued representation of Bruno be reversed and the firm be disqualified from any further participation in the matter of State v. Bruno.

POINT II

THE FIRM SHOULD BE DISQUALIFIED  
BECAUSE REPRESENTATION OF BRUNO  
CREATES AN APPEARANCE OF  
IMPROPRIETY

The State can find no rational basis for the trial court's decision not to disqualify the firm in light of the impermissible appearance of impropriety continued representation presents.

New Jersey law imposes upon attorneys the duty to avoid even the appearance of impropriety. Petition for Review of Opinion No 569, 103 N.J. 325, 329 & n.4 (1986). "The appearance doctrine is intended not to prevent any actual conflicts of interest but to bolster the public's confidence in the integrity of the legal profession." Id. at 330 (citing In re Cipriano, 68 N.J. 398 (1975) and In re Opinion No. 415, 81 N.J. 318, 323 (1979)).

The dispositive test is whether an informed and concerned private citizen could reasonably find an appearance of impropriety in the subject representation. Inquiry to Advisory Committee on Prof. Ethics Index No. 58-91(b), 130 N.J. 431, 433 (1992); In re Opinion No. 415, supra, 81 N.J. at 325. The test recognizes that "appearances too are a matter of ethical

concern, for the public has an interest in the repute of the legal profession." State v. Needham, 298 N.J. Super. 100, 104 (Law Div. 1996) (quoting In re Abrams, 56 N.J. 271, 277 (1970)).

There are several New Jersey decisions that were binding on the trial court, which it unjustifiably did not follow. These decisions recognize that an attorney who represents a police officer, even on an unrelated matter, cannot subsequently represent a criminal defendant at a trial where the police officer will serve as the State's key witness.

In State v. Needham, supra, the trial court held that representation of a criminal defendant by an attorney who formerly represented the State's police-officer-witness would impermissibly create an appearance of impropriety. 298 N.J. Super. at 102. The facts were such that (1) the attorney represented the police-officer-witness "on an entirely unrelated matter," id. at 102 (emphasis added); and, (2) the representation of the officer occurred "during the very same time period that the criminal charges arose," id. at 103.

The court stated, "[w]hen an attorney's former client is the State's chief witness, it is beyond dispute that an appearance of impropriety is created, requiring the attorney be disqualified." Id. In support of this conclusion, the court identified the following appearances such representation would

present: (1) that the witness might unfairly have aided defendant; (2) that defense counsel might not have cross-examined his former client as vigorously; and, (3) that the attorney will use confidential information from the prior relationship to cross-examine the witness. Id. at 104-07.

Needham clearly applies to require disqualification of the firm from representing Bruno in the pending criminal proceeding. The firm has served as counsel for Ohnmacht on two separate matters. The time period of the second representation overlapped with the firm's acceptance of Bruno's case. The last letter to Ohnmacht from the firm was dated January 26, 1998. Pa 23. The homicide occurred on January 18, 1998. Pa 15, ¶ 2. Thus, the firm's relationship with Ohnmacht extended up through "the very same time period that the criminal charges arose." The statuses of the parties in this case are materiall identical to the ones present in Needham.

Accordingly, as in Needham, a private citizen reasonably apprised of the facts might very well find an appearance of impropriety by opining: (1) Ohnmacht might hold back with his own testimony in deference to his lawyer-adversary; (2) defense counsel might not cross-examine Ohnmacht as vigorously; and/or, (3) the firm will use facts conveyed in confidence per its relationship with Ohnmacht to cross-examine him.

The trial court below tried to distinguish Needham on several grounds. First, the court found material that the prior representation involved a defense against a criminal matter. (2T:7-20 to 7-24; :9-15 to 24). On this ground, the court reasoned that "one could easily conclude that certain confidential information passed between attorney and client which would have jeopardized the integrity of that police officer as a chief witness in the State's criminal case." (2T:7-24 to 8-2).

The trial court's reasoning might be legitimate if were not flatly undermined by the Needham court's opinion. The Needham opinion consistently emphasized that the subject criminal case was completely unrelated to the matters for which the firm had formerly represented the police officer. 298 N.J. Super. at 101, 102-03, 106. If anything, the court underplayed the fact one of the prior matters was criminal in nature. The court's reasoning was such that, "Regardless of what defense counsel has learned about Officer Warner, in a layman's eyes, the man who the defense attorney once represented stands to be discredited, on cross-examination, by his former attorney." Id. at 107 (quoting State v. Catanoso, supra, 222 N.J. Super. at 648) (emphasis added).



Thus, contrary to the trial court's conclusion, the Needham court clearly did not think material the fact that the former representation happened to be a criminal matter. Instead, the court emphasized the improper appearance posed by the representation. The Needham Court's reasoning in this regard is consistent with New Jersey law. State v. Galati, supra, 64 N.J. at 576-78; State v. Catanoso, supra, 222 N.J. Super. at 647-48 ("Even if no actual conflict or attributed conflict existed in this matter, [counsel] must be disqualified because the appearance of impropriety is created by his representation of his former client who is now the State's chief witness."); Opinion 84 (1965); see also State v. Needham, supra, 298 N.J. Super. at 105 (citing applicable ethics opinions).

The trial court also stated that, unlike Needham, there was "no indication here that Ohnmacht w[ould] be the State's key witness." (2T:9-8 to 9-9). Plainly, this is wrong. In his affidavit in support of the motion, Ohnmacht indicated he was "designated by the Middletown Police Department to serve as lead detective in connection with the investigation," he had taken "approximately 20 formal written statements" and "served as the affiant for several search warrants." Pa 15, ¶¶ 3, 4. Ohnmacht witnessed the only statement given by defendant Bruno. Ohnmacht absolutely will be a key police witness in the pending Bruno

trial. See (1T:5-18 to 6-11; :37-1 to 37-4).

Finally, the court sought to distinguish Needham by indicating Bruno's case might expose him to the death penalty. (2T:9-25 to 10-5). Actually, it has been decided that Bruno will not be tried for capital murder. Even if this were a capital matter though, this would not mean that Bruno's choice of counsel trumps the rules of ethics. Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988); State v. Needham, supra, 298 N.J. Super. at 103 (citing State v. Lucarello, 135 N.J. Super. 347, 353 (App. Div.), aff'd o.b., 69 N.J. 31 (1975)); State v. Catanoso, supra, 222 N.J. Super. at 644.

In all material respects, Needham is indistinguishable from the instant case, and the firm's disqualification should have been ordered. In addition to relying upon Needham, the State argued below that application of Opinion 404, 102 N.J.L.J. 205 (1978), required disqualification. The trial court did not even address Opinion 404 or attempt to explain why it did not apply.

In Opinion 404, the Ethics Committee determined it was ethically improper for an attorney to represent a defendant in municipal court, where the complaining witness would be a police officer whom the attorney represented two other times on unrelated matters. The Committee analogized Opinion 113, 90 N.J.L.J. 473 (1967), and reasoned that its rationale "applies

with equal, if not greater, force to this situation where the attorney in question, which not representing the P.B.A., has specifically represented the complaining witness."<sup>5</sup>

In this case, this firm has "specifically" represented Ohnmacht on two prior matters, both work-related, and one whose status was treated as continuing up through the time Bruno was accepted as a client. In representing Bruno, the firm will be required to cross-examine Ohnmacht, attack his credibility, and question his investigative competency and technique. All of the Needham and Opinion 104 factors deemed to give rise to conflict and an untoward appearance are implicated.

The Supreme Court has stated that, so long as there is an "adequate factual basis" for an informed citizen to conclude there would be a "high risk" of impropriety, then the lawyer must be disqualified. Matter of Petition for Review of Opinion

---

<sup>5</sup> The Committee also noted the attorney represented five other police officers in various matters. In the instant case, the State, "upon information and belief," certified that the firm has represented numerous Middletown police officers in the past, some of whom may be witnesses in this case. Pa 5-6, ¶ 10; see generally Pa 57-71. To substantiate its belief, the Stat. requested that the firm submit a list of police officers it currently or formerly represented. Pa 6, ¶ 11. The firm denied it represented the PBA, Pa 37, ¶¶ 12 & 13, but never denied it represented numerous Middletown officers. See Pa 27, ¶ 25. The court never ordered the firm to produce the list; indeed, it never even addressed the State's point in this regard.

No. 569, supra, 103 N.J. at 331; see also State v. Catanoso, supra, 222 N.J. Super. at 648. Moreover, if there is any doubt as to the propriety of an attorney's representation of a client, "such doubt must be resolved in favor of disqualification." Reardon v. Marlayne, Inc., 83 N.J. 460, 471 (1980); compare (2T:10-8 to 10-16) (recognizing that "reasonable minds" could differ as to whether an appearance of impropriety was posed, but concluding that the court's "reasonable mind" discerned no conflict).

In this case, the "factual basis" derives not from the particulars of precisely what Ohnmacht disclosed in the course of his six-year long relationship with the firm and how such details might specifically be utilized on cross-examination in the pending trial. Ohnmacht undoubtedly did disclose an "infinite number of confidences" to the firm during his tenure as a client, but this misses the heart of the matter. The "factual basis" requiring disqualification in this case derives from Ohnmacht's status as a present/very-recently-former client of the firm, his status as a police officer, his status as a critical prosecution witness in the Bruno matter, and the firm's current status as Bruno's advocate and the State's adversary.

There are too many opinions finding an appearance of impropriety in cases with postures analogous to this one. The

trial court was insensitive to the precedent and its applicability to the facts of this case. The conclusion is compelled that continued representation of Bruno by the firm creates a very real appearance of impropriety.

The State respectfully requests this Court reverse the trial court's order permitting the firm to continue representing defendant Bruno in the pending criminal trial.

CONCLUSION

For the foregoing reasons and authorities cited in support thereof, the State respectfully requests this Court reverse the order denying disqualification of the firm from continued representation of defendant Gregory Bruno in the matter of State v. Bruno.

Respectfully submitted,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

*Mary E. Juliano*

By: Mary E. Juliano  
Assistant Prosecutor  
Of Counsel and  
On the Letter Brief

WPS/mrj/vlr  
03/19/99

cc Norman M. Hobbie, Esq.  
Edward C. Bertucio, Esq.

A-3215-98T5

FILED  
APPELLATE DIVISION  
MAR 19 1999

REC'D  
APPELLATE DIVISION

MAR 19 1999

*[Handwritten signature]*  
Clerk

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-3215-98T5  
CASE NO. 98-0489

STATE OF NEW JERSEY,  
Plaintiff-Appellant,  
v.  
GREGORY S. BRUNO,  
Defendant-Respondent.

:  
:  
:  
:  
:

CRIMINAL ACTION

ON APPEAL FROM AN ORDER  
DENYING DISQUALIFICATION OF  
COUNSEL FROM CONTINUED REPRESENTATION OF DEFENDANT IN THE  
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

SAT BELOW:      Honorable James A. KENNEDY, J.S.C.

---

APPENDIX DOCUMENTS ON BEHALF OF THE STATE OF NEW JERSEY

---

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
MONMOUTH COUNTY COURT HOUSE  
71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1789  
(732) 431-7160

Mary R. Juliano  
Assistant Prosecutor  
Of Counsel and  
On the Brief

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ORIGINAL FILED  
MONMOUTH COUNTY  
JUL 16 1998  
WILLIAM W. CARPENTER  
Deputy Clerk  
Superior Court

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
COURT HOUSE  
FREEHOLD, NEW JERSEY 07728-1261  
(732) 431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331 & 1998-000044-1331

STATE OF NEW JERSEY :

Plaintiff, :

v. :

GREGORY S. BRUNO :

Defendant. :

**CRIMINAL ACTION**

NOTICE OF MOTION TO  
DISQUALIFY COUNSEL

TO: Norman M. Hobbie, Esq.  
GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road, P.O. Box 190  
Middletown, New Jersey 07748

Edward C. Bertucio, Jr., Esq.  
GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road, P.O. Box 190  
Middletown, New Jersey 07748

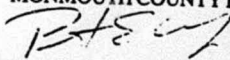
**PLEASE TAKE NOTICE** that on Friday, August 7, 1998, at 9:00 in the forenoon  
or as soon thereafter as counsel may be heard, the undersigned will make an application

before the Honorable John A. Ricciardi, P.J. Cr., for an order disqualifying the law firm of Giordano, Halleran & Ciesla or any of its individual attorneys from representing the defendant.

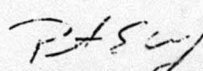
PLEASE TAKE FURTHER NOTICE that the undersigned will rely upon the attached affidavit, certification and brief submitted herewith as well as oral argument. Pursuant to Rule 1:6-2, a proposed form of order is enclosed herewith.

Respectfully submitted,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

  
By: Peter E. Warshaw, Jr.  
Assistant Prosecutor

I hereby certify that copies of the within notice of motion and proposed order were served upon defense counsel by depositing same in a regular U.S. mailbox in Freehold, New Jersey on July 16, 1998.

  
Peter E. Warshaw, Jr.  
Assistant Prosecutor

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
COURT HOUSE  
FREEHOLD, NEW JERSEY 07728-1261  
(732) 431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331 & 1998-000044-1331

STATE OF NEW JERSEY :

Plaintiff, :

v. :

GREGORY S. BRUNO :

Defendant. :

CRIMINAL ACTION

CERTIFICATION IN SUPPORT OF  
MOTION SEEKING TO DISQUALIFY  
COUNSEL

I, PETER E. WARSHAW, JR., hereby certify that the following facts are true  
to the best of my knowledge:

1. I am an Assistant Monmouth County Prosecutor in which capacity I have been assigned to prosecute the within matter which is pending grand jury. As such, I am fully familiar with the facts I now relate.

2. In late February or early March of 1998, I was contacted by Detective Ronald D. Ohnmacht of the Middletown Township Police Department. Detective Ohnmacht advised me that he had been told that Norman M. Hobbie, Esq. of the law firm of Giordano, Halleran & Ciesla would be representing the defendant in the above-captioned matter. Detective Ohnmacht indicated to me that he was extremely uncomfortable with this because he had been previously represented by the Giordano firm in a civil rights action in which he was a defendant and was currently represented by the Giordano firm in a worker's compensation matter. Detective Ohnmacht asked me about the propriety of this concurrent representation.

3. I conducted legal research and located the law which is contained in the attached brief. In my mind, this raised a legitimate legal question as to whether the Giordano firm could represent the defendant.

4. I advised Detective Ohnmacht that I had not received any communication from the Giordano firm indicating that they represented the defendant but would deal with the issue if, and when, I received such communication.

5. In April 1998, I was speaking to Edward C. Bertucio, Jr., Esq. about an unrelated matter. I advised Mr. Bertucio that I had heard that his firm was going to be

representing the defendant and asked whether that was so. Mr. Bertucio indicated that a substitution of attorney form had been filed with the Court and the Giordano firm would in fact be representing the defendant. Subsequently, I received a letter from Mr. Bertucio dated April 14, 1998, a copy of which is attached verifying their representation of the defendant. (See Appendix A)

6. Subsequent to my receiving this letter, I contacted Mr. Hobbie directly and discussed the issue as to whether a conflict existed directly with him. Mr. Hobbie indicated that he would take my concerns under advisement, discuss them with the defendant and advise me as to his position.

7. Subsequently, I forwarded a letter dated May 6, 1998 to Mr. Hobbie. A copy of this letter is attached. (See Appendix B)

8. On May 11, 1998, I received a reply from Mr. Bertucio indicating that the Giordano firm would not be removing itself as counsel in this matter. (See Appendix C)

9. By filing this motion, I am not in any way asserting, directly or indirectly, that Mr. Hobbie or Mr. Bertucio have deliberately committed an ethics violation. To the contrary, I have known and respected both attorneys for many years. This is very simply a question of law.

10. Upon information and belief, I assert that Giordano, Halleran & Ciesla has represented numerous Middletown Township police officers in the past, some of whom may be witnesses in this case. I respectfully request that the Court order Giordano,

Halleran & Ciesla to submit, under seal if necessary, a list of Middletown police officers the firm has represented or is now representing.

11. I also respectfully request that the Court consider ordering this hearing to be testimonial in nature if deemed necessary.

12. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

P. E. Warshaw, Jr.

Peter E. Warshaw, Jr.

Dated: July 16, 1998

JOHN C. GIORDANO JR.  
JOHN P. HALLERAN  
THOMAS M. CIESLA  
BERNARD J. BERRY JR.  
THOMAS A. PULVIN  
JOHN A. RIELLO  
MICHAEL J. GROSS  
RICHARD L. FREEDMAN DA  
GEORGE J. TILLY  
JOHN A. GUNCO  
NORMAN W. HOBBS DA  
EDWARD S. RAZELY  
STEVEN W. BERLIN D  
BARBARA A. HUNT  
PHILIP D. FORLENZA  
MICHAEL J. COLLING D  
PAUL H. SCHNEIDER  
W. SCOTT TABUJ  
MICHELLE A. QUERQUEZ  
DAVID P. CORRIGAN D  
EDWARD C. BERTUCIO JR. A  
ANDREW S. ROBINS  
MICHAEL A. BRUNO  
DORIANET S. CARNELI  
KURT E. ANDERSON  
PAUL T. COLELLA  
STEVEN J. BROGHAN  
COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT E. LINNIN  
JOANNE S. GRAY  
OF COUNSEL  
S. THOMAS GAGLIANO  
JOHN C. GIORDANO  
1921-1999

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PAUL V. FERRICOLA D  
JAY S. BECKER  
J. ANDREW KINSEY  
TIMOTHY D. LYONS  
DEAN E. REBAN  
DEBRA J. RUBENSTEIN  
GERALD P. LALLY  
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CRAIG S. VIRSH  
CHARLES A. CERUSI  
MICHAEL J. VITELLO  
ANITA L. CHARDELAIN  
PATRICK S. CONVERY  
JACQUELINE DECARLO  
NICOLE DEVANEY

CERTIFIED CIVIL TRIAL ATTORNEY  
& CERTIFIED CRIMINAL TRIAL ATTORNEY

PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER:

(732) 219-5484

FILE NO.  
11308/001

April 14, 1998

Peter E. Warshaw, Assistant Prosecutor  
Monmouth County Prosecutor's Office  
East Wing, Court House  
Third Floor  
Freehold, New Jersey 07728-1261

Re: State of New Jersey v. Gregory Bruno

Dear Assistant Prosecutor Warshaw:

Pursuant to our telephone conversation of April 14, 1998,  
enclosed please find correspondence and a Substitution of  
Counsel in the above-captioned matter.

Please adjust your records to indicate our appearance on  
this matter.

Very truly yours,

GIORDANO, HALLERAN & CIESLA, P.C.

*Edward C. Bertacio*  
Edward C. Bertacio, Jr., Esq.

ECB/job  
Enclosures  
cc: Criminal Case Management

Pa 7

APPENDIX A



JOHN E. GIORDANO JR.  
FRANK M. CIESLA  
EDWARD J. BERRY JR.  
JAMES A. FISHMAN  
JOHN A. AIELLO  
MICHAEL J. BROSS  
RICHARD L. FRIEDMAN, DA  
GEORGE J. TYLER  
JOHN A. SHIBES  
NORMAN W. HOBBS DA  
EDWARD S. RADELY  
STEVEN M. DEBLIO  
CHARLENE A. HUNT  
PHILIP D. FURLEN, A  
MICHAEL J. CANNINO C  
PAUL H. SCHNEIDER  
N. BERTY VADOFF  
MICHELE A. QUERQUES  
DAVID P. CORRIGAN D  
EDWARD C. BERTYUCO JRA  
ANDREW S. ROSS  
MICHAEL A. BRUNS  
MARGARET B. CARNELI  
MURT C. ANDERSON  
PAUL T. COLELLA  
STEVEN J. BRODMAN

COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT E. LINNIN  
JOANNE S. GRAY  
OF COUNSEL  
S. THOMAS SAGLIANO

JOHN E. GIORDANO  
DOB: 1958

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FAX: (732) 224-6599

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19098 999-3900

PLEASE REPLY TO: MIDDLETOWN  
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February 10, 1998

MICHAEL P. KAPUR  
LAURA R. ANDERSON  
PAUL V. FERRELLA B  
JAY S. BECKER  
J. ANDREW KIMBY  
TIMOTHY D. LYONS  
SEAN E. REBAN  
DEBRA J. RUBENSTEIN  
GERALD P. LALLY  
MICHAEL A. PANE  
J. SCOTT ANDERSON  
GRAIG S. VIRSHI  
CHARLES A. CERUSO  
MICHAEL J. VITELLO  
AMTA L. SHAPDELANE  
PATRICK S. CONVERY  
JACQUELINE DECARLO  
MIDDLE DEWANEY

REGISTERED CIVIL TRIAL ATTORNEY  
REGISTERED CRIMINAL TRIAL ATTORNEY  
FILE NO.

11308/001

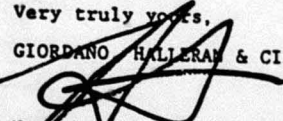
Criminal Division Manager  
Monmouth County Superior Court  
Monmouth County Court House  
71 Monument Park  
Freehold, New Jersey 07728

Re: State of New Jersey v. Gregory Bruno  
Indictment No.:

Dear Sir/Madam:

Enclosed herein please find an original and two copies of a Substitution of Attorney with regard to the above-referenced matter. Kindly file said Substitution of Attorney with the Court and return a "filed" copy of same to attention at your earliest convenience.

Should you have any questions or concerns with regard to the enclosed, please do not hesitate to contact me.

Very truly yours,  
GIORDANO HALLERAN & CIESLA, P.C.  
  
Norman W. Hobbie, Esq.

NMH/mem  
Enclosures

cc: Theodore V. Fishman, Office of the Public Defender

GIORDANO, HALLERAN & CIESLA, P.C.  
Post Office Box 190  
125 Half Mile Road  
Middletown, New Jersey 07748  
(908) 741-3900  
Attorneys for Defendant

STATE OF NEW JERSEY,  
Plaintiffs,  
-vs-  
GREGORY BRUNO,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY  
LAW DIVISION - CRIMINAL PART

INDICTMENT NO.:

CRIMINAL ACTION

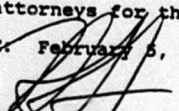
SUBSTITUTION OF ATTORNEY

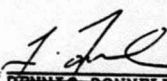
The undersigned hereby consent to the substitution of

Norman M. Hobbie, Esq.  
GIORDANO, HALLERAN & CIESLA, P.C.  
Post Office Box 190  
Middletown, New Jersey 07748

as attorneys for the Defendant in the above-captioned matter.

DATE: February 5, 1998

  
NORMAN M. HOBBIE, ESQ.  
Superseding Attorney

  
~~DENNIS CONNELLY, ESQ.~~  
Withdrawing Attorney

*Theodore V. Fishman*



JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH

71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1261

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FAX (908) 409-3673  
FAX (908) 409-4830

ALTON D. KENNEY  
FIRST ASSISTANT PROSECUTOR  
ROBERT A. HONECKER, JR.  
SECOND ASSISTANT PROSECUTOR  
WILLIAM D. GUIDRY  
DIRECTOR OF TRIAL DIVISION  
WILLIAM P. LUCIA  
CHIEF OF INVESTIGATIONS

May 6, 1998

Norman M. Hobbie, Esq.  
GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road, P.O. Box 190  
Middletown, New Jersey 07748

Re: State of New Jersey v. Gregory Bruno  
Case No. 98-00489; Investigation No. HM98-00020

Dear Mr. Hobbie:

Attached herewith please find copies of letters dated June 26, 1997, September 29, 1997, October 13, 1997, January 6, 1998 and January 26, 1998, from M. Scott Tashjy, Esq. to Detective First Class Ronald Ohnmacht. Detective Ohnmacht provided me with these letters after he learned that your firm had entered an appearance on behalf of the above-captioned defendant.

The purpose of this letter is to advise you that Detective Ohnmacht unequivocally objects to your firm representing Bruno at the same time as it represents him. It is my understanding that Detective Ohnmacht has verbally advised Mr. Tashjy of this fact. Though Mr. Tashjy is currently handling Detective Ohnmacht's case, the detective advises me that he retained your firm because of your personal reputation as well as the friendship you and he share.

Please review this letter with the above-captioned defendant and advise me as to your position as to whether a conflict of interest exists or whether there is an appearance of impropriety. Please be advised that if your firm intends to remain as

Pa 10  
APPENDIX B

Norman M. Hobbie, Esq.

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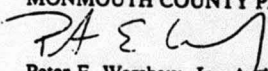
May 6, 1998

counsel to Defendant Bruno, this office will file a motion to determine whether a conflict exists.

I can be reached directly at 577-6790 and look forward to hearing from you.

Very truly yours,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

  
By: Peter E. Warshaw, Jr., Assistant Prosecutor  
Director, Major Crimes Unit

PEW:pl

Enclosures

cc Detective First Class Ronald Ohnmacht

JOHN L. GIORDANO JR.  
 JOHN B. HALLERAN  
 FRANK B. CIESLA  
 BERNARD J. BERRY JR.  
 THOMAS A. FLISKIN  
 JOHN A. FIELLO  
 MICHAEL J. GROSS  
 RICHARD J. FRIEDMAN DA  
 GEORGE J. TILLEN  
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 NORMAN M. HOBBS DA  
 EDWARD S. MADZELY  
 STEVEN M. BERLUP O  
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COUNSEL  
 ELIZABETH CHRISTIAN  
 ROBERT E. LINNIN  
 JOANNE E. DRA  
 OF COUNSEL  
 S. THOMAS BAGLIANO

JOHN C. GIORDANO  
 1921-1988

**GIORDANO, HALLERAN & CIESLA**  
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441 EAST STATE STREET  
 TRENTON, NEW JERSEY 08625  
 (609) 688-3900

PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER:  
 (732) 219-5484

May 11, 1998

NICHOLAS P. SAPUR  
 LAURA N. ANDERSON  
 PAUL V. FERRICOLA D  
 JAY B. BECKER  
 TIMOTHY D. LYONS  
 SEAN E. REGAN  
 DEBRA J. RUBENSTEIN  
 GERALD P. LALLY  
 MICHAEL A. PANE  
 J. SCOTT ANDERSON  
 CRAIG S. WIRSH  
 CHARLES A. CERUSBI  
 MICHAEL J. VITIELLO  
 ANITA L. CHAMPAGNE  
 PATRICK S. CONVERY  
 JACQUELINE DECARLO  
 NICOLE DEVANET

CERTIFIED CIVIL TRIAL ATTORNEY  
 & CERTIFIED CRIMINAL TRIAL ATTORNEY

FILE NO.

11308/001

Peter E. Warshaw, Assistant Prosecutor  
 Monmouth County Prosecutor's Office  
 Monmouth County Court House  
 East Wing, Third Floor  
 71 Monument Park  
 Freehold, New Jersey 07728-1261

Re: State of New Jersey v. Gregory Bruno  
 Case No.: 98-00489

Dear Mr. Warshaw:

This letter confirms our telephone conversation and receipt of your letter dated May 7, 1998 to Norman M. Hobbie, Esq. of this firm. At the outset, please note that we appreciate the professional courtesy you extended when you dealt with this matter by way of a personal telephone call.

We have received and considered your inquiry that a conflict of interest may exist with this firm's representation of Mr. Bruno in the above-referenced case.

Please be advised that your inquiry of conflict of interest has been discussed fully with our client, as well as his parents. Both our client and his parents unequivocally have instructed us to remain as counsel in this case.

You should also be aware that some of the information contained in your correspondence is inaccurate. For example, as was discussed with you during our telephone conversations, Detective Ohnmacht is not a present client of this firm. His worker's compensation case was closed in September of 1997.

GIORDANO, HALLERAN & CIESLA  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Peter E. Warshaw  
May 11, 1998  
Page 2

Significantly, neither Mr. Hobbie nor I have ever worked on said matter on behalf of Det. Ohnmacht. His worker's compensation case was handled solely by Scott Tashjy, Esq. of this office.

Of interest, however, is that Gregory Bruno's parents have indicated to me that they have a long-standing personal friendship with Detective Ohnmacht. Detective Ohnmacht, despite this relationship, was not removed from the investigation or dissuaded from discharging his duty in a professional manner. Nor did he cease to pursue the investigation due to his friendship with the Bruno family.

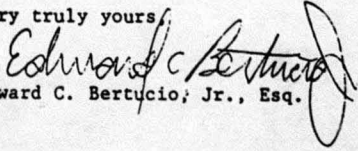
As you are well aware, the discovery in this case has not been disclosed to defense counsel. Nevertheless, during a recent conversation you referred to this case as a "forensics" case. Likewise, Det. Ohnmacht did not take an inculpatory statement from Gregory Bruno. In fact, after one interview with Det. Ohnmacht, Gregory was allowed to leave. Nor was Det. Ohnmacht a witness to any of the alleged crimes.

As counsel for Gregory Bruno, this firm expects to zealously and aggressively represent his interests. This firm does not perceive any factor that will hamper or prevent us from discharging our duties on behalf of this firm's client, Gregory E. J.

Therefore, in view of the foregoing and with the client's instructions, this firm will not remove itself as counsel in this case.

Should you have any questions or comments with regard to the foregoing, kindly contact me at your convenience.

Very truly yours,

  
Edward C. Bertuccio, Jr., Esq.

ECB/bmc

cc: Gregory Bruno  
Mr. and Mrs. Robert Bruno

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
COURT HOUSE  
FREEHOLD, NEW JERSEY 07728-1261  
(908) 431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331 & 1998-000044-1331

STATE OF NEW JERSEY :

Plaintiff, :

CRIMINAL ACTION

v. :

AFFIDAVIT

GREGORY S. BRUNO, :

Defendant. :

I, RONALD D. OHNMACHT, of full age, being duly sworn according to law,  
upon my oath, depose and say:

1. I am a Detective with the Middletown Township Police Department and have  
been employed by that department for approximately 30 years. I have been assigned to  
the Detective Bureau for approximately 26 consecutive years.

2. On January 18, 1998, Robert James Gelhaus, Jr., of 28B Bayview Avenue, Keansburg was found dead by a Middletown police officer who was on routine patrol. Mr. Gelhaus' body was found in a 1991 Mercury station wagon taxi cab which belonged to his employer at approximately 4:59 p.m. The taxi cab containing Mr. Gelhaus' body was located behind a commercial structure known as Crestview Pharmacy, Highway 35 North and Crestview Drive, Middletown. An autopsy has determined that the cause of death was multiple sharp force trauma from one or more knives, and the manner of death was homicide.

3. I was designated by the Middletown Police Department to serve as lead detective in connection with this investigation.

4. In that capacity, I conducted numerous witness interviews as well as an interview of the defendant. I anticipate that my interview of the defendant will be subject to a Miranda hearing. I participated in taking approximately 20 formal written statements. Additionally, I served as the affiant for several search warrants.

5. On February 1, 1998, the defendant was charged with murder and felony murder on Warrant Complaint 1998-000043-1331 and armed robbery and possession of a knife for an unlawful purpose on Warrant Complaint 1998-000044-1331.

6. The complainant was Detective Lieutenant Michael Rubino of the Middletown Township Police Department.



7. It is my understanding that the law firm of Giordano, Halleran & Ciesla, 125 Half Mile Road, Middletown has entered an appearance on behalf of the defendant. More specifically, I understand that the defendant will be represented by Norman M. Hobbie, Esq. and Edward C. Bertucio, Esq.

8. I have been represented by the law firm of Giordano, Halleran & Ciesla in the past and am currently being represented by them. When I learned that the Giordano firm intended to represent the defendant, I communicated my objection to M. Scott Tashjy, Esq. who had been handling one of my matters. I was advised that Giordano, Halleran & Ciesla intended to represent Mr. Bruno notwithstanding my objection. I communicated my objection to the Monmouth County Prosecutor's Office and requested that legal research be conducted to determine the propriety of this.

9. I was initially represented by the Giordano firm in the civil action known as John Richard Ward v. Township of Middletown, et. al. The matter was venued in Federal Court and had been assigned Docket No. 92-1712 (GEB). The case was assigned to the Honorable Garrett E. Brown, Jr. In this matter I was sued individually as well as in my status as a detective with the Middletown Township Police Department. There were also numerous John and Jane Doe defendants and representatives of the Monmouth County Prosecutor's Office were sued as well. In this civil rights action, the plaintiff alleged that I had committed numerous sixth amendment violations in connection with several interviews I conducted of him in July 1989.

10. I retained the Giordano firm to represent my interests. I specifically went to Norman M. Hobbie, Esq. because of his fine reputation as well as my personal friendship with him. Though I can not articulate all the details, I do know that the case against me was ultimately dismissed.

11. Subsequently, I suffered an injury at Middletown Township Police Headquarters. I pursued a worker's compensation case and was again represented by the Giordano firm. My initial contact was with Mr. Hobbie who referred me to Mr. Tashjy. I again retained the Giordano firm because of my friendship with Mr. Hobbie as well as his reputation.

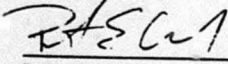
12. The initial phase of the worker's compensation claim was resolved in or around June 1997. At the time that this was resolved, I discussed with Mr. Tashjy the possibility of filing what I understand to be called a re-opener claim. I believe that I am currently represented by the Giordano firm and wish to pursue the reopener claim. However, on July 14, 1998, I spoke to Mr. Tashjy and he advised me that he did not represent me.

13. Attached herewith please find copies of letters I received from Mr. Tashjy dated June 26, 1997, September 29, 1997, October 13, 1997, January 6, 1998 and January 26, 1998. (See Appendix A-1 through A-5)

14. I unequivocally object to the Giordano firm representing myself and the defendant in this matter simultaneously. I was never asked to consent to this joint representation but, on my own initiative, I advised Mr. Tashjy that I object.

  
Ronald D. Ohnmacht

Sworn and subscribed to  
before me this 13<sup>th</sup> day  
of July, 1998.

  
Peter E. Warsaw, Jr.  
Attorney at Law, State of New Jersey

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PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER:

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June 26, 1997

MICHAEL P. KAPUR  
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JOANNE B. UHAY  
PAUL J. FERRICOLA  
JAY L. BECHT  
J. ANTHONY WISE  
JAMES H. TUNNEY  
ANDREW J. JORDAN  
SEAN J. HILAN  
VERONICA HUGHENSTEIN  
DEBRA J. KELLY  
ANDREW J. MACCO  
MICHAEL A. PANE  
J. SCOTT ANDERSON  
ERIN S. WINDEN  
JOSEPH M. L'AMOREUX  
CHARLES A. L'AMOREUX  
JUDITH A. L'AMOREUX  
MICHAEL J. L'AMOREUX  
DAVID M. DE WOLFE  
ANTHONY CHARNOLEONE  
JAMES R. BOGGS  
LYNETTE J. CARMARTY  
PATRICIA S. CONVERY

GEORGE W. CIVIL, FIRM ATTORNEY  
& CERT. OF QUAL. FIRM ATTORNEY

FILE NO

9112/377

JOHN C. GIORDANO, JR.  
JOHN H. HALLERAN  
FRANK R. CIESLA  
BERNARD J. HERRY, JR.  
THOMAS J. P. TEIN  
JOHN A. A.E. II  
MICHAEL J. DOBBS  
MICHAEL J. HILGREN, II  
DEBRA J. KELLY  
JOHN A. SUNDG  
NORMAN W. TORRE DA  
EDWARD S. MADZEL  
STEVEN W. BERLIN, II  
SHARLENE H. HUNT  
PHILIP S. FOLLENZA  
TOBYE BRAGA  
MICHAEL J. CANNING D  
PAUL W. BERNHARDT  
W. SCOTT TASHJY  
MICHAEL A. WERQUEZ  
DAVID H. CANNIDA, D  
EDWARD S. BERTUCIO, JR.  
ANDREW S. ROBINSON  
MICHAEL A. SUONO  
MARGARET B. CARMELI  
KURT E. ANDERSON  
PAUL F. COLELLA  
STEVEN J. BRIDGMAN  
SUSAN B. DAVIS  
COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT C. NEIN  
D. C. DUMBEL  
S. THOMAS GALLAGHER  
JOHN C. GIORDANO  
1991-1999

Mr. Ronald Ohnmacht

Re: Ohnmacht v. Township of Middletown

Dear Mr. Ohnmacht:

It was a pleasure meeting with you recently with regard to resolution of your Workers' Compensation claim. I would like to take this opportunity to thank you for expressing confidence in our firm, and it was a pleasure for me to handle your claim. As we discussed during our last meeting, you have two years from the date you receive your last disability benefit to reopen your case for an increase in permanent disability or to request additional medical treatment. Please keep this in mind. I would ask that, once you get your final permanent disability payment, you mark your calendar for 18 months in advance (as a precaution), to ensure that the two-year period does not pass unnoticed.

As always, I will be available for any questions you might have with regard to your case or any legal issues that confront you in the future. I wish you the best.

Thank you for your attention.

Very truly yours,

GIORDANO, HALLERAN & CIESLA, P.C.

*M. Scott Tashjy*

M. Scott Tashjy, Esq.

MST/cmc

APPENDIX A-1 Pa 19

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JOHN A. NELLO  
MICHAEL J. CROSS  
RICHARD J. FREDMAN, DR.  
GEORGE J. TILLY  
JOHN A. GUNCO  
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TERRY C. GUFF  
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M. SCOTT TASHJY  
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COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT E. LINNIK  
OF COUNSEL  
S. THOMAS DALRYMPLE  
JOHN C. GIORDANO  
1991-1999

NICHOLAS P. KAPUR  
LAURA M. ANDERSON  
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PAUL T. FERRELLA  
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J. ANDREW KINSEY  
T. MATHIAS L. VING  
JAMES J. SHARON  
JAMES E. HUGH  
JAMES J. HUBENSTEIN  
MICHAEL J. LASKY  
CATHERINE F. MACOS  
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AGAN R. KOKAS  
LYNETTE J. CANNARY  
PATRICK S. CONVERY  
CERTIFIED CIVIL TRIAL ATTORNEY  
& CERTIFIED CRIMINAL TRIAL ATTORNEY  
FILE # 2.

9142/377

September 29, 1997

Mr. Ronald Ohnmacht

Re: Ohnmacht v. Township of Middletown

Dear Mr. Ohnmacht:

Enclosed please find three (3) blank Applications for Review or Modification of Formal Award. Please sign where indicated and return same to me per the enclosed self-addressed stamped envelope.

Thank you for your attention.

Very truly yours,

*M. Scott Tashjy*  
M. Scott Tashjy, Esq.

MST/cmc  
Enclosure

JOHN C. GIORDANO, JR.  
 JOHN W. HALLERAN  
 FRANK B. CIOLO  
 BERNARD J. BERRY, JR.  
 THOMAS A. ELISHA  
 JOHN J. AIELLO  
 MICHAEL J. BROSS  
 RICHARD L. FRIEDMAN, D.D.  
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 JOHN A. SIVCO  
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 STEVEN J. BRODMAN  
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 COUNSEL  
 ELIZABETH CHRISTIAN  
 ROBERT E. LINDS  
 OF COUNSEL:  
 S. THOMAS DAVIS, JAMES  
 JOHN C. GIORDANO, JR.  
 1981-1988.

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 JORDANO SALVERSTEIN  
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 DAVID A. DE SINDHE  
 ANITA L. CHARDELAIN  
 ADAM R. LORAN  
 LYNETTE J. CANHART  
 PATRICK S. CONVENT  
 CARRIES CIVIL, FIRM, ATTORNEY  
 & CORPORATE CHIEF, FIRM, ATTORNEY  
 FILE NO.  
 9142/1117

October 13, 1997

Mr. Ronald Ohnmacht  
 [REDACTED]

Re: Ohnmacht v. Township of Middletown

Dear Mr. Ohnmacht:

Please be advised that we have filed a Reopener Claim Petition with regard to your Workers' Compensation claim. Please contact my office and advise me specifically the complaints you have with regard to your leg and your neck. As you will recall, when we originally settled this matter, we reserved the right to reopen this claim, but we must indicate to the Court how your injuries have "worsened" since the date of the last Order in this matter. Thus, your input is essential. Please contact me at your convenience so we may discuss these issues.

Thank you for your attention.

Very truly yours,  
*M. Scott Tashjy*  
 M. Scott Tashjy, Esq.

MST/vak

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J. ANDREW HINDEY  
TIMOTHY D. ATOMB  
LAWRENCE J. BRADON  
DEAN E. REARD  
DEBRA J. RUBENSTEIN  
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ABRAHAM H. KURAN  
PATRICK S. CONVERY  
JACQUELINE DECARLO  
NICOLE DEVANEY

\*CERTIFIED CIVIL, CRIMINAL, ATTORNEY  
\*CERTIFIED CRIMINAL, CIVIL, ATTORNEY

FILE NO.

9142/1117

JOHN C. SORREANO, JR.  
JOHN R. HALLERAN  
FRANK B. CIESLA  
BERNARD V. REBER, JR.  
THOMAS A. FLISIN  
JOHN E. KELLO  
MICHAEL J. GROSS  
MICHAEL L. FRIEDMAN, DA  
SCOTT J. TILES  
JOHN A. GUNCO  
RODMAN H. HOBBS, DA  
EDWARD B. MADLEY  
STEVEN H. BERLIN, D  
CHARLES H. HUNT  
PHILIP D. FORLENZA  
TODD E. DRAFF  
MICHAEL J. CANNING, L  
PAUL H. SCHNEIDER  
M. SCOTT TASHJY  
NICOLE A. QUERQUES  
DAVID P. CORRIGAN, D  
EDWARD C. BERTUCCIO, JR.  
ANDREW B. HOBBS  
MICHAEL A. BRUNO  
MARGARET B. CARMELI  
RUBY E. ANDERSON  
PAUL I. COLELLA  
STEVEN J. BROOKMAN  
COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT E. LINNIN  
OF COUNSEL  
D. THOMAS BARLING  
JOHN C. SORREANO  
1021-1020

January 6, 1998

Mr. Ronald Ohnmacht

Re: Ohnmacht v. Township of Middletown

Dear Mr. Ohnmacht:

Please contact my office to schedule an appointment which would be convenient for yourself regarding the reopening of your Workers' Compensation claim. If it is not convenient for you to meet at my office, please be advised that I would be happy to meet you at headquarters. I look forward to speaking with you soon.

Thank you for your attention.

Very truly yours

*M. Scott Tashjy*

M. Scott Tashjy, Esq.

MST/jmb

JOHN C. GIORDANO JR.  
 JOHN W. HALLERAN  
 FRANK B. CIESLA  
 EDWARD S. BERRY JR.  
 THOMAS A. PULLEN  
 JOHN A. AIELLO  
 MICHAEL J. SRODS  
 MICHAEL L. FRIEDMAN CA.  
 GEORGE J. TYLER  
 JOHN A. GIUNGO  
 NORMAN W. HOBBS DA.  
 EDWARD S. JADELY  
 STEVEN M. BERTLY  
 SHARLENE A. HUNT  
 PAUL D. FORTNER  
 JOE E. SHAFF  
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 MART E. ANDERSON  
 PAUL F. COVELLA  
 STEVEN V. BROOKMAN  
 COUNSEL  
 ELIZABETH CHRISTIAN  
 COLLEEN E. HAN  
 OF COUNSEL  
 S. THOMAS DALYANO  
 JOHN C. GIORDANO  
 1981-1982

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 J. ANDREW W. KIMM  
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 LAWRENCE J. SHAWON  
 BEAM E. HEGAN  
 DEBRA J. RUBEN-FEN  
 BERNALD P. LULL  
 MICHAEL A. PARR  
 J. SCOTT ANDERSON  
 CRAIG S. GUNDEL  
 CHARLES A. LEM VBI  
 MICHAEL J. ...  
 ANITA L. ...  
 ALAN M. ...  
 PATRICIA S. ...  
 JACQUELINE ...  
 NICOLE ...

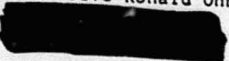
LICENSED CIVIL TRIAL ATTORNEY  
 LICENSED CRIMINAL TRIAL ATTORNEY

FILE NO

9142/1117

January 26, 1998

Detective Ronald Ohnmacht



Re: Ohnmacht v. Township of Middletown

Dear Detective Ohnmacht:

Please contact me at your earliest possible convenience so that we may schedule a mutually agreed upon date and time for an appointment so that we may discuss reopening your claim. In the alternative, please advise me as to your availability at Headquarters, and I will be happy to meet you there.

Very truly yours,  
  
 M. Scott Tashjy, Esq.

MST/job



GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - CRIMINAL PART
Plaintiff,	:	MONMOUTH COUNTY
	:	Case No. 98-00489
v.	:	
	:	<u>Criminal Action</u>
GREGORY S. BRUNO,	:	<b>NOTICE OF CROSS-MOTION TO COMPEL</b>
Defendant.	:	<b>THE PRODUCTION OF DISCOVERY AND</b>
	:	<b>FOR A SPEEDY INDICTMENT</b>

TO: Criminal Motions Clerk  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728  
  
The Honorable James A. Kennedy  
Judge of the Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728

Peter E. Warshaw, Jr.  
Assistant Prosecutor  
Monmouth County Prosecutor's Office  
East Wing, Courthouse, Third Floor  
Freehold, New Jersey 07728-1261

SIRS/MADAM:

PLEASE TAKE NOTICE that, on August 14, 1998, or a time to be set by the Court, counsel for defendant, Gregory S. Bruno, shall cross-move before the Honorable James A. Kennedy, J.S.C., for an Order compelling a speedy indictment and that the Monmouth County Prosecutor's Office produce complete discovery and a complete witness list in this matter.

In support of the aforesaid Cross-Motion, defendant shall rely upon the attached Certification in Lieu of Affidavit of Edward C. Bertucio, Jr., Esq. and Letter Brief.

Pursuant to the Court Rules, an original and two copies of a proposed form of Order is attached hereto and made a part hereof. Oral argument is hereby requested.

GIORDANO, HALLERAN & CIESLA, P.C.  
Attorneys for Defendant, Gregory S. Bruno

By: Edward C. Bertucio  
EDWARD C. BERTUCIO, JR., ESQ.

Dated: August 5, 1998

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
EDWARD C. BERTUCIO, JR., ESQ.**

I, EDWARD C. BERTUCIO, JR., ESQ., an attorney-at-law in the State of New Jersey,  
hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C. As such, I am fully familiar with the facts I am about to relate.
2. Please accept the following attachments as Exhibits to be considered in opposition to the State of New Jersey's Motion to Disqualify counsel in this matter.
3. Exhibit "A" is the Attorney's Certification of M. Scott Tashjy, Esq.
4. Exhibit "B" is the Attorney's Certification of Norman M. Hobbie, Esq.
5. Exhibit "C" is the Attorney's Certification of Guy Ryan, Esq.
6. Exhibit "D" is the Attorney's Certification of Michelle Querques, Esq.
7. Exhibit "E" is the Affidavit of Gregory Bruno.
8. Exhibit "F" is the Affidavit of Robert Bruno.

9. I have been a member of this firm since June 19, 1995. I have never represented Detective Ronald D. Ohnmacht in any legal matter.

10. I do not represent any PBA's or police collective bargaining organizations.

11. I was not a member of this firm during the pendency of Ward v. Middletown Township, et al. in 1992.

12. I do not practice in the area of worker's compensation law. I have not had any connection to Detective Ohnmacht's worker's compensation case at any time.

13. I do not have any personal relationship with Detective Ohnmacht.

14. During my employment with Giordano, Halleran & Ciesla, P.C., I have not learned from any source any information regarding Detective Ohnmacht's investigative or interrogative techniques. I have not learned any attorney-client information regarding Detective Ohnmacht from any source.

15. Mr. Norman M. Hobbie, Esq. and I fully apprised our client, Gregory Bruno, and his family, of this firm's prior representation of Detective Ohnmacht and that Mr. Hobbie knew Detective Ohnmacht when Mr. Bruno first retained this firm to represent him in this matter.

16. Mr. Hobbie and I have kept Gregory Bruno and his family fully informed of the position of the Monmouth County Prosecutor's Office as to an alleged conflict of interest based on this firm's prior representation of Detective Ohnmacht and the suggestion that a personal friendship has created a conflict of interest.

17. At the time Mr. Bruno retained us to undertake his representation in State v. Bruno, he indicated that he did not see any actual or potential conflict of interest and wished this firm to enter an appearance as defense counsel in this matter.

18. Since the time of the initial retention of this firm, both Mr. Gregory Bruno and his family have insisted that Mr. Hobbie and I and this firm remain as counsel to Gregory Bruno in State v. Bruno.

19. On February 1, 1998, Gregory Bruno was arrested and charged with murder and related offenses. The charges expose Mr. Bruno to the death penalty. He is on trial for his life.

20. On February 4, 1998, this firm was retained to represent Gregory Bruno in the criminal matter, State v. Bruno.

21. On February 10, 1998 a Substitution of Attorney was filed with the Criminal Case Management Office, substituting this firm as counsel of record for the Monmouth County Trial Region of the Public Defender's Office.

22. For six months defendant has been incarcerated in lieu of bail, but has not been indicted.

23. This firm has not been provided with discovery.

24. In paragraph 4 of his Affidavit, Detective Ohnmacht represents the extent of his investigation in this case. No documentation or discovery is provided in support of Detective Ohnmacht's claims of the extent of his participation in this investigation.

25. In paragraph 10 of his Certification, Assistant Monmouth County Prosecutor Peter Warshaw states, "Upon information and belief, I assert that Giordano, Halleran & Ciesla has represented numerous Middletown Township police officers in the past, some of whom may be witnesses in this case." He then requests of the Court an Order that we provide a list of Middletown Township police officers that we have represented.

26. Without the discovery in this case, Mr. Hobbie and I and this firm must answer these allegations of an alleged or apparent conflict of interest without possession of specific facts surrounding the extent of Detective Ohnmacht's participation in this investigation. For example,

Detective Ohnmacht opines that he will be called to testify at a Miranda Hearing. However, the undersigned understands on information and belief that Mr. Bruno did not give an inculpatory statement, was questioned briefly by another officer while Detective Ohnmacht was present, and was allowed to leave the police department after the interview concluded. See Exhibit "C" of Assistant Monmouth County Prosecutor Warsaw's Certification. Thus, a factual question exists as to whether Detective Ohnmacht will, in fact, face any cross-examination as to any statements obtained from Mr. Bruno.

27. Likewise, without a list of the State's witnesses, this firm cannot advise Mr. Bruno properly on this case, nor can this firm properly discharge its duties as an officer of the Court in responding to this motion and distinguish between an alleged conflict of interest and, as the case law states, "a mere fanciful possibility." Thus, the Court should order a speedy grand jury presentation and, if an indictment is returned, immediate production of the discovery and a witness list so that, if necessary, any factual issues arising from the State's Motion to Disqualify Counsel may be settled on the actual facts and not on "imagined or fanciful possibilities."

28. On July 13, 1998, I wrote to Assistant Monmouth County Prosecutor Warsaw requesting discovery in this matter and alerting him of the continued delay in presenting this matter to the grand jury, and that same has hampered defendant's efforts to properly investigate the charges and pursue a defense. A copy of my correspondence is attached hereto as Exhibit "G."

29. On July 17, 1998, Assistant Prosecutor Warsaw responded to my correspondence, stating, "This office will not provide discovery until the time of the arraignment and certainly not until the issue of representation is resolved." A copy of his letter is attached as Exhibit "H."

30. The delay in presenting this matter to a grand jury and, upon return of an indictment, in presenting the discovery has hampered Mr. Bruno and his attorneys in (1) responding to the present motion within a fact based context and not on imagined conflicts and (2) in properly investigating this matter and preparing a defense to a capital murder prosecution.

31. Therefore, it is respectfully requested that the State of New Jersey's Motion to Disqualify this firm from representing Mr. Bruno be denied and that defendant's cross-motion for a speedy grand jury presentation and, upon indictment, immediate supplying of discovery be granted. Should there be an actual or apparent conflict of interest after review of the discovery, as Officers of the Court, Mr. Hobbie and I will be in a position to so inform counsel and the Court.

I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

  
Edward C. Bertucio, Jr., Esq.

Dated: August 5, 1998

GIORDANO, HALLERAN & CIESLA, P.C.  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Lincroft, N.J. 07738  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Civil Action

**CERTIFICATION IN LIEU  
OF AFFIDAVIT OF  
M. SCOTT TASHJY, ESQ.**

1. I, M. Scott Tashjy, of full age, do hereby certify and state:
2. I am an attorney-at-law in the State of New Jersey and a Shareholder with the law firm of Giordano, Halleran & Ciesla, P.C.
3. Pursuant to my position, I am responsible for overseeing the day to day operations of the Workers' Compensation Department for our firm. I am the only attorney in our firm who represents clients in Workers' Compensation claims. My practice is limited strictly to Workers' Compensation, Personal Injury and Social Security/Retirement Disability practice.
4. In this capacity, I represented Detective Ohnmacht in a Workers' Compensation claim which was settled before the Honorable Neale F. Hooley via an Order Approving



Settlement, on June 24, 1997. (See Exhibit "A.") At that time the Workers' Compensation file for Detective Ohnmacht was closed.

5. On or about February 13, 1998, I was contacted by Detective Ohnmacht and asked to discuss the potential of reopening his claim in accordance with the New Jersey Workers' Compensation Law. I advised Detective Ohnmacht that our firm could not represent him in the reopener of his Worker's Compensation matter because I was advised by my office of the representation of Gregory Bruno by Norman Hobbie and Edward Bertucio of my office. I was made aware that Detective Ohnmacht was involved in the Bruno investigation and because of that our office could not represent him in any matter whatsoever. I suggested various other attorneys in other law firms with expertise in Workers' Compensation for him to contact, at his convenience, to pursue his claim. I took no affirmative action after our February 13, 1998 meeting to pursue a reopener or any other claim for Workers' Compensation benefits on behalf of Detective Ohnmacht.

6. In reviewing the submissions of the State of New Jersey, I note that within the Affidavit of Detective Ohnmacht, specifically the attachment denoted as A-3, there is a typographical error in the first line of that letter of October 13, 1997, whereby same should have read:

**Please be advised that we have not filed a Reopener Claim  
Petition with regard to your Workers' Compensation claim".**

A fair reading of that letter in its entirety clearly indicates that I contacted Detective Ohnmacht as a follow-up to my September 29, 1997 letter to determine whether a basis existed for the reopening of his Workers' Compensation claim. Further, attachments A-4 and A-5 to Detective Ohnmacht's Affidavit support the fact that I was attempting to get information from

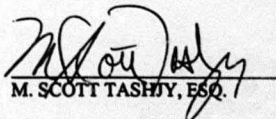
Detective Ohnmacht to determine a basis for filing a Reopener Petition. Detective Ohnmacht did not respond to any of these letters until the February 13, 1998 conversation aforesated.

7. Mr. Hobbie and Mr. Bertucio had no part in the representation of Detective Ohnmacht regarding his Workers' Compensation claim. Mr. Hobbie and Mr. Bertucio did not take any action in pursuing said claim. They never appeared in Court on said claim and never negotiated on behalf of Detective Ohnmacht. I was solely responsible for the handling of this matter.

8. The facts of Detective Ohnmacht's Workers' Compensation case in no way involved or related to the criminal case of State v. Bruno, and I have absolutely no involvement in Mr. Hobbie's and Mr. Bertucio's representation of Mr. Bruno in his criminal case, nor do I have any direct or indirect representative duties or obligations on behalf of Mr. Bruno in his criminal case.

9. My questioning of Detective Ohnmacht in his Workers' Compensation claim had no bearing on any testimony he may give in a criminal case, particularly the case of Mr. Bruno. Nor did I ever learn of any investigative or interrogative techniques of Detective Ohnmacht at any time during my representation of him. I have never discussed any attorney-client information involving Detective Ohnmacht with either Mr. Hobbie or Mr. Bertucio.

The above statements are true to the best of my knowledge. If any of the above statements made are willfully false, I am subject to punishment.

  
M. SCOTT TASHY, ESQ.

DATED: August 5, 1998

::ODMA\PCDOCS\GHCDOS\9257\1

State of New Jersey  
Department of Labor  
DIVISION OF WORKERS' COMPENSATION

ORDER  
 JUDGE ENT  
 APPROVING SETTLEMENT  
 DISMISSAL

CASE NO.'S 94-009803  
District Office: FA441.340

SOCIAL SECURITY NUMBER  
148-34-9700

NAME DONALD D. DHAMMACHT AGE 51

ADDRESS (Including County) MUMFORDTOWN  
15 MOHAWK AVENUE  
LAGO BUNK, NJ - 07701

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER  
22-231750 AG-116

NAME GIDYORNO HALKOPROPIASIA

ADDRESS P.O. BOX 190  
MIDDLERTOWN, NJ 07748

APPEARING M. SPOOT TASAJY, ESQ.

NAME TOWNSHIP OF MIDDLETOWN

ADDRESS (Including County) MUMFORDTOWN  
1 KING'S HIGHWAY  
MIDDLETOWN, N.J. 07748

NAME DOWD + REILLY, P.O.

ADDRESS (Including County) MUMFORDTOWN  
90 MAIN AVENUE  
LAGO BUNK, NJ 07701

APPEARING JOHN LANS, Esq.

NAME (Indicate if Not Covered or if Self-Insured)  
SELF INSURED (IMA ADMA)

DATE OF ACCIDENT:  
OR  
OCCUPATIONAL EXPOSURE: 6/11/93

DESCRIBE (Briefly)  
FALL DOWN  
WICK - 4

Weekly Wages \$1006.00 Rate(s) 43 1 MAK

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: \_\_\_\_\_ PERMANENT: 0 TEMP: 0  
This matter having come on before the Court on this 24<sup>th</sup> day of JUNE, 1997:

- ORDER FOR JUDGMENT:**  
It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; it is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.
- ORDER APPROVING SETTLEMENT:**  
The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.
- ORDER FOR DISMISSAL**  
This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and the following good cause shown, the claim petition herein is hereby dismissed for  
 1. Lack of Prosecution  
 2.
- ORDER FOR DISCONTINUANCE**  
This matter having come on before the Court and the Court having received evidence that this matter should be discontinued and for good cause shown, it is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:
- It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)
- 

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

\_\_\_\_\_  
(PETITIONER'S ATTORNEY)

\_\_\_\_\_  
PETITIONER (Where Applicable)

\_\_\_\_\_  
(RESPONDENT'S ATTORNEY)

STENO FEE \_\_\_\_\_

Nicki M. Hooley 4/24/97  
(JUDGE OF COMPENSATION) (DATE)

Nicki F. Hooley  
NAME (PRINT OR TYPE)

State of New Jersey  
 Department of Labor  
 DIVISION OF WORKERS' COMPENSATION

(CONTINUATION)  
 ORDER  
 JUDGMENT  
 APPROVING SETTLEMENT  
 DISMISSAL  
 DISCONTINUANCE

CASE NO.'S 94-009303  
 D.O. FR 11/10/00

Permanent Disability (Describe Percentages, Nature and extent of Disability, and Members Involved)  
30 1/2 % Permanent Partial Total Disability for principals of cervical  
thoracic disc at C6-C7 and deep venous thrombosis in  
right leg (20 1/2 % partial total in neck, 15% in leg) by/under 10/00

DISABILITY AWARDED  
PAID AS ADOQUANT

TEMPORARY: \_\_\_\_\_ Weeks at \$ \_\_\_\_\_ - \$ \_\_\_\_\_ less \$ \_\_\_\_\_ paid - Balance due \$ \_\_\_\_\_

PERMANENT: 183 Weeks at \$ 201.22 - \$ 36,783 less \$ 6900.00 paid - Balance due \$ 29883.00

Medical Bills (Doctors and/or institutions)  
(# order for existing neck injury)  
PERSONAL will pay LEO BANK radiologic bill for \$630.00  
ALL OTHER AUTHORIZED BILLS HAVE BEEN PAID OR WILL  
BE PAID

MEDICAL FEE ALLOWED (Expert and/or Testimony)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
Dr. J. P. PULSIF (TESTIMONY (PAYABLE TO GIGERMAN & PULSIF))	450.00	225	225
Dr. GOODMAN (PAYABLE TO GIGERMAN & PULSIF)	200.00	100	100
TR. H. PULSIF TO GIGERMAN HALLGREN & PULSIF	366.00	366	—
ATTORNEY(S) FEE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
GIGERMAN HALLGREN & PULSIF, P.C.	6100	2440	3660
STENOGRAPHIC SERVICE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
J. Thomas Jr.	225	—	225

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY.

JUDGE OF COMPENSATION W. J. [Signature] (DATE) 6/24/01

(PETITIONER'S ATTORNEY) \_\_\_\_\_ (RESPONDENT'S ATTORNEY) \_\_\_\_\_

PETITIONER (Where Applicable) \_\_\_\_\_

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
NORMAN M. HOEBIE, ESQ.

I, NORMAN M. HOBBIE, ESQ., an attorney-at-law in the State of New Jersey, hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C., counsel to Gregory Bruno in the above-captioned matter. As such, I am fully familiar with the facts I am about to relate.
2. On or about February of 1998, this firm was retained to represent Mr. Bruno in the above-captioned case.
3. It has been asserted by Mr. Warshaw that this firm presently represents Detective Ohnmacht and that Detective Ohnmacht selected this firm for representation because of my professional reputation and because he personally knows me. In addition, Mr. Warshaw suggests that the foregoing constitutes a potential conflict and as such this firm should be disqualified from representing Mr. Bruno.

4. On or about October of 1992, Giordano, Halleran & Ciesla, P.C. undertook the representation of Detective Ronald Ohnmacht in Ward v. The Township of Middletown, et al. Two attorneys in the firm at the time, Michele Querques, Esq., who is a member of the firm, and Guy P. Ryan, Esq., a former associate with the firm, were assigned the matter.

5. Ms. Querques and Mr. Ryan were responsible for the litigation of this matter to its conclusion.

6. The matter was resolved, in 1993, by a case dispositive motion on the papers.

7. During 1996 and 1997, this firm represented Detective Ohnmacht in a worker's compensation matter. The matter was assigned to M. Scott Tashjy, Esq., a member of this firm. Mr. Tashjy is the only attorney at this firm who handles workers' compensation cases.

8. The worker's compensation matter was handled exclusively by Mr. Tashjy.

9. It is my understanding that Detective Ohnmacht's worker's compensation matter was closed during the Summer of 1997. To date, the case has not been reopened. (See Certification of M. Scott Tashjy, Esq.)

10. I do not possess any information from the foregoing that can in any way be used against Detective Ohnmacht to impeach or cross-examine him or anyone else in or the Middletown Township Police Department in the prosecution of State v. Gregory Bruno.

11. All of the above issues have been fully discussed with Gregory Bruno and his parents. Mr. Bruno and his parents all have indicated to me that the issues involving Detective Ohnmacht suggested by the State to create a conflict of interest, have been fully explained to them, they understand the scope and terms of same, and they have insisted that I remain as counsel in State v. Gregory Bruno.

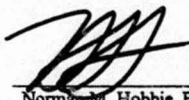
12. Neither I nor Edward C. Bertucio, Jr., Esq., another member of this firm, represent any Police Benevolent Associations (PBA's) in the State of New Jersey.

13. No one else in Giordano, Halleran & Ciesla, P.C., represents any PBA organization or police collective bargaining entity.

14. I fully expect Detective Ohnmacht, despite his long-standing personal relationship with the family of Gregory Bruno, to fully and zealously pursue the investigation and prosecution of Mr. Bruno with the utmost integrity and professionalism.

15. Likewise, I intend to fully and zealously represent Gregory Bruno in this matter. Nothing will cause me in any way to fail to discharge fully my obligations to Gregory Bruno and to defend him as aggressively and completely as I can, and with the utmost in professionalism and integrity.

I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.



Norman M. Hobbie, Esq.

Dated: August 4, 1998

::ODMA\PCDOCS\GHCDPCS\10569\1

**CERTIFICATION OF GUY P. RYAN, ESQ.**

I, GUY P. RYAN, ESQ., an attorney at law in the State of New Jersey, hereby certify the following facts to be true:

1. I am a former associate to the law firm of Giordano, Halleran & Ciesla, P.C. I was assigned to handle the file of Ward v. Township of Middletown, et al. during my employment at Giordano, Halleran & Ciesla, P.C. As such, I am fully familiar with the facts I am about to relate.

2. Michele A. Querques, Esq., a member of Giordano, Halleran & Ciesla, P.C., and I were the attorneys assigned to handle the defense of this matter. Norman M. Hobbie, Esq. did not participate in the actual defense of Detective Ohnmacht in Ward v. Township of Middletown.

3. The representation was pro forma. There was a brief period of discovery, followed by a case dispositive motion from which the matter was dismissed.

4. During the entire time that I handled this matter, I never had any personal meetings or telephone contact with Detective Ohnmacht. All communication with him was by way of correspondence from me to him as to the status of this case.

5. Once this matter was closed, I did not have any meetings or telephone contact with Detective Ohnmacht.

6. At no time during the pendency of Ward v. Township of Middletown did I ever learn, either through Detective Ohnmacht or anyone else, of any investigative techniques or interrogative techniques employed by Detective Ohnmacht or any other member of the Middletown Township Police Department. My representation of Detective Ohnmacht was relatively brief and conducted through the mail and in court on the papers. I never

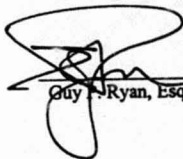


communicated any attorney-client information to Mr. Hobbie regarding Detective Ohnmacht during my representation of him, nor did I ever learn of any such information.

7. I have since left my association with Giordano, Halleran & Ciesla and work in another law firm.

8. At no time, either during my association with Giordano, Halleran & Ciesla, P.C., or at any time thereafter, have I ever communicated any attorney-client confidential information, or any other information with regard to Detective Ohnmacht, to Norman M. Hobbie, Esq. or Edward C. Bertucio, Jr., Esq. I never learned of any such information in the first place.

I hereby certify the foregoing facts to be true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

  
Guy J. Ryan, Esq.

Dated: August 3, 1998

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
MICHELE A. QUERQUES, ESQ.**


I, MICHELE A. QUERQUES, ESQ., an attorney-at-law in the State of New Jersey,  
hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C. As such, I am fully familiar with the facts I am about to relate. I was assigned to handle the file of Ward v. Township of Middletown, et al., along with a former associate of this firm Guy P. Ryan, Esq. Mr. Ryan and I handled the actual defense of Detective Ohnmacht in Ward v. Township of Middletown, et al. Norman M. Hobbie, Esq., did not participate in the day-to-day defense of Detective Ohnmacht in said matter.
2. The representation was pro forma. After a brief period of discovery, a case dispositive motion was filed by this firm and the matter was dismissed.
3. During the entire time that I handled this matter, I never learned, either from Detective Ohnmacht or anyone else, of any investigative techniques or interrogative techniques employed by Detective Ohnmacht or any other member of the Middletown Township Police Department.

My representation of Detective Ohnmacht was relatively brief and was conducted mainly through mailings and filing of discovery and court papers. I never communicated any attorney-client information to Mr. Hobbie regarding Detective Ohnmacht during my representation of him. I never learned of any such information to communicate same to Mr. Hobbie.

4. At no time during my representation of Detective Ohnmacht, nor at any time thereafter, have I ever communicated any attorney-client confidential information, or any other information with regard to Detective Ohnmacht, to either Mr. Hobbie or to Edward C. Bertucio, Jr., Esq. of this firm. I never learned of any such information in the first place.

I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I may be subject to punishment.

  
Michele A. Querques, Esq.

Dated: August 3, 1998

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**AFFIDAVIT OF  
GREGORY BRUNO**

I, GREGORY BRUNO, of full age and having been duly sworn according to my oath hereby depose and say:

1. I am the defendant in the above-captioned matter, State v. Gregory Bruno.
2. After an extensive search for counsel, I retained Norman M. Hobbie, Esq. to represent me in the above-captioned matter.
3. He has been my attorney since February 4, 1998.
4. From that time period to present, Mr. Hobbie and Mr. Bertucio have been extensively involved in the preparation of my defense. We have had numerous meetings, have discussed strategy and, through a private investigator, have taken extensive steps in the conduct of our own investigation into this matter.

5. I retained Mr. Hobbie because I understand this matter will be prosecuted as a capital offense. I am on trial for my life. Mr. Hobbie is the attorney that I have selected to defend me in this matter.

6. It would be an extreme hardship and devastating to my defense to lose the services of Mr. Hobbie and Mr. Bertucio at this point in the case. They are both extensively involved in my defense. I have complete trust and confidence in them, and to be forced to change lawyers now when my life is at stake would be extremely unfair and prejudicial to me in the preparation of my defense.

7. Both Mr. Hobbie and Mr. Bertucio have fully informed me of the prior representation of Detective Ohnmacht and the suggested personal friendship between Detective Ohnmacht and Mr. Hobbie. I do not see any actual or potential conflict of interest in their representation of me. I have complete confidence that they will represent me aggressively and zealously, despite the prior representation and the suggested friendship of Detective Ohnmacht by the Giordano firm.

8. I have previously directed them to represent me and have waived any alleged or perceived conflict of interest (even though I do not allege or perceive any myself).

9. Mr. Hobbie and Mr. Bertucio have explained to me that the Monmouth County Prosecutor's office for the last several months has maintained that a conflict of interest exists and that they intended to file a motion to disqualify Mr. Hobbie and Mr. Bertucio from this case. I instructed Mr. Hobbie and Mr. Bertucio to remain on this case and insisted that they continue their representation of me.

10. I respectfully request the Court not to place an extreme hardship upon me or unfairly prejudice my defense in this capital murder case by ordering the removal of my counsel. To do so would have a devastating impact on my defense by interrupting their efforts and by forcing

me to start over with new counsel, who I do not want, and who would have to recommence an investigation and preparation of my defense over seven months after the homicide allegedly occurred.

11. To force new counsel to play catch up in a capital murder case at this point in time is unfair to me.

I hereby swear that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

Gregory J. Bruno  
Gregory Bruno

Sworn to and subscribed to before  
me this 3<sup>rd</sup> day of July, 1998

Edward C. Bertuccio, Esq.  
Att. at Law, New Jersey

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,  
Plaintiff,

v.

GREGORY S. BRUNO,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

AFFIDAVIT OF  
ROBERT BRUNO

I, ROBERT BRUNO, of full age and having been duly sworn according to oath hereby  
depose and say:

1. I am the father of Gregory Bruno, who is charged with murder and faces the death  
penalty in the above-captioned matter, State v. Bruno. As such, I am fully familiar with the facts  
I am about to relate.

2. As my son was being charged with murder on February 1, 1998, I undertook an extensive  
search and interview process to find the best counsel I could to defend him.

3. After my extensive search, I, together with my son and my family, decided to retain  
Norman M. Hobbie, Esq. and the law firm of Giordano, Halleran & Ciesla, P.C., to represent my  
son in this matter.

4. At the time I retained Mr. Hobbie, and at various times thereafter, he fully apprised me of  
the prior representation of Detective Ronald Ohnmacht by Giordano, Halleran & Ciesla, P.C.,  
and of the personal friendship suggested by the State to create a conflict of interest.

5. I, along with my son and my family, fully consented to Mr. Hobbie being retained and continuing as counsel to Gregory Bruno in this matter.

6. Since Mr. Hobbie was initially retained, I and my son have been kept fully apprised of the position of the Monmouth County Prosecutor's office with respect to the continued representation of my son by Mr. Hobbie, Mr. Edward C. Bertucio, Jr., Esq., and the Giordano law firm. I disagree with the Prosecutor's Office and do not see any actual or perceived conflict of interest.

7. I have always insisted, and continued to insist, as has my son, that Mr. Hobbie and Mr. Bertucio and the Giordano law firm continue as counsel in this matter. I am completely confident, as is my son, that they will represent him zealously and aggressively.

8. It would be extremely unfair and very prejudicial to disqualify my son's counsel at this juncture in the case, as the Giordano firm has undertaken extensive investigation in this matter. Mr. Hobbie and Mr. Bertucio have spent months with my son and have developed a mutual trust and confidence, which I believe is vital to the defense of my son, who is on trial for his life.

9. Simply put, neither my son nor I want any other attorney on this case.

10. Detective Ohnmacht has been a long-standing family friend to me and my entire family for years prior to the arrest of my son in this matter.

11. That has not prevented Detective Ohnmacht from discharging what he believes to be his duty in the investigation and prosecution of the homicide alleged in State v. Bruno. I have not expected him to act other than in a professional manner.

12. I likewise expect Mr. Hobbie and Mr. Bertucio to act in the same professional and zealous manner in the defense of my son, as our family friend Detective Ohnmacht has done in the investigation and prosecution of my son.



I hereby swear that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

*Robert Bruno*  
Robert Bruno

Sworn to and subscribed to before  
me this 3<sup>rd</sup> day of August, 1998

*Carolyn Ciavarella*

CAROLYN CIAVARELLA  
A Notary Public of New Jersey  
My Commission Expires 8/17/98

**GIORDANO, HALLERAN & CIESLA**

A PROFESSIONAL CORPORATION

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125 HALF MILE ROAD  
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(609) 695-3900

PLEASE REPLY TO MIDDLETOWN

DIRECT DIAL NUMBER: -----

DIRECT E-MAIL: -----

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JOHN B. HALLERAN  
FRANK B. CIESLA  
BERNARD J. BERRY, JR.  
THOMAS A. FLISEM  
JOHN A. AIELLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN DA  
GEORGE J. TYLER  
JOHN A. GIUNCO  
NORMAN M. HOBBS DA  
EDWARD S. RADELLY  
STEVEN M. BERLIM D  
SHARLENE A. HUNT

PHILIP D. FORLENZA  
MICHAEL J. CANNING D  
PAUL M. SCHWEIDER  
W. SCOTTY YASNY  
MICHAEL A. QUERQUE  
DAVID F. CORRIGAN D  
EDWARD C. BERTUCIO, JR. A  
ANDREW B. SOBINS  
MICHAEL A. BRUNO  
MARGARET S. CARMELI  
EUST E. ANDRESSON  
PAUL T. COLELLI  
STEVEN J. BRODMAN

COUNSEL:  
KELIAESTH CHRISTIAN  
ROBERT E. LINDEM  
JOANNE S. GRAY  
-----  
OF COUNSEL:  
S. THOMAS GAGLIANO  
-----  
JOHN C. GIORDANO  
(1931-1991)

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LAURA N. ANDERSON  
PAUL T. FRESHICOLA D  
JAY S. BICKER  
TIMOTHY D. LYONS  
SEAN E. REGAN  
DEBRA J. ROSENSTEIN  
GERALD P. LALLY  
MICHAEL A. PANE

J. SCOTT ANDERSON  
CRAIG E. VIRGIL  
CHARLES A. CERUSI  
MICHAEL J. VITIELLO  
PATRICK S. CONVERY  
JACQUELINE DECARLO  
NICOLE DEVANEY

CERTIFIED CIVIL  
TRIAL ATTORNEY  
A CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.

11308/001

July 13, 1998

Peter Warshaw, Assistant Prosecutor  
Monmouth County Prosecutor's Office  
Court House, East Wing, Third Floor  
71 Monument Park  
Freehold, New Jersey 07728-1261

Re: State v. Gregory Bruno  
Prosecutor's Case No.: 98-00489

Dear Mr. Warshaw:

It has been sometime since I have heard from you with regard to the above-referenced matter, specifically, the Prosecutor's Office's Motion to have this firm disqualified as counsel for Defendant, Gregory Bruno. Moreover, I still have not received the requested discovery in this matter.

As you are aware, my receipt of the discovery in this matter is imperative for two reasons, specifically:

1. It will allow this firm to properly respond to your anticipated Motion to disqualify this firm; and
2. It will allow this firm to properly investigate this matter (i.e., the continual delay in presenting this matter before the Grand Jury and supplying this firm with the requested discovery has hampered Defendant's attempts to properly investigate the charges and pursue a defense).

Accordingly, if we do not receive the requested discovery within seven days from the date of your receipt of this letter, Defendant will file a motion to compel the production of same.

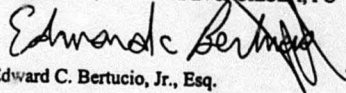
GIORDANO, HALLERAN & CIESLA  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Peter Warshaw, Assistant Prosecutor  
July 13, 1998  
Page 2

Should you have any questions or concerns with regard to the foregoing, please contact me forthwith.

Very truly yours,

GIORDANO, HALLERAN & CIESLA, PC



Edward C. Bertucio, Jr., Esq.

ECB/mer

--ODMA\PCDOCS\GHCDPCS\74001



JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

**OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH**

71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1261  
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FAX (908) 409-3673  
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ALTON D. KENNEY  
FIRST ASSISTANT PROSECUTOR  
ROBERT A. HONECKER, JR.  
SECOND ASSISTANT PROSECUTOR  
WILLIAM D. GUIDRY  
DIRECTOR OF TRIAL DIVISION  
WILLIAM P. LUCIA  
CHIEF OF INVESTIGATIONS

July 17, 1998

Edward C. Bertucio, Jr., Esq.  
GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road, P.O. Box 190  
Middletown, New Jersey 07748

Re: State of New Jersey v. Gregory Bruno  
Case No. 97-00489


Dear Mr. Bertucio:

I received your letter dated July 13, 1998, subsequent to our telephone conversation of July 17, 1998. As we discussed, the motion to disqualify counsel was filed on July 16 and is returnable before The Honorable John A. Ricciardi, P.J.Cr. on August 7, 1998. This office will not provide discovery until the time of the arraignment and certainly not until the issue of representation is resolved.

I can be reached directly at 577-6790 and look forward to hearing from you at your earliest convenience regarding this matter.

Very truly yours,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

  
By: Peter E. Warshaw, Jr., Assistant Prosecutor  
Director, Major Crimes Unit

PEW:pl

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
COURT HOUSE  
FREEHOLD, NEW JERSEY 07728-1261  
(908) 431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331 & 1998-000044-1331

STATE OF NEW JERSEY :

Plaintiff, :

CRIMINAL ACTION

v. :

SUPPLEMENTAL AFFIDAVIT

GREGORY S. BRUNO, :

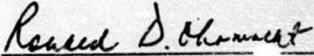
Defendant. :

I, RONALD D. OHNMACHT, of full age, being duly sworn according to law,  
upon my oath, depose and say:

1. I am a Detective with the Middletown Township Police Department and have  
been employed by that department for approximately 30 years. I have been assigned to  
the Detective Bureau for approximately 26 consecutive years.

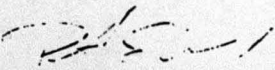
2. I have reviewed the certifications submitted by the defense in the above-captioned matter.

3. Specifically, I have reviewed the certification of M. Scott Tashjy, Esq. I do recall having a conversation with him some time in February regarding the reopener claim. Mr. Tashjy does not report that during our conversation I objected to the Giordano firm representing Bruno and indicated that I did not wish to switch lawyers. It is my recollection that I expressly indicated that I wanted Giordano, Halleran & Ciesla to continue to represent me. I believed it was in my best interests for the firm which handled the original compensation matter to continue to handle the reopener. I do not want to have to get a new lawyer at this juncture.



Ronald D. Ohnmacht

Sworn and subscribed to  
before me this 27<sup>th</sup> day  
of August, 1998.

  
\_\_\_\_\_  
Peter E. Warshaw, Jr.  
Attorney at Law, State of New Jersey

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
COURT HOUSE  
FREEHOLD, NEW JERSEY 07728-1261  
(732) 431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331 & 1998-000044-1331

STATE OF NEW JERSEY : CRIMINAL ACTION  
Plaintiff, :  
v. : SUPPLEMENTAL CERTIFICATION  
GREGORY S. BRUNO : IN SUPPORT OF MOTION SEEKING  
Defendant. : TO DISQUALIFY COUNSEL

I, PETER E. WARSHAW, JR., hereby certify that the following facts are true  
to the best of my knowledge:

1. I am an Assistant Monmouth County Prosecutor in which capacity I have been assigned to prosecute the within matter which is pending grand jury. As such, I am fully familiar with the facts I now relate.

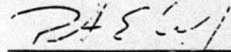
2. This supplemental certification is initially intended to address the issue of who represented Detective Ohnmacht in the civil action known as John Richard Ward v. Township of Middletown, et. al. On August 13, 1998, I contacted the Office of the Clerk of the Federal District Court in Trenton. I spoke to Lillian Krzyzanowski of the Clerk's Office.

3. Ms. Krzyzanowski advised me that the file itself was physically in Kansas City, Missouri in archives. However, Ms. Krzyzanowski checked the Federal Court's computerized docket sheet and advised me that the computer maintained by the Federal Court indicated that the attorney of record for Detective Ohnmacht was Norman M. Hobbie, Esq. who filed a substitution of attorney on March 29, 1993.

4. Additionally, attached herewith as Appendix A is a document entitled Courtroom Confidence and Preparation. It pertains to a presentation by Norman M. Hobbie, Esq. conducted Monday, March 24, 1997 for the Middletown Police Department. This document was forwarded to me by a detective of the Middletown Police Department who was aware that this motion was pending. This document is submitted because while counsel certifies that they do not represent any PBA, there is clearly a close connection to the PBA of the Middletown Police Department.



5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Peter E. Warsaw, Jr.

Dated: *March 27 1957*

DEPARTMENT OF POLICE  
THE TOWNSHIP OF MIDDLETOWN

TOWNSHIP HALL, 1 KING'S HIGHWAY

MIDDLETOWN, NJ 07748-2594

(732) 615-2100

FAX: (732) 671-5696

DETECTIVE FAX # (732) 615-2037



JOHN F. POLLINGER  
Chief of Police

RIHART CCHIE'S  
Deputy Chief of Police

JOSEPH F. BRALN  
Deputy Chief of Police



FAX COVER SHEET

FAX # (732) 615-2037

DATE: 8/13/98

TO: A.P. PETE WARSHAW FAX # 409-7531

M.C.P.O.

(LOCATION)

FROM: DET. JERRY WEIMEX 615-2120

(SENDER)

(TELEPHONE NO.)

TOTAL NUMBER OF PAGES 15 (INCLUDING THIS PAGE)

IF YOU HAVE ANY TROUBLE OR QUESTIONS WITH TRANSMISSION, PLEASE CALL # \_\_\_\_\_

NOTES:

THOUGHT you may be interested in this  
Booklet Regarding the upcoming HEARING  
IF you want the original I'll forward it  
ALSO.

JERRY

**GIORDANO, HALLERAN & CIESLA**  
*Attorneys at Law*

**COURTROOM CONFIDENCE & PREPARATION**

*presented by*

**Norman M. Hobbie, Esq.**

Certified Civil Trial Attorney  
Certified Criminal Trial Attorney

Monday, March 24, 1997

for

**THE MIDDLETOWN POLICE DEPARTMENT**

125 Half Mile Road  
Post Office Box 190  
Middletown, NJ 07748  
(908) 741-3900

441 East State Street  
Trenton, NJ 08625  
(609) 695-3900

**APPENDIX A**

Pa 57

NOTE

1. This Seminar is offered for police personnel only.
2. The presentation will be candid and opinionated.
3. Your questions are invited.
4. No videos or recorders are allowed.



**N**ORMAN M. HOBBIE is the partner in charge and the head litigator of the Criminal/Plaintiff's Personal Injury Department of Giordano, Halleran & Ciesla. He is responsible for the investigation, preparation, and litigation of significant and complex product liability, medical malpractice, criminal defense (including homicide, aggravated sexual assault,

robbery, drug distribution), personal injury, and breach of contract cases.

Mr. Hobbie has been designated by the Supreme Court of the State of New Jersey as a Board Certified Civil and Criminal Trial Attorney.

He is a former member of the Union County Prosecutor's Office, where he served as lead litigation attorney for the Major Crimes Unit. In such capacity, he was responsible for the prosecution of homicide and aggravated sexual assault cases. He was also Deputy Supervisor of the Special Enforcement Unit wherein he prosecuted individuals who violated the Controlled Dangerous Substance (CDS) and Gambling Laws.

Mr. Hobbie is a Fordham University Law School graduate, a member of the Monmouth County, Union County, and New Jersey State Bar Associations, and is licensed to practice law in New Jersey, New York, and Pennsylvania.

Norman M. Hobbie  
GIORDANO, HALLERAN & CIESLA, PC  
(808) 219-5484



GIORDANO,  
HALLERAN &  
CIESLA, PC  
Attorneys at Law

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## PREFACE

The criminal justice/Disciplinary system is premised on the theory that Litigation (the adversarial process) with its checks and balances and competing interests will ultimately achieve justice, improve the quality of law enforcement, and facilitate the apprehension and conviction of criminals.

To me, Litigation is war and justice is a fleeting concept usually embraced by the successful party. Thus, to win, the defense attorney representing the client must use every available technique and skill to legally and ethically destroy the opposition's case. To that end, he seeks justice (a.k.a. not guilty).

Successful defense litigation is accomplished through meticulous, comprehensive, and aggressive representation (and sometimes a little "luck").

My primary focus in defense litigation is to identify the weaknesses of the prosecution's case. All documentation, evidence and testimony must be thoroughly reviewed, analyzed, examined and cross-referenced.

My secondary focus is the presentation of a reasonable defense (which will be consistent with the deficiencies in the Investigator's/Prosecution's case).

My third area of focus involves evaluating the judge, the prosecutor, the prosecution's theory of the case and the impact the foregoing would have on the jury (this in turn would dictate the type of jurors I would challenge (excuse or keep)).

Thereafter, I am committed to the attack. I believe in "pro-active" representation as opposed to "re-active" representation. I subscribe to the adage that the best defense is a strong offense -- in trial, as in war, I attack.

Notwithstanding the foregoing, it should be the goal of the attorney representing the law enforcement officer as a target to negative the Investigator's/Prosecutor's case.

**I. CURRENT-TONE OF SOCIETY (PUBLIC SENTIMENT):**

Law enforcement is an honorable profession which often times is not recognized for its achievements and contributions to our society. Instead, law enforcement is continually maligned by the media and other radical/liberal groups. Accordingly, the law enforcement officer, is well advised to continuously guard against committing any improprieties (or appearing to commit same).

The foregoing concerns are further magnified by the fact that we presently live in the "Video/Recording Generation" and as such, law enforcement officers, while protecting the rights of many, must also protect themselves from those individuals or groups who are ready and willing to use such devices to unfairly attack and discredit the profession.

That is, during the course of his employment, while testifying, or enjoying every day life, the law enforcement officer must be mindful that certain actions (even a slight off-the-cuff comment or inappropriate gesture) could be recorded and/or taken out of context in order to denigrate the profession, subject the officer to unfair ridicule or prosecution.

To many, the men in blue are shining knights protecting our society. To others, the men in blue are legalized ruffians who act as if they were "above the law". The Officer must know his friends, guard against his enemies and "know his limitations". Dirty Harry - Magnum Force.

- |                      |                      |
|----------------------|----------------------|
| 1. The Public        | 6. Superior Officers |
| 2. Media             | 7. The Prosecution   |
| 3. Criminals         | 8. Judges            |
| 4. Defense attorneys | 9. Jurors            |
| 5. Liberals          | 10. Brother Officers |

This seminar is dedicated to one area wherein the law enforcement officer is most vulnerable to attack -- Cross Examination at Trial.

The Law Enforcement Officer is a professional, however, at trial his character and professionalism will be under constant scrutiny and attack.

There is no doubt that the tasks before law enforcement are imposing -- then again -- "great men embrace great challenges".

**II. KNOW YOUR TRIAL PROSECUTOR:**

In the least, the Assistant Prosecutor should be experienced (as opposed to inexperienced), patient (as opposed to impatient) and well prepared (as opposed to unprepared).

The Assistant Prosecutor must dedicate himself to the case and the cause. He must allocate the appropriate amount of time to prepare the witnesses, learn the file, anticipate defense strategies



and insure that the law enforcement officers are apprised of the foregoing. Should the assistant prosecutor not conform to the above mentioned criteria, the law enforcement testimony and the case will be compromised.

Thus, whenever the law enforcement officer is called upon to participate in a trial wherein the Assistant Prosecutor does not fulfill his obligations or the officer is asked to deviate from his oath (no matter how slight), the officer should contact a supervising officer, refuse to deviate and document the circumstances (see Vega v. L.).

### III. THE OFFICER AS A TARGET (DEFENDANT);

The law enforcement officer's nightmare has become an all too frequent reality. When the law enforcement officer is accused or a potential target, experience reveals that a disorienting, all-consuming paranoia sets in which is not consistent with survival.

Should the foregoing scenario ever befall you or one of your brother officers, the reflex must be immediate and unyielding:

1. Do not speak to anyone;
2. Immediately contact your lawyer (the big "M"); and
3. Do not forget Rules #1 and #2.

Note: We will discuss the Prosecution of Law Enforcement (State v. J.C.; State v. G.L.).

### IV. KNOW THE DEFENSE ATTORNEY;

Never underestimate the defense attorney, that is, whether he has a reputation for being inexperienced and unprepared, or experienced and well prepared, always presume he will be the latter and unpredictable. The defense attorney is a formidable foe and as such he is capable of discrediting you, the witness, and the prosecution's case.

The focus of the defense attorney's cross-examination may fall into any of the following enumerated categories (not intended as an exhaustive listing):

1. Create confusion;
2. Distract jury's attention;
3. Set up the defense's theory of the case;
4. Undermine the credibility of the witness;
5. Undermine the prosecution's theory of the case;
6. Impeach the witness;
7. Demonstrate a certain character trait;

8. Establish prosecutorial misconduct;
9. Establish witness collusion (or rehearsal);
10. Illustrate conflict in prosecution's case;
11. Discover new evidence;
12. Educate the jury as to the relationship between the law and the facts;
13. Establish the lack of evidence;
14. Attack the qualifications of expert witnesses;
15. Establish facts consistent with the defendant's case;
16. To extract exculpatory testimony (especially if the Prosecution failed to do so on direct);
17. Repetition of exculpatory testimony;
18. Establish inconsistencies in witnesses' testimony;
19. Illustrate inability to perceive, observe, etc.
20. Demonstrate reasonable doubt.

V. **THE A B C's OF TRIAL-TESTIMONY:**

- A. Always anticipate the defense strategy and cross-examination questions before testifying in Court (otherwise your actions will be perceived as being calculating and unreasonable).
- B. Belligerent, combative or arrogant witnesses are not well received by the jury (do not fall prey to this defense trap).
- C. Cross-reference your report with the reports of other law enforcement officers involved in the case (consistency and accuracy must be ensured).
- D. Documentation review should include search warrants, grand jury transcripts, index cards, logs, etc.
- E. Ensure that you do not embellish your testimony in order to cure prosecutorial errors or overzealousness.
- F. Familiarize yourself with the evidence in the case.
- G. Guessing, assuming, lying or acting in an arrogant manner is improper courtroom testimony.
- H. Hamper defense attorney's cross-examination timing, flow and direction.
- I. Insure that your courtroom attitude, voice and eye contact are appropriate, professional, reasonable and natural.
- J. Jurors, perception is often reality. Thus, do not jeopardize your credibility because of unreasonable or unbelievable testimony. Jurors respond most favorably to witnesses who are perceived as being honest, sincere, reasonable and well prepared.
- K. Know the Rules of Evidence and current case law. Zealous investigation and reporting which is not consistent with the Rules of Evidence and current case law will result in suppressed evidence and inadmissible testimony.
- L. Laborious investigation results in proper arrests and convictions (carelessness will result in acquittals). The investigation of a criminal case and resulting documentation must at all times be professional, meticulous and comprehensive (clear, succinct, accurate, and consistent).
- M. Mirandize all targets prior to interrogation, secure appropriate waiver and signatures, date

and sign.

- N. Never try to sell the case when testifying. Your goal is to be yourself, not sell yourself. Be true to yourself -- extrovert -v- introvert.
- O. Omissions in the report regarding relevant persons, observations, statements, etc., will result in intense cross-examination, magnification and exaggeration. Adverse inferences, destructive cross-examination and argument based upon the foregoing, will result in acquittals.
- P. Post-trial evaluation of your performance should be conducted with the Prosecutor and other responsible personnel.
- Q. Questions must be asked, received, digested, and analyzed prior to the witnesses' answer. Quick responses should be avoided by the witness.
- R. Review your report before stating specific times, places, dates and observations and statements.
- S. Searches without a warrant are disfavored except when the search is justified by informed written consent, plain view, exigent circumstance or incident to a lawful arrest.
- T. Tape recorded or transcribed statements are always more persuasive than personal recollection or written statements included in a police report.
- U. Unbelievable testimony is perfect and rehearsed, believable testimony is imperfect and natural.
- V. Visit the scene of the crime prior to finalizing your report and testifying.
- W. Written statements which are signed and corrected by the Defendant are more persuasive than law enforcement officers recorded/reported recollection.
- X. Xerox copies of unrelated or unnecessary reports, etc., should be purged from your file before you testify (unless you are the custodian of the file or the investigator in charge of the case).
- Y. Your oath mandates that the correct answer to a question is the truthful one (which may not necessarily be the answer required by the prosecutor).
- Z. Zealous prosecution should never be allowed to alter your testimony or cause you to secrete exculpatory evidence.

VI. COMMON MISTAKES (THE "NEVERS")/CASE EXAMPLES:

- 1. Never assume that all documentation is consistent, including, Grand Jury transcripts, police reports, trial transcripts and statements. See State v. K.L.; U.S. v. M.F.
- 2. Never assume that all personal diaries, search warrants and the indictment are consistent. See State v. K.L.
- 3. Never embellish your testimony to satisfy the interest, motivations or overzealousness of the prosecution. See State v. D. J.; State v. F. P. Vega.
- 4. Never let the defense attorney's questioning place you in an uncomfortable and visibly nervous demeanor. See State v. R.R.

5. Never testify in an unbelievable or unreasonable fashion.
  - A). "Despite the fact that he confessed, admitted his participation in the conspiracy, we did not arrest him in a secluded place, but instead, we waited until he got into a public bar." See U.S. v. M.F.
  - B). "We never used any force, coercion or raised our voice in order to secure the statements". See State v. D.H.
6. Never assume that a signed statement taken from the defendant will be accepted by the jury (he should initial and correct mistakes in his statement and the statements must be in the defendant's vernacular). See State v. D.H. ("We/Be" defense).
7. Never underestimate the defense attorney or attempt to alter the evidence to be consistent with the statements. State v. F.P.
8. Never challenge or verbally attack the defense attorney (the defense attorney is a liar. State v. K.L.) ("Just like you counsel" State v. D.P.).
9. Never assume that the time on the Miranda cards, statements and reports are consistent. State v. J.D.
10. Never reconstruct the scene or alter evidence so that identification of defendant matches the witness's description. State v. F.P.

**VII. IMPROVEMENTS TO THE PRESENT DISCIPLINARY PROCESS:**

The following are suggested improvements to the present process:

1. An agreement whereby an officer that has been suspended will be paid unless and until there is a criminal conviction.
2. Independent fact-finder/decision-maker.
3. The investigating officer must be objective (in order to ensure fairness).
4. The complaining witness must be produced at the initial hearing.
5. Defendant has the absolute right to produce witnesses at the initial hearing.
6. The accused should have the absolute right to confront the complaining witness as well as present exculpatory testimony by way of actual witness presentation.

**INAPPROPRIATE FORM**

**INTERNAL AFFAIRS ADVISEMENT FORM**

NAME: \_\_\_\_\_ DEPARTMENT: \_\_\_\_\_

1. You are being questioned as part of an official investigation by this office into events directly related to your official position. This investigation concerns:  
\_\_\_\_\_  
\_\_\_\_\_
2. You will be asked questions specifically directed and narrowly related to the performance of your official duties.
3. You have the right to refuse to answer any questions or make any statements that might incriminate you in a criminal manner.
4. If you fail to exercise this right, anything you say may be used against you in a criminal proceeding.
5. The right to refuse to answer a question on the grounds of your right against self-incrimination, does NOT include the right to refuse to answer on the grounds that your answer may reveal a violation of a department policy, rule or regulation that is not a criminal offense.
6. You may be subject to departmental discipline for refusal to give an answer that would not implicate you in a criminal offense.
7. Anything you say may be used against you not only in any subsequent department charges, but also in any subsequent criminal proceeding.
8. You have the right to consult with a representative of your collective bargaining unit, or another representative of your choice, and have them present during the interview.

I acknowledge that I have read and understand the contents of the above statement on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Signature: \_\_\_\_\_

Others Present \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

**PUBLIC EMPLOYEE IMMUNITY UNDER  
GARRITY v. STATE OF NEW JERSEY  
AND N.J.S.A. 2A:81-17.2a1 et seq.**

The law surrounding immunity for public employees, such as law enforcement officers, is particularly complex. It is, however, an area of law that every law enforcement officer should understand for his or her own protection.

Public employees, like every other person, possess the same privilege against self-incrimination and protection from giving a coerced statement under the Fifth Amendment of the United States Constitution as applied to the individual states through the Fourteenth Amendment to the United States Constitution.

Notwithstanding, public employees do have a duty to appear and testify on matters relating to the conduct of their office, position or employment before any Court, Grand Jury or the State Commission of Investigation. A public employee who fails or refuses to so appear and testify is then subject to removal from his office, position or employment. N.J.S.A. 2A:81-17.2a1. While the words of the statute only compel the public employee to testify "before any Court, Grand Jury or the State Commission of Investigation . . ." the statute has been applied to compel cooperation with law enforcement departmental investigations as well. Banca v. Town of Phillipsburg, 181 N.J. Super. 109 (App. Div. 1981).

If the conduct of the law enforcement officer being investigated constitutes a criminal offense, the testimony compelled by N.J.S.A. 2A:81-17.2a1 could incriminate the law enforcement officer. This incriminating testimony could be compelled despite the Fifth Amendment privilege that the law enforcement officer possesses. This places the law enforcement officer between "a rock and a whirlpool," that is, between the choice of

self-incrimination or loss of public employment. This situation is unconstitutional. Garrity v. New Jersey, 385 U.S. 493 (1967).

In order to resolve this dilemma, N.J.S.A. 2A:81-17.2a2 provides that if a law enforcement officer or other public employee, having claimed the privilege against self-incrimination, testifies before any Court, Grand Jury or the State Commission of Investigation, or cooperates with any departmental investigation, any testimony or evidence derived from such appearance before the Court, Grand Jury or State Commission of Investigation, or from cooperation with the departmental investigation, may not be used against the law enforcement officer in any subsequent criminal proceeding, other than a prosecution for committing perjury during said testimony or departmental investigation. This concept is known as "use immunity."

The practical effect of this to a law enforcement officer who is being investigated is as follows. If that officer is being investigated for criminal activity and is asked or ordered by a Court, Grand Jury or investigating agency to give an account of the incident in question and that officer invokes his Fifth Amendment privilege against self-incrimination, then the Court, Grand Jury or investigating agency must inform the officer of its intention to compel such testimony or cooperation from him. The entity attempting to compel the officer's testimony or cooperation must also inform the officer that any evidence gained from such cooperation is immunized from use in a subsequent criminal proceeding under the laws of New Jersey, except for a prosecution for perjury or false swearing committed while testifying or cooperating. The entity must further inform the law enforcement officer that failure to appear, testify or cooperate when compelled to do so under a grant of use immunity can subject the law enforcement officer to removal from

office, position or employment.

If a law enforcement officer should be placed in such a position, that officer should take the following action. First, if the investigation surrounds potential criminal activity or charges involving the officer, the officer should invoke the Fifth Amendment privilege against self-incrimination. The officer should also immediately contact an attorney and request that the entity seeking his cooperation speak to the attorney. Next, before any type of cooperation is given, the law enforcement officer should ensure through the attorney that the appropriate warnings under the statutes, with respect to possible termination from employment for lack of cooperation and the grant of use immunity in the event of cooperation, are given to the law enforcement officer in writing and signed by all parties involved. The officer should also be assured and informed through the attorney as to the scope and subject matter of the investigation to ensure that the immunity covers all topics that will be investigated. At some point, depending on the nature and extent of the investigation, the officer may decide, notwithstanding the grant of immunity, to refuse to cooperate and face departmental consequences as opposed to risking cooperation with its inevitable potential to somehow aid the criminal investigation. This is a decision that must be arrived at carefully and after consultation with counsel.

In no event should a law enforcement officer engage in any form of cooperation, be it testimony or cooperation in a departmental investigation (this includes even writing a written report or giving an oral report to a supervisor), unless the officer has first consulted with counsel and received assurances as to the officer's constitutional and statutory privileges. These assurances should be in writing. Attached to this explanation of the law, strictly by way of example, is the type of written warning that may be presented to a law enforcement officer



during the conduct of an internal investigation. A similarly worded warning would be provided in the event the law enforcement officer is being compelled to testify in Court, or before a Grand Jury or the State Commission of Investigation.

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
EDWARD C. BERTUCIO, JR., ESQ.**

I, Edward C. Bertucio, Jr., Esq., an attorney-at-law in the State of New Jersey, hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C., counsel to Defendant Gregory Bruno in the above-captioned matter. As such, I am fully familiar with the facts I am about to relate.
2. I have reviewed the Supplemental Certification of Assistant Monmouth County Prosecutor Peter Warshaw, Jr. dated August 27, 1998.
3. Assistant Prosecutor Warshaw continues to maintain incorrectly that Norman M. Hobbie, Esq. conducted the actual representation of Detective Ronald Ohnmacht in the matter of Ward v. Township of Middletown, et al., despite the attorney's Certifications of Mr. Hobbie,

Guy P. Ryan, Esq. and Michelle A. Querques, Esq., all of which are attached to Defendant's original response to the State's Motion to Disqualify this law firm.

4. Attached hereto as Exhibits "A", "B" and "C" are copies of correspondence from Michelle A. Querques, Esq. regarding documentary discovery issues in the matter of Ward v. Township of Middletown.

5. Attached hereto as Exhibit "D" is correspondence from an attorney regarding the substitution of attorney to which Assistant Prosecutor Warshaw refers, which correspondence is addressed to Guy P. Ryan, Esq.

6. Attached hereto as Exhibit "E" is correspondence from Mr. Ryan to Detective Ohnmacht as to the disposition of the matter by way of a successful motion for summary judgment, which correspondence is dated July 9, 1993.

7. Thus, as Mr. Hobbie, Ms. Querques and Mr. Ryan have previously stated in the Certifications attached to the original responsive papers of this firm, Ms. Querques and Mr. Ryan were in fact the counsel who litigated the matter of Ward v. Township of Middletown on a day to day basis.

8. Mr. Warshaw further implies incorrectly that the law firm of Giordano, Halleran & Ciesla has a "close connection" to the PBA of the Middletown Township Police Department because of a seminar given by Mr. Hobbie in March of 1997.

9. What Assistant Prosecutor Warshaw fails to inform the Court is that in or about 1992-1993 Mr. Hobbie, along with several other Monmouth County criminal defense attorneys, was invited and solicited by the Monmouth County Prosecutor's Office to speak at a training seminar.

*How Can  
Beacco  
Centire This?*

10. In response to an invitation from the Monmouth County Prosecutor's Office, Mr. Hobbie volunteered his time as a public service to the law enforcement community. Mr. Hobbie's speaking partner was Monmouth County head of Homicide, Detective Michael Dowling.

11. Judge Anthony Mellaci, then Assistant Prosecutor Mellaci, was the moderator or organizer of the training seminar.

12. The seminar focused on defense litigation's techniques and cross-examination strategies. The specific purpose was to assist the detectives to let them know what the defense attorneys in the county expected and looked for in a litigation matter so as to better prepare the law enforcement community. At no time did any member of the Prosecutor's Office state that giving such a seminar would in fact constitute a conflict of interest which would prevent the defense attorneys from participating in litigated matters. In fact, the Monmouth County Prosecutor's Office solicited Mr. Hobbie's participation.

13. After this seminar, a number of law enforcement personnel who attended the meeting, thanked Mr. Hobbie and asked him if he would ever be interested in giving such a seminar to members of the respective departments. Thereafter, when a request was made, Mr. Hobbie would volunteer his time and give a seminar to the any department at no charge and with no contingencies (emphasis added).

14. The Prosecutor's Office has been aware of this for more than five years and at no time has notified Mr. Hobbie that they objected to this type of seminar or indicated that it would constitute a conflict.

15. The seminar conducted on March 24, 1997 was also given voluntarily as a service to the law enforcement community with the same understanding by this law firm that existed when

Mr. Hobbie was invited to conduct the seminar for the Monmouth County Prosecutor's Office, namely, that the seminar was appreciated and a service to the law enforcement community. Nothing more; nothing less.

16. Nor was any attorney/client relationship involved. In fact, a number of officers, who attended the March 24, 1997, seminar, were not from Middletown. Moreover, a number of the officers who attended, were represented by other attorneys or use other lawyers in other matters. To suggest that as a result of the seminar there is any attorney/client relationship or other influential situation is without merit and pure creative speculation. Mr. Hobbie has not spoken to a number of the attendees since that seminar. This was a training seminar and in no way an attorney/client meeting. Nor was there any information discussed about pending law enforcement cases. The format of the seminar provided for the distribution of booklets, the officers read the booklet and asked questions. The majority of the seminar involved Mr. Hobbie explaining cases that he had had and where the various witnesses had made mistakes and how those mistakes should have been avoided.

17. No information was learned at that seminar about any investigative or interrogative techniques of any Middletown police officer. In fact, it was the police officers who learned of the techniques and strategies of the defense attorneys. The seminar was also attended by members of other law enforcement communities in addition to Middletown Township.

18. Assistant Prosecutor Warshaw also fails to inform the Court that the law firm of Klatsky & Klatsky represents the Middletown Township PBA. Said law firm has acted in that capacity for a number of years. This law firm does not represent Middletown PBA or any PBA organizations.

19. Mr. Hobbie's public service in conducting a seminar sanctioned by the Prosecutor's Office, should not now be used as a "sword" in litigation to attempt to remove an adversary from a death penalty case. Mr. Bruno, the client, should have that decision.

20. Significantly, the original focus of the State's Motion to disqualify this firm was based on the allegation that this firm presently represents Detective Ohnmacht. It is now clear that this firm does not presently represent Detective Ohnmacht. The Prosecutor's Office's assertion was inaccurate and its application should be denied.

21. Yet, the Monmouth County Prosecutor's Office persists in this eleventh hour creative attempt to disqualify this firm where there is no basis to do so. Such an application in a capital murder case such as this one is unprecedented. In fact, previous cases have shown that the Monmouth County Prosecutor's Office does not make such applications against the other attorneys who participated in the seminar or represent law enforcement officers.

22. For example, Gregory Bruno was previously represented in an unrelated criminal case by John T. Mullaney, Jr., Esq. in Indictment 95-07-1117 involving criminal charges that allegedly occurred in the Township of Middletown. The State's witness list in that matter, a copy of which is attached hereto as Exhibit "F," named a number of Middletown Township police officers as witnesses.

23. It is well-known that Mr. Mullaney was previously the First Assistant Monmouth County Prosecutor and in that position had a supervising relationship with all members of law enforcement in Monmouth County, including Middletown Township. In addition, Mr. Mullaney previously represented a Middletown Police Officer in a criminal case. See Exhibit "G." Yet, no application to disqualify Mr. Mullaney was ever made by the Monmouth County Prosecutor's Office when Mr. Mullaney represented Mr. Bruno to the conclusion of that previous matter.

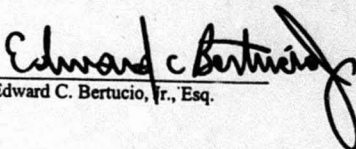
24. Moreover, the Prosecutor's Office has been aware of Mr. Hobbie's seminars to different law enforcement personnel for many years. Not once has the Prosecutor's Office objected, even when Mr. Hobbie represented other criminal clients where Middletown Police Officers were the investigating officers. It is respectfully requested that the Court look at the genuine motives of the prosecution. There are numerous attorneys, who were long standing members of the Prosecutor's Office, who went into private practice and have very extensive criminal defense practices. It is clear that these attorneys, as Assistant Prosecutors, developed much more extensive relationships with law enforcement officers from the various towns. Yet, these attorneys are not conflicted out of cases because they gave a seminar or represented an officer in the past.

25. Despite this contrary precedent, the Monmouth County Prosecutor's Office persists in pursuing this Motion in a capital murder case against this law firm without basis.

26. Mr. Warsaw has previously indicated in Paragraph 9 of his Certification to his original Motion to disqualify this law firm that "I am not in any way asserting, directly or indirectly, that Mr. Hobbie or Mr. Bertucio have deliberately committed an ethics violation. To the contrary, I have known and respected both attorneys for many years. This is very simply a question of law."

27. It is the expectation of this firm as counsel for Gregory Bruno that this application is not a personal attack upon counsel representing Mr. Bruno in this case. It is not the intention of this law firm to allow this issue to degenerate into personal attack on any attorney. However, in view of the foregoing facts, the undersigned cannot understand the State's persistence in pursuing this issue which is clearly without merit.

28. I hereby certify that the foregoing facts are true to the best of my knowledge,  
information and belief. I am aware that if any of the foregoing facts is willfully false, I am  
subject to punishment.

  
Edward C. Bertucio, Jr., Esq.

Dated: September 8, 1998

:ODM\PCDOCS\GHCD\OCS\185171



**GIORDANO, HALLERAN & CIESLA**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

125 HALF MILE ROAD

POST OFFICE BOX 190

MIDDLETOWN, NEW JERSEY 07748

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FAX (908) 224-6599

PLEASE REPLY TO: MIDDLETOWN  
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MERCER COUNTY OFFICE  
441 EAST STATE STREET  
TRENTON, NEW JERSEY 08625  
(609) 895-3900

OCEAN COUNTY OFFICE  
200 MAIN STREET  
TOWNS RIVER, NEW JERSEY 08753  
(908) 241-9800

FILE NO.

December 24, 1992

Patricia B. Quelch, Esq.  
Assistant Prosecutor  
Monmouth County Prosecutor's Office  
Monmouth County Court House  
Freehold, New Jersey 07728-1261

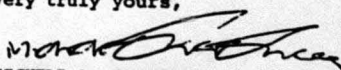
Re: State of N.J. v. Ward, et al.  
Indictment Nos. 89-09-1641 and 89-10-1799  
Case Nos. 89-03324 and 89-03350  
U.S.D.C. Civil Action No. 92-1712 (GEE)

Dear Ms. Quelch:

Thank you for forwarding copies of the documents pertaining to the civil action in the above-referenced matter. Enclosed is this firm's check in the amount of \$114.50 to cover the cost of same.

Thank you for your assistance and cooperation in this regard.

Very truly yours,

  
MICHELE A. QUERQUES

MAQ/SK/sk  
Enc.  
cc: Bernard M. Reilly, Esq.

**GIORDANO, HALLERAN & CIESLA**

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January 4, 1993

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SHERRY L. SPENCER  
M. SCOTT VABLY  
DEBBIE KRANER GREGG  
STEVEN J. BRODMAN  
ANDREW S. ROBIN  
MICHAEL A. BRUNO  
SUSAN D. DAVIS  
MARGARET S. CARNELLI  
KURT E. ANDERSON  
PAUL T. COLELLA  
JODY V. WILSON  
JOANNE S. GRAY  
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LISA A. BUTTO  
GLY P. RYAN  
ROBERT J. BURNS  
GREGG H. HOBBIE  
DAVID H. NACHMAN  
PATRICK J. COTTELL  
LAURA A. LAHE  
PAUL V. FERRICOLA  
LAWRENCE J. SHARON  
TRACY A. ARMSTRONG  
SUSAN A. SCHENBER  
BRYAN H. SCHULMAN  
SEAN E. REGAN

FILE NO.

JOHN C. GIORDANO, JR.  
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FRANK B. CIESLA  
BERNARD J. BERRY, JR.  
THOMAS A. FLISKIN  
JOHN A. AIELLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN  
GEORGE J. TYLER  
MARR S. BELLIN  
LC 3 D SHAFIR  
JOHN A. GIUNCO  
NORMAN M. HOBBIE  
EDWARD S. RADELY  
STEVEN M. BERLIN  
SHARLENE A. HUNT  
CHARLES D. CONWAY  
VICRIJAN ISLER  
PHILIP D. FORLENZA  
WILLIAM J. BOWE  
TOBI E. GRAFF  
MICHAEL J. CANNING  
RICHARD D. STANZIONE  
PAUL H. SCHNEIDER

OF COUNSEL:  
S. THOMAS BAGLIANO

JOHN C. GIORDANO  
(1921-1988)

John Richard Ward  
N.J.S.P. #230300  
Southern State Correctional Facility  
Post Office Box #150  
Phase II-Unit #10-L  
Delmont, New Jersey 08314

Re: Ward adv. Ohnmacht, et al.

Dear Mr. Ward:

Enclosed please find the following discovery requests to be answered by you within thirty (30) days of your receipt of same:

1. Defendant, Ronald D. Ohnmacht's First Set of Interrogatories to Plaintiff;
2. Defendant, Ronald D. Ohnmacht's First Notice to Produce on Plaintiff.

Very truly yours,

*Michele A. Querques*

NICHELE A. QUERQUES

HAQ/SK/sk

Enc.

cc: Bernard M. Reilly, Esq.

Receipt of the within interrogatories is acknowledged this  
\_\_\_\_\_ day of January, 1993.

\_\_\_\_\_  
JOHN RICHARD WARD

**GIORDANO, HALLERAN & CIESLA**

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January 25, 1993

8239/001

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CHARLES D. CONWAY  
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RICHARD S. STANZIONE  
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OF COUNSEL:  
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JOHN C. GIORDANO  
(1981-1988)

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SUSAN G. DAVIS  
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JODY V. WILSON  
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DAVID H. NACHMAN  
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ROBERT J. BURNS  
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PATRICK J. COTTRELL  
LAURA A. LANE  
PAUL V. FERNICOLA  
LAWRENCE J. SHARON  
TRACY A. ARMSTRONG  
SUSAN S. DOWDEN  
BRYAN H. SCHULMAN  
SEAN E. REGAN  
DEBRA J. RUBENSTEIN  
WILLIAM H. HEALEY  
GERALD P. LALLY

FILE NO.

John Richard Ward  
N. J. S. P. #230300  
Southern State Correctional Facility  
P. O. Box 150  
Phase II Unit 10-L  
Delmont, New Jersey 08314

RE: WARD VS. RONALD D. OHNMACHT  
CIVIL ACTION NO. 92-1712(GEB)

Dear Mr. Ward:

Enclosed please find and original and one copy of Defendant,  
Ronald Ohnmacht's Answers to Plaintiff, John Ward's First Set of  
Interrogatories.

Very truly yours,

*Michele A. Querques*  
MICHELE A. QUERQUES

MAQ:kd  
Enc.

cc: Bernard M. Reilly, Esq.

*Dowd & Reilly*  
*Counselors At Law*

WILLIAM F. DOWD  
N.J. & N.Y. BARS  
BERNARD M. REILLY

JOHN T. LANE, JR.  
N.J. & L.A. BARS

30 Maple Avenue  
Red Bank, NJ 07701  
(908) 536-7777  
Fax (908) 530-8115

March 23, 1993

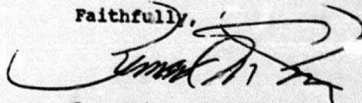
Guy Ryan, Esquire  
Giordano, Halleran & Ciesla  
125 Half Mile Road  
Box 190  
Middletown, NJ 07748

RE: Ward v. Middletown, et al  
Civil Action No. 92-1712 (GEB)

Dear Mr. Ryan:

Enclosed please find three copies of Substitution of Attorney for  
the above captioned matter.

Faithfully,



Bernard M. Reilly

**GIORDANO, HALLERAN & CIESLA**

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ATTORNEYS AT LAW

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(908) 341-9500

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DIRECT DIAL NUMBER:

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GEORGE J. TYLER  
MARG B. BELLIE  
LOIS B. SHAPIR  
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EDWARD S. HADELY  
STEVEN M. BERLIN  
CHARLES A. HUNT  
CHARLES S. CONWAY  
VICTOR J. ISLER  
THOMAS J. FOLEY  
WILLIAM J. BOWEN  
TOM S. SHAPIR  
MICHAEL J. GANNING  
RICHARD D. STAMM  
DAVID W. SCHNEIDER  
H. SCOTT TASHI  
MICHELE A. QUERQUEVE

OF COUNSEL:  
S. THOMAS BRIDGES

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SHERYL E. SPENCER  
STEVEN J. GROSSMAN  
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KURT S. ANDERSON  
PAUL T. COLELLA  
JOHN V. WILSON  
DAVID M. EVERETT  
JOHANN D. GRAY  
ROBERT J. BLANCHARD  
LISA A. BUTTE  
DAVID M. RACHMAN  
TIMOTHY F. HALLAHAN  
GUY P. RYAN  
ROBERT J. GUNN  
GREG G. HOBBS  
PATRICK J. EDY  
LAURA A. LANE  
PAUL V. FERNICOLA  
LORRAINE J. SHANNON  
TRACEY A. ARMSTRONG  
SUSAN S. SCHWEN  
SEAN E. DEGAN  
DEBRA J. RUBENSTEIN  
WILLIAM S. HEALEY  
GERALD R. LALLY  
TODD A. STAVETE

FILE NO.

8239/001

July 9, 1993

Detective Ronald D. Ohnmacht  
Middletown Township Police Department  
Kings Highway  
Middletown, NJ 07748

RE: Ward v. Township of Middletown, et al  
Civil Action No. : 92-1712(GSB)

Dear Detective Ohnmacht:

I am pleased to advise you that the United States District Court has granted Summary Judgement in your favor in the above-referenced law suit. Enclosed please find a copy of a Memorandum and Order by the Honorable Garrett E. Brown, Jr., U.S.D.J. As you can see, we successfully moved for Summary Judgement in your favor.

It is possible that John Ward could file an appeal from this Order, but that appeal would most likely have to await the outcome of his claim against the other defendants. Accordingly, Summary Judgement does not become a final judgement until the conclusion of the law suit against the remaining defendants. Please contact me if you have any questions in this regard.

Very truly yours,

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation

By:   
GUY P. RYAN, ESQ.

GPR:jmh  
Enclosure

cc: Norman M. Hobbie, Esq.



OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH

71 MONMOUTH PARK  
FREDHOLM, NEW JERSEY 07720-1301  
(908) 431-7100  
FAX (908) 409-3673  
FAX (908) 409-4830

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

ALTON D. KENNEY  
FIRST ASSISTANT PROSECUTOR  
ROBERT A. HONECKER, JR.  
SECOND ASSISTANT PROSECUTOR  
WILLIAM D. GUIDRY  
DIRECTOR OF TRIAL DIVISION  
WILLIAM P. LUCIA  
CHIEF OF INVESTIGATION

To Defense Counsel:

Re State of New Jersey v. GREG BRUNO  
Indictment No. 95-07-1117

Pursuant to R. 3:13-3(a) the State of New Jersey hereby furnishes the defendant with copies of all relevant papers, records, and documents now in the possession or control of the prosecuting attorney. Any books, tangible objects, buildings, or places referred to in the enclosed papers as being within the custody or control of the State will be made available for inspection by the defendant upon receipt of notice given two days in advance of the date requested for inspection.

The State further provides the defendant with a list containing the names and addresses of all persons known to have relevant information in regard to the above matter, including therein a designation of those persons whom the State may call as witnesses. This list may be amended as the result of subsequent investigation.

The State of New Jersey requests reciprocal Discovery pursuant to R. 3:13-3(b) by way of formal answer within twenty days from the receipt of this letter.

The State of New Jersey also requests that if the defendant is to rely in any way on the defense of alibi, the defendant comply with the provisions of R. 3:11-1.

Very truly yours,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

By: *William D. Guidry*  
Director Trial Division

VDG:md

Page 2

GRAND JURY MINUTES WERE TAKEN ON: 6-20-95

GRAND JURY STENOGRAPHER: Terry Gribben Transcribing Service  
111 Sand Spring Drive  
Eatontown, NJ 07724  
908 542-5282

WITNESSES:

Cpl. John Bauers	Middletown PD
Sgt. John Lenge	Middletown PD
DSG Michael Cerame	Middletown PD
Det. Frederic Deickmann	Middletown PD
Robert Tomkins	670 Monmouth Dr. Pt. Monmouth
Edward Franchek	1272 Hwy 36, Hazlet Trailer Pk #7, Hazlet
Robert Feldman, DDS	207 Maple Ave, Red Bank
Andrew Farkas, M>D>	Riverview Med. Ctr., 1 Riverview Plaza, Attn: Emergency Dept.
Robert Wold M.D.	Red Bank Radiology, 6 Riverview Plaza, Red Bank
Kelly Meed, RN	Riverview Med. Ctr. 1 Riverview Pl.

ENCLOSURES:

1 pg Waiver of Immunity signed by Gregory Bruno  
25 pg Medical records of Robert Tomkins from Riverview Med.  
3 pgs Arrest report of Gregory Bruno  
16 pg Inyest report  
4 pg Statement of Gregory Bruno dtd 12/11/94  
3 pg Statement of Robert Tomkins dtd 2/7/95  
2 pgs Rap sheet of Gregory Bruno dtd 5/3/95  
1 pg Rap sheet of Gregory Bruno dtd 12/22/94  
Plea offer letter

THE STATE OF NEW JERSEY

MONMOUTH COUNTY

NEW JERSEY SUPERIOR COURT  
MONMOUTH COUNTY

LAW DIVISION - CRIMINAL

S.B.I. No. Not Available

DATE OF ARREST 9/4/85

v.  
STEVEN XANTHOS,

MAY 13 1986

*James J. [Signature]*  
County Clerk

JUDGMENT OF CONVICTION

69

Defendant

The defendant on August 22, 1985 was indicted on Accusations # 1172-8-85

The defendant on September 9, 1985 entered a plea of not guilty to the Indictment

with the following for the crime(s) of: (Please include Title, Statute and Degree)  
Aggravated Assault (ct.1) (2nd degree) N.J.S.2C:12-1b(1)  
Official Misconduct (cts. 2 & 3) (2nd degree) N.J.S.2C:30-2b

and the defendant having on March 6, 10, 11, 12, 13, 17 & 18, 1986

RETRACTED PLEA OF NOT GUILTY AND ENTERED A PLEA OF GUILTY TO:

BEEN TRIED with A JURY AND A verdict OF ~~NOT GUILTY~~ Not Guilty of ct.1 but Guilty of a lesser included offense of Simple Assault, Guilty on ct. 2 and Not Guilty on ct. 3 but Guilty of a Lesser included offense of Accomplice having been rendered on March 18, 1986

IT IS THEREFORE, on May 9, 1986

Ordered and Adjudged that the defendant be and is sentenced as follows:  
Count 1 merges with ct.2(2nd degree)- to serve 250 hours of Community Service and is to forfeit office and is to pay a Fine of \$2500 and \$14.00 costs of court (N.J.S.A. 22A:3-1, 52; N.J.S.A. 22A:3-2, 512).  
Ct. 3 a lesser included offense - 250 hours of Community Service and is to run concurrently with count 2.

A penalty of \$25 is imposed on each count on which the defendant was convicted unless the box below indicates a higher penalty pursuant to N.J.S.A. 2C:43-3.1.

penalty imposed on count(s) is \$ . respectively.  
gb Total Fine \$2500 . Total Restitution 0 . Total VCCS Penalty \$50.00  
Installment payments, if applicable, are due at the rate of \$ per

STATEMENT OF REASONS REQUIRED BY R. 3:21-4(b) APPEARS ON THE REVERSE SIDE



70

ATTORNEY FOR DEFENDANT  
Upon entry of Guilty Plea or Conviction

Defendant to receive P. 3:21-P credit  
for time spent in custody

From \_\_\_\_\_ to \_\_\_\_\_

John Mullaney, Attorney  
At time of Sentencing

Days credit None

John Mullaney, Attorney

Gene L. Wray  
County Clerk

May 9, 1986  
Date

**STATEMENT OF REASONS, R. 3:21-4(e)**

The aggravating factors: There is a need to punish this defendant. There is a need to deter others. There is a need to protect society. A lesser sentence would deprecate the seriousness of the offense.

The mitigating factors: The defendant is a high school graduate with college credits. He has an excellent work history. The defendant is a veteran of the U.S. Army with no previous record. The offense was the result of unusual circumstances. The victim induced the commission of the crime. The defendant is unlikely to commit another offense. This Court believes he is not a risk.

In view of the character and condition of the defendant, the opinion of this Court that his imprisonment would be a gross injustice which overrides the need to deter and protect others.

Michael D. Farrey  
MICHAEL D. FARREY, J.S.C.      JUDGE X  
Pa 87

GIORDANO, HALLERAN & CIESLA, P.C.  
Mail to: P.O. Box 190 Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Lincroft, N.J. 07738  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Civil Action

CERTIFICATION IN LIEU  
OF AFFIDAVIT OF  
M. SCOTT TASHJY, ESQ.

1. I, M. Scott Tashjy, of full age, do hereby certify and state:
2. I am an attorney-at-law in the State of New Jersey and a Shareholder with the law firm of Giordano, Halleran & Ciesla, P.C.
3. I am responsible for overseeing the day to day operations of the Workers' Compensation Department for our firm. I am the only attorney in our firm who represents clients in Workers' Compensation claims. My practice is limited strictly to Workers' Compensation, Personal Injury and Social Security/Retirement Disability practice.
4. I have reviewed the Supplemental Affidavit of Ronald Ohnmacht. In paragraph 3 thereof, Detective Ohnmacht now recollects the conversation we had in February, 1998, which

conversation he did not relate to the Court in his original Affidavit. It was during this conversation that I told him this firm could not represent him in the reopening of his claim because of this firm's representation of Gregory S. Bruno in State v. Bruno. Detective Ohnmacht relates that during our February conversation he stated that he "...objected to the Giordano firm representing Bruno and indicated that (he) did not wish to switch lawyers". He further indicated that he stated, "It is my recollection that I expressly indicated that I wanted Giordano, Halleran & Ciesla to continue to represent me."

5. As I advised Detective Ohnmacht at that time, our firm ended our representation of him with the settlement of his Workers' Compensation case on or about June 24, 1997. At that point, Detective Ohnmacht was free to ask any other attorney to undertake the reopening of his claim. Subsequent to June 24, 1997, this firm no longer represented Detective Ohnmacht regarding his Workers' Compensation claim. I told Detective Ohnmacht in February, 1998, that I could recommend him to several competent Workers' Compensation attorneys.

6. The process of reopening a claim on behalf of a Workers' Compensation client can be done by the attorney that originally represented that individual in his or her Workers' Compensation claim, or by an attorney not associated with the original prosecution of that individual's claim. There is absolutely no prejudice visited upon Detective Ohnmacht by having a law firm other than Giordano, Halleran & Ciesla reopen his claim. I have represented a number of Workers' Compensation clients in the reopening of their claims when I had not handled the original claim. There is absolutely no disadvantage to a client in such a situation. In such a situation, the Petitioner (Detective Ohnmacht) is not assessed additional fees, nor is there any delay associated with his matter being reopened by another attorney. As long as the attorney

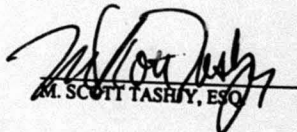
reopening the claim is versed in the law of Workers' Compensation, Detective Ohnmacht's interests will be protected.

7. Once Detective Ohnmacht's case was settled on June 24, 1997, his case was over at that time. The "reopening" of a claim is not mandatory. Further, in the majority of the cases that I have handled, reopeners are not filed. Any attorney versed in the law of Workers' Compensation would be able to properly evaluate Detective Ohnmacht's claim and advise him as to whether or not he has a basis to in fact reopen his claim. If such a basis exists, that attorney would be adequately versed to pursue that claim and protect all of Detective Ohnmacht's interests.

The above statements are true to the best of my knowledge. If any of the above statements made are willfully false, I am subject to punishment.

DATED: September 8, 1998

::ODMA\FCDOS\GHCDOCS\187911

  
M. SCOTT TASHIY, ESQ

DEC 15 1998

JAMES A. KENNEDY, J.S.C. DEC 15 1998

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331, 1998-000044-1331

STATE OF NEW JERSEY :

Plaintiff :

v. :

GREGORY S. BRUNO, :

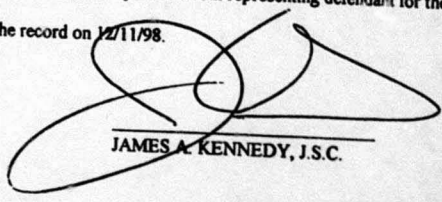
Defendant :

ORDER DENYING APPLICATION  
TO DISQUALIFY COUNSEL

This matter having been opened to the Court by John Kaye, Monmouth County  
Prosecutor, Assistant Prosecutor Peter E. Warshaw, Jr., upon notice to and in the  
presence of defendant GREGORY S. BRUNO and his attorney, Edward C.  
Bertucio, Jr., Esq. and

The Court having considered the moving papers, responding affidavits, and oral  
argument and for good cause shown;

It is on this 15th day of December, 1998, ORDERED that the law firm of  
Giordano, Halleran & Ciesla is not disqualified from representing defendant for the  
reasons spread upon the record on 12/11/98.



JAMES A. KENNEDY, J.S.C.

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - CRIMINAL PART  
: MONMOUTH COUNTY  
: Case No. 98-00489

: Criminal Action

: **NOTICE OF MOTION TO COMPEL THE**  
: **PROVISION OF ALL DISCOVERY TO**  
: **DEFENDANT**

TO: Criminal Motions Clerk  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728  
  
The Honorable James A. Kennedy  
Judge of the Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728

Peter E. Warshaw, Jr.  
Assistant Prosecutor  
Monmouth County Prosecutor's Office  
East Wing, Courthouse, Third Floor  
Freehold, New Jersey 07728-1261

SIRS/MADAM:

PLEASE TAKE NOTICE that, on January 8, 1999, or a time to be set by the Court,  
Giordano, Halleran & Ciesla, P.C., counsel for Defendant, Gregory S. Bruno, shall move before

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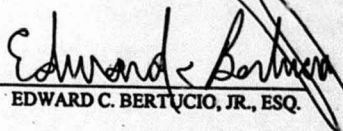
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the Honorable James A. Kennedy, J.S.C., for an Order compelling the immediate provision of all discovery to the defense in connection with the Indictment brought against Defendant.

In support of the foregoing Motion, the Defendant shall rely upon the attached Attorney's Certification in Lieu of Affidavit of Edward C. Bertucio, Jr., Esq., and Letter Brief.

Pursuant to the Court Rules, an original and two copies of a proposed form of Order is attached hereto and made a part hereof. Oral argument is hereby requested.

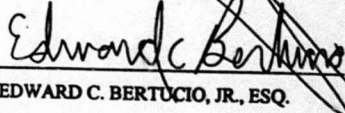
GIORDANO, HALLERAN & CIESLA, P.C.  
Attorneys for Defendant, Gregory S. Bruno

By:   
EDWARD C. BERTUCIO, JR., ESQ.

Dated: December 22, 1998

**CERTIFICATION OF SERVICE**

I hereby certify that the original Notice of Motion, supporting papers, and proposed form of Order have been filed with the Criminal Motions Clerk, Monmouth County Courthouse, Freehold, New Jersey, via Lawyers Service, on the below-referenced date. Clear copies have also been forwarded, via Lawyers Service, to The Honorable James A. Kennedy, J.S.C., Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey 07728, and Peter E. Warshaw, Jr., Assistant Prosecutor, Monmouth County Prosecutor's Office, East Wing, Courthouse, Third Floor, Freehold, New Jersey 07728-1261, on the below-referenced date.

  
EDWARD C. BERTUCCIO, JR., ESQ.

Dated: December 22, 1998

::ODMA\PCDOCS\GHCDPCS\424361



98-00489

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
COURT HOUSE  
71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1789  
(732) 431-7160

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION (CRIMINAL)  
MONMOUTH COUNTY  
CASE NO. 98-00489  
INDICTMENT NO. 98-12-2324

STATE OF NEW JERSEY, :  
Plaintiff, : CRIMINAL ACTION  
v. : NOTICE OF MOTION FOR  
GREGORY S. BRUNO, : ORDER DENYING DISQUALIFICATION  
Defendant. : OF DEFENSE COUNSEL

TO: Norman M. Hobbie, Esq. Edward C. Bertucio, Jr., Esq.  
GIORDANO, HALLERAN & CIESLA GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road 125 Half Mile Road  
Post Office Box 190 Post Office Box 190  
Middletown, New Jersey 07748 Middletown, New Jersey 07748

SIRS:

PLEASE TAKE NOTICE that John Kaye, Monmouth County Prosecutor,  
Attorney for the Plaintiff-Appellant, State of New Jersey, Peter E.  
Warshaw, Jr., Assistant Prosecutor, appearing, moves herein for

Leave to Appeal an Interlocutory Order Denying Disqualification of  
defense counsel

In support of this motion, the State will rely upon the brief  
attached hereto, as well as oral argument.

Respectfully submitted,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

*Patricia B. Quelch*  
By: Patricia B. Quelch  
Assistant Prosecutor

CERTIFICATION

I hereby certify that a copy of the within Notice of Motion  
for Leave to Appeal an Interlocutory Order Denying Disqualification  
of Defense Counsel has been served upon defendant's attorneys, at  
the address stated above, by regular U.S. mail.

*Patricia B. Quelch*  
PATRICIA B. QUELCH

am

ORIGINAL FILED  
JAN 11 1999

1

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
MONMOUTH COUNTY COURT HOUSE  
71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1789  
(732) 431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
INDICTMENT NO. 98-12-2324  
CASE NO. 98-0489

STATE OF NEW JERSEY, :  
Plaintiff, : CRIMINAL ACTION  
v. : NOTICE OF CROSS-MOTION  
GREGORY S. BRUNO , : FOR STAY PENDING  
Defendant. : DISPOSITION OF APPEAL

TO: Edward C. Bertucio, Jr., Esq.  
Giordano, Halleran & Ciesla, P.C.  
P.O. Box 190  
Middletown, New Jersey 07748

PLEASE TAKE NOTICE that on the 29th day of January, 1999, at nine o'clock in the forenoon, or as soon thereafter as counsel may be heard, the State will move before the Superior Court, Law Division, Criminal, Monmouth County, Honorable, James A. Kennedy, J.S.C., at the Monmouth County Court House, Freehold, New Jersey, for an Order Granting a Stay of Trial Proceedings Pending Interlocutory Review of the Order Denying Disqualification of Counsel; and

Pa 97

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PLEASE TAKE FURTHER NOTICE, that in support of its motion, the State will rely upon the annexed certification and brief, together with oral argument, pursuant to R. 1:6-2(D), at the time of the above application. A proposed form of Order is attached hereto.

Respectfully submitted,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

*JSW*  
By: Peter E. Warshaw, Jr.  
Assistant Prosecutor  
Director, Major Crimes Unit

CERTIFICATION

I hereby certify that a copy of the within Notice of Motion and accompanying certification and brief was served upon the defendant at the address stated above, by placing same in the U.S. Mail.

*JSW*  
Peter E. Warshaw, Jr.  
Assistant Prosecutor  
Director, Major Crimes Unit

Dated: January 11, 1999

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY : SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - CRIMINAL PART  
: MONMOUTH COUNTY  
v. : Case No. 98-00489  
GREGORY S. BRUNO, : Criminal Action  
: **NOTICE OF MOTION FOR**  
Defendant. : **REDUCTION OF BAIL**

TO: Criminal Case Manager  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728  
Honorable James A. Kennedy, J.S.C.  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728  
Peter Warsaw, Asst. Pros.  
Monmouth County Prosecutor's Office  
East Wing, Courthouse, Third Floor  
Freehold, New Jersey 07728-1261

SIR/MADAM:

PLEASE TAKE NOTICE that on January 29, 1999, at 9:00 a.m. or as soon thereafter as  
counsel may be heard, defendant shall move for a reduction of his bail pursuant to R. 3:26-2(c)  
and (d).

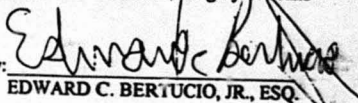
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In support of the aforesaid Motion, defendant shall rely upon the Letter Brief and proposed form of Order filed in opposition to the State's Cross-Motion for a Stay, which are attached hereto.

Oral argument is hereby requested on January 29, 1999 at 9:00 a.m. before the Honorable James A. Kennedy, J.S.C.

GIORDANO, HALLERAN & CIESLA, P.C.  
Attorneys for Defendant, Gregory S. Bruno

By:   
EDWARD C. BERTUCIO, JR., ESQ.

Dated: January 18, 1999

Pa 100

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FILED

FEB 8 1999

JAMES A. KENNEL, J.S.C.

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
v.	:	LAW DIVISION - CRIMINAL PART
GREGORY S. BRUNO,	:	MONMOUTH COUNTY
Defendant.	:	Case No. 98-00489
	:	<u>Criminal Action</u>
	:	<b>ORDER COMPELLING PROVISION</b>
	:	<b>OF DISCOVERY</b>

THIS MATTER, having been opened to the Court upon Defendant's Motion for the immediate provision of discovery, Giordano, Halleran & Ciesla, P.C., attorneys for Defendant Gregory S. Bruno, on notice to the State of New Jersey and the Monmouth County Prosecutor's Office, and the Court having considered the papers filed by the parties and their arguments in open Court; and good cause having been shown;

IT IS on this 8 day of FEB. 1999,

ORDERED that the Monmouth County Prosecutor's Office shall provide all discovery to counsel for Defendant within 20 days hereof;

IT IS HEREBY FURTHER ORDERED that the above-captioned matter is not stayed pending any appeals by any parties of any issues in the matter;

*CROSS MOTION FOR A STAY OF PROCEEDING PENDING OUTCOME OF INTERLOCUTORY APPEAL IS DENIED*

IT IS HEREBY FURTHER ORDERED that a copy of this order be served upon all

counsel of record within 5 days hereof.

SEE REC. 20 2/8/99

APPLICATION BY THE STATE  
FOR A STAY IS DENIED

HONORABLE JAMES A. KENNEDY, J.S.C.

AK

DEFENDANT SHALL BE  
ARRAIGNED AT THE  
EXPIRATION OF 20 DAYS  
PROVIDED HEREIN.



FEB 8 1999

JOHN RAYE  
MONMOUTH COUNTY PROSECUTOR  
MONMOUTH COUNTY COURTHOUSE  
71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1789  
(732) 431-7160

JAMES A. KENNEDY, J.S.C.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY  
IND. NO. 98-12-2324  
CASE NO. 98-0489

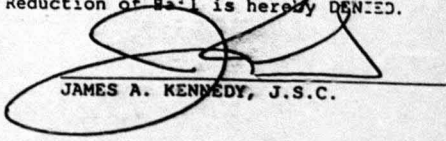
STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTICK</u>
Plaintiff,	:	ORDER DENYING MOTION FOR
v.	:	REDUCTION OF BAIL
GREGORY BRUNO	:	
Defendant	:	

This matter having been brought before this Court on the  
<sup>8th</sup> day of FEB . , 1999, by Edward Bortucio, Esq., appearing on  
behalf of the defendant, and an Assistant Monmouth County  
Prosecutor appearing for the State of New Jersey, on a Motion  
for a Reduction of Bail; and

The Court for good cause shown;

It is on this 8 day of Feb , 1999, ORDERED that the  
defendant's Motion for a Reduction of Bail is hereby DENIED.

SEE RECORD 2/8/99

  
JAMES A. KENNEDY, J.S.C.

AM-402-985

may *mw*

ORDER ON MOTION

STATE OF NEW JERSEY  
VS  
GREGORY S BRUNO

RECEIVED

FEB 22 1999

JUDGE JAMES KENNEDY

FILED  
APPELLATE DIVISION

FEB 17 1999

*Rebecca*

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. AM-000402-98T5  
MOTION NO. M-002778-98  
BEFORE PART: F  
JUDGE(S): KEEFE  
COBURN

MOTION FILED: DECEMBER 31, 1998  
ANSWER(S) FILED: JANUARY 11, 1999

BY: STATE OF NEW JERSEY  
BY: GREGORY BRUNO

SUBMITTED TO COURT: FEBRUARY 10, 1999

REC'D  
APPELLATE DIVISION

FEB 17 1999

*Rebecca*

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS  
11th DAY OF February, 1999, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT  
- FOR LEAVE TO APPEAL

GRANTED DENIED OTHER  
(x) ( ) ( )

SUPPLEMENTAL:

Motion by appellant for leave to appeal is granted.  
The appeal is accelerated. The Clerk of the Court shall establish  
a briefing schedule and calendar the appeal as soon as possible.

MON 98-12-2324

FOR THE COURT:

I hereby certify that this  
is a true copy of the  
original on file in my office.

*Rebecca*

*John E. Keefe*  
JOHN E. KEEFE U.A.D.  
Pa 104

ORIGINAL FILED  
MERCER COUNTY

FEB 26 1999

WILLIAM W. CARPENTER  
Deputy Clerk  
Superior Court

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR  
MONMOUTH COUNTY COURT HOUSE  
71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1789  
(732)431-7160

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
INDICTMENT NO. 98-12-2324  
CASE NO. 98-0489

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO

Defendant.

CRIMINAL ACTION.

NOTICE OF MOTION FOR  
RECONSIDERATION OF ORDER  
DENYING STAY OF PRETRIAL  
PROCEEDINGS

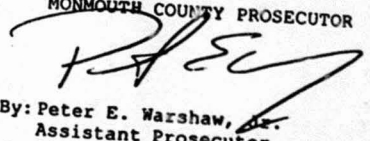
TO: Edward C. Bertucio, Jr., Esq.  
Giordano, Halleran & Ciesla, P.C.  
P.O. Box 190  
Middletown, New Jersey 07748

PLEASE TAKE NOTICE that on the 1 day of March, 1999, at nine o'clock in the forenoon, or as soon thereafter as counsel may be heard, the State will move before the Superior Court, Law Division, Criminal, Monmouth County, Honorable, James A. Kennedy, J.S.C., at the Monmouth County Court House, Freehold, New Jersey, for Reconsideration of an Order Denying a Stay of Pretrial Proceedings Pending Interlocutory Review of the Order Denying Disqualification of Counsel; and

PLEASE TAKE FURTHER NOTICE, that in support of its motion, the State will rely upon the annexed certification, together with oral argument, pursuant to R. 1:6-2(D), at the time of the above application. A proposed form of Order is attached hereto.

Respectfully submitted,

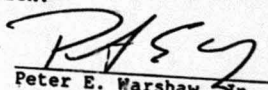
JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR



By: Peter E. Warshaw, Sr.  
Assistant Prosecutor  
Director, Major Crimes Unit

CERTIFICATION

I hereby certify that a copy of the within Notice of Motion and accompanying certification and brief was served upon the defendant at the address stated above, by placing same in the U.S. Mail and sending by facsimile transmission.



Peter E. Warshaw, Sr.  
Assistant Prosecutor  
Director, Major Crimes Unit

Dated: February 26, 1999

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

THE STATE OF NEW JERSEY :

v. :

Indictment No. 98-12-02324M

GREGORY S. BRUNO, :

Defendant. :

FIRST COUNT

MURDER - FIRST DEGREE CRIME

The Grand Jurors of the State of New Jersey, for the County of Monmouth upon their oaths present that GREGORY S. BRUNO, on or about January 18, 1998, in or about the Township of Middletown and/or the Borough of Sea Bright, County of Monmouth, and within the jurisdiction of this Court, did commit the crime of murder in that he purposely or knowingly caused the death of Robert James Gelhaus, Jr. or purposely or knowingly caused serious bodily injury to Robert James Gelhaus, Jr. resulting in his death, contrary to the provisions of N.J.S.A. 2C:11-3, and against the peace of this State, the Government, and dignity of the same.

SECOND COUNT

FELONY MURDER - FIRST DEGREE CRIME

The Grand Jurors of the State of New Jersey, for the County of Monmouth, upon their oaths present that GREGORY S. BRUNO, on or about January 18, 1998, in or about the Township of

Middletown and/or the Borough of Sea Bright, County of Monmouth, and within the jurisdiction of this Court, did commit the crime of felony murder by causing the death of Robert James Gelhaus, Jr., while said GREGORY S. BRUNO, was engaged in the commission of, and/or an attempt to commit, and/or, flight after committing or attempting to commit the crime of Robbery, contrary to the provisions of N.J.S.A. 2C:11-3a(3), and against the peace of this State, the Government, and dignity of the same.

THIRD COUNT

ARMED ROBBERY - FIRST DEGREE CRIME

The Grand Jurors of the State of New Jersey, for the County of Monmouth, upon their oaths present that GREGORY S. BRUNO, on or about January 18, 1998, in or about the Township of Middletown and/or the Borough of Sea Bright, County of Monmouth, and within the jurisdiction of this Court, did commit the crime of armed robbery by inflicting bodily injury or using force upon Robert James Gelhaus, Jr. or by threatening Robert James Gelhaus, Jr. or purposely putting Robert James Gelhaus, Jr. in fear of immediate bodily injury in the course of committing a theft, while armed with or while threatening the immediate use of a deadly weapon, contrary to the provisions of N.J.S.A. 2C:15-1, and against the peace of this State, the Government, and dignity of the same.

FOURTH COUNT

POSSESS A WEAPON FOR UNLAWFUL PURPOSE

THIRD DEGREE CRIME

The Grand Jurors of the State of New Jersey, for the County of Monmouth, upon their oaths present that GREGORY S. BRUNO,

on or about January 18, 1998, in or about the Township of Middletown and/or the Borough of Sea Bright, County of Monmouth, and within the jurisdiction of this Court, did commit the crime of possession of a weapon for an unlawful purpose by possessing one or more knives, with a purpose to use it unlawfully against the person of Robert James Gelhaus, Jr., contrary to the provisions of N.J.S.A. 2C:39-4d, and against the peace of this State, the Government, and dignity of the same.

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JOHN KAYE  
PROSECUTOR  
MONMOUTH COUNTY

Endorsed:

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Foreperson

A-3215-9815

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APR 9 1999

STATE OF NEW JERSEY,  
  
Plaintiff/Appellant,  
  
v.  
  
GREGORY S. BRUNO,  
  
Defendant/Respondent

ON APPEAL FROM SUPERIOR  
COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL PART  
MONMOUTH COUNTY  
INDICTMENT NO.: 98-12-2324  
CASE NO.: 98-00489

SAT BELOW

The Honorable James A. Kennedy, J.S.C.

RESPONDENT'S BRIEF AND APPENDIX IN OPPOSITION TO THE  
STATE OF NEW JERSEY'S INTERLOCUTORY APPEAL OF THE  
TRIAL COURT'S ORDER DENYING THE STATE'S  
APPLICATION TO DISQUALIFY DEFENSE COUNSEL

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**COUNTER STATEMENT OF FACTUAL AND PROCEDURAL HISTORY**

The State of New Jersey filed a Notice of Motion for Leave to File an Interlocutory Appeal after its Motion to Disqualify this law firm from representing Gregory Bruno was denied by The Honorable James A. Kennedy, J.S.C. Without legal basis or factual support, the State of New Jersey inappropriately contends that this firm's representation of Mr. Bruno creates a conflict of interest or appearance of impropriety.

The State contends that Detective Ronald Ohnmacht was a present client of the firm when it undertook Mr. Bruno's representation. This is untrue. The State argues that Detective Ohnmacht will be a key witness in the homicide case, creating an appearance of impropriety. This is also not true.

In addition, critical facts established in the record have been misquoted or misstated in Appellant's papers before the Appellate Division. What follows here is an accurate counter-statement of the factual and procedural history in this matter.

Detective Ohnmacht was previously represented by this law firm in a civil rights matter in which he was a named defendant. That matter was not handled by either Norman M. Hobbie, Esq., or by Edward C. Bertucio, Jr., Esq. (who was not even a member of the law firm during the pendency of that case). Rather, the matter was handled by other counsel. It concluded in July of 1993. It was a pro forma defense of a civil rights action filed by a plaintiff who had been a criminal defendant involving issues surrounding his arrest and the investigation. There was a brief period of discovery and a Motion for Summary Judgment on behalf of Detective Ohnmacht was successful. See Ra 58, Exhibit "E" (the July 9, 1993 letter of Guy P. Ryan, Esq.).

The Certifications of Mr. Ryan and Michele Querques, Esq., of this firm clearly state that no attorney-client confidences were obtained in that representation that are in any manner

useable or relevant in Mr. Bruno's case. Ra 17, Exhibits "C" and "D." Importantly, the State never alleged below that any such problem potentially exists in Mr. Bruno's matter.

Detective Ohnmacht also had a worker's compensation matter with this law firm. Said matter was handled exclusively by M. Scott Tashjy, Esq. of this law firm. Again, neither Mr. Hobbie nor Mr. Bertucio participated in that matter in any fashion. The worker's compensation matter was concluded and the file closed in June 1997. At that time, the firm's representation of Detective Ohnmacht ended.

Mr. Tashjy clearly states in his original Certification that no attorney-client confidences were obtained by him during the workers compensation matter that are useable or relevant in Mr. Bruno's matter. Ra 17, Exhibit "A." Again, the State never alleged below that such a potential problem existed here. The Honorable James A. Kennedy, J.S.C. found, as a matter of fact, as follows:

"I'm essentially finding based upon my review of the file that the Giordano firm's representation of Detective Ohnmacht terminated on or shortly after June 24, 1997 coincidentally with the settlement of the worker's compensation claim." T8-13-17.

In addition, Judge Kennedy found as follows:

"And I, therefore, find that the compensation case was not an open matter at the time the Giordano firm was retained by the Bruno family." T9-1-4.

Gregory Bruno was charged with murder and related offenses on February 1, 1998.

Through his family he retained this law firm on February 4, 1998, over six months after Detective Ohnmacht's worker's compensation file had been closed and this firm's representation of him ended. The attorneys assigned to Mr. Bruno's defense are Mr. Hobbie and Mr. Bertucio. None of the attorneys involved in Detective Ohnmacht's prior matters has had, or will have, any

involvement in the defense of Mr. Bruno in the pending homicide case. In fact, Mr. Ryan does not work with the Giordano law firm any longer. Conversely, neither Mr. Hobbie nor Mr. Bertucio participated in the day-to-day handling of any of Mr. Ohnmacht's previous matters.

Judge Kennedy found as a fact as follows:

"I find that there is no substantial relation between the prior representations of Detective Ohnmacht and the current representation of Gregory Bruno." T8-8-10.

Judge Kennedy further found:

"From my reading of the various certifications, neither the civil rights action or the worker's compensation case would have required the detective to reveal confidential information. As stated in the certifications of counsel, both representations appear to have been pro forma in nature.

My review of the exhaustive certification gives rise to my conclusion that no member of the Giordano firm would now possess confidential information in reference to the detective that would serve to benefit defense counsel during cross-examination of that detective in the Bruno case if the State elected to call him to testify." T7-9-19.

After review of the exhaustive papers filed by both sides below (please see the respective certifications and attachments in the Appendices of both parties), Judge Kennedy concluded as to Detective Ohnmacht's participation in the homicide case as follows:

"There is no indication here that Ohnmacht will be the State's key witness. No representations were made to that effect either in the certifications or at oral argument." T9-8-11.

Since the time of the initial filings of the parties to the Appellate Division, the defense has received and reviewed the discovery in this case. It consists of about 1,000 pages of material. The discovery clearly reveals that Detective Ohnmacht is not a key witness here. He is not an eyewitness; there are none. He did not take or witness any inculpatory admissions by Mr. Bruno; there are none. He did not himself locate through search warrants or otherwise any

evidence in the matter that requires the defense to challenge his report of its location or existence; this matter is a "forensics" case in which the findings of the New Jersey State Police and Monmouth County Prosecutor's Detectives are the critical evidence. Detective Ohnmacht simply took or witnessed statements of mostly collateral witnesses; there was always a second officer with him. He witnessed an exculpatory statement by Mr. Bruno, the admission of which the defense does not intend to challenge.

Throughout the "Statement of Facts" of the State of New Jersey in their appellate papers, misleading statements were made. The State of New Jersey attempts to argue, incorrectly and the State knows it, that Mr. Tashjy "admitted" that he was working on Ohnmacht's case until February 13, 1998, citing to certain correspondence Mr. Tashjy sent to remind the Detective of certain rights. See Pb8. This is simply untrue. Mr. Tashjy states clearly in his sworn Certification to Judge Kennedy that: "In this capacity, I represented Detective Ohnmacht in a worker's compensation claim, which was settled before the Honorable Neal F. Hooley via an Order Approving Settlement on June 24, 1997. (See Exhibit "A.") At that time, the worker's compensation file for Detective Ohnmacht was closed." Ra 17, Exhibit "A," paragraph 4. Mr. Tashjy then continues in his certification to explain that he met with Detective Ohnmacht on February 13, 1998, solely for the purpose of explaining to Detective Ohnmacht that he could not represent him in any reopener of his worker's compensation matter because Mr. Hobbie and Mr. Bertucio were representing Gregory Bruno in the homicide matter. He suggested various other attorneys from other law firms with expertise in worker's compensation for Detective Ohnmacht to contact. Mr. Tashjy did not take, and there is no proof that he took, any action in Worker's Compensation Court to file or pursue a reopener of Detective Ohnmacht. See Ra 17, Exhibit



"A," the Certification of M. Scott Tashjy, dated August 5, 1998. In a Supplemental Certification, dated September 8, 1998, at paragraph 5, Mr. Tashjy indicated as follows:

"As I advised Detective Ohnmacht at that time [February 13, 1998] our firm ended our representation of him with the settlement of his workers' compensation case on or about June 24, 1997. At that point, Detective Ohnmacht was free to ask any other attorney to undertake the reopening of his claim. Subsequent to June 24, 1997, this firm no longer represented Detective Ohnmacht regarding his workers' compensation claim. I told Detective Ohnmacht in February, 1998, that I could recommend him to several competent workers' compensation attorneys." [Bracketed dates added for clarification.] Ra 55.

Mr. Tashjy then proceeds to discuss in paragraph 6 of the same supplemental Certification that "there is absolutely no prejudice visited upon Detective Ohnmacht by having a law firm other than Giordano, Halleran & Ciesla reopen his claim. I have represented a number of workers' compensation clients in the reopening of their claims when I had not handled the original claim. There is absolutely no disadvantage to a client in such a situation." Ra 55. In fact, Detective Ohnmacht has retained other counsel to represent him in the reopening of his Workers' Compensation claim and in the filing of a new occupational exposure claim. Ra 73. The attorney is Martin Rudnick, Esq., an extremely experienced and very competent attorney. Contrary to the State's baseless claims, Detective Ohnmacht and his reopener claims have not been "abandoned." Rather, to avoid creating a conflict of interest, and on the advice of Mr. Tashjy, other counsel has been obtained and Detective Ohnmacht's rights have been protected.

Thus, the State's misleading and inaccurate contention that Mr. Tashjy admitted that he continued to work on Detective Ohnmacht's case and was Detective Ohnmacht's lawyer until mid-February 1998 is simply untrue. Also untrue is the State's contention that this firm "abandoned" Detective Ohnmacht and his claim. Instead, the claim has been protected and a conflict of interest avoided.

In fact, Judge Kennedy found that the matter had been closed on June 24, 1997 and that the subsequent letters to Detective Ohnmacht were "simply good practice letters" that "do not change my opinion." T8-18-21. Judge Kennedy further found that "Detective Ohnmacht never responded to the several business letters sent by the Giordano firm inquiring about a possible reopener of the worker's compensation claim." T3-22-24. He never met with Mr. Tashjy to plan or discuss the reopening of his claim. Detective Ohnmacht simply was not a client of this firm at the time that Gregory Bruno retained this firm as counsel.

The State in footnote 2 at Pb 6 incorrectly implies that Mr. Tashjy had filed a reopener petition or that Detective Ohnmacht thought he did. Both implications are without basis. Mr. Rudnick filed the reopener as aforesaid, along with an additional new claim. Ra 73. Detective Ohnmacht, as Judge Kennedy found at T3-22-24, never contacted Mr. Tashjy to file the reopener. Therefore, Detective Ohnmacht knew the matter was closed.

Procedurally, defendant was arrested on February 1, 1998. He has been held in lieu of an extremely high cash bail for over one year. The Indictment in the above-captioned matter was returned in December of 1998. The Arraignment/Status Conference occurred on March 1, 1999. Although the State attempted to withhold discovery in this matter pending resolution of the issues before the Appellate Division, and notwithstanding its obligation to provide same both under the United States and New Jersey Constitutions and the Rules of Court in New Jersey, the Honorable John Ricciardi, P.J. Crim., ordered that it be provided. The defense, as aforesaid, has received and reviewed same. The defense has also been conducting its own investigation on this matter over the 14 months of representation of Mr. Bruno. The defense has also continued to develop the trust and confidence of Mr. Bruno and his family, who have clearly articulated that they do not perceive any conflict of interest or appearance of impropriety and want present

counsel to remain on this case. See Ra 17, Exhibits "E" and "F." Finally, the State of New Jersey is clearly employing the strategy of using the Rules of Professional Responsibility as a sword to attempt to remove defendant's chosen counsel from this matter and to deprive defense counsel of an opportunity to conduct a meaningful and timely investigation and prepare a defense at this juncture of the case by diverting counsel's attention and resources to this issue. As shown in the documents provided to Judge Kennedy, the State's application here contradicts its position in a prior matter involving Mr. Bruno and Detective Ohnmacht's police department. In that matter, John Mullaney, Esq., the former First Assistant Monmouth County Prosecutor, who defended a police officer from Detective Ohnmacht's department in a criminal trial, defended Mr. Bruno against charges brought by Detective Ohnmacht's department without objection by the State. Meanwhile, Mr. Bruno here is charged with murder and remains in jail awaiting trial in limbo as to who will be his attorney.

**LEGAL ARGUMENT**

**POINT I**

**THE TRIAL JUDGE PROPERLY DENIED THE STATE'S MOTION TO DISQUALIFY THIS LAW FIRM FROM REPRESENTING DEFENDANT UNDER R.P.C. 1.9 AND BASED ON THE CORRECT FACTUAL FINDING THAT DETECTIVE RONALD OHNMACHT IS A FORMER CLIENT OF GIORDANO, HALLERAN & CIESLA, P.C.**

The State buries in footnote 3 at Pb 14 its incorrect version of this Court's standard of review. The State says there: "The facts establishing the relationship of Detective Ohnmacht and the firm are undisputed." Id. This statement is patently wrong. The facts were sharply contested below as to whether Detective Ohnmacht was a present or former client of this firm; whether or not he is a "key witness" in this case; and whether or not any facts existed to create either a conflict of interest or appearance of impropriety. Judge Kennedy resolved all factual disputes in favor of the defense. His legal conclusions came from his resolution of the factual disputes. Therefore, the State's claim in footnote 3 that this Court's review is plenary and does not require any deference to the trial court is wrong.

While no deference is owed to a trial court's legal conclusions, this Court owes substantial deference to trial-level fact-finding. Manalapan Realty v. Township Committee, 140 N.J. 366, 378 (1995). Appellate review of judicial fact-finding is guided by Rova Farms Resort v. Investors Insurance Co., 65 N.J. 474, 483-484 (1974), where the New Jersey Supreme Court, said:

"Considering first the scope of our appellate review of judgment entered in a non-jury case, as here, we note that our courts have held that the findings on which it is based should not be disturbed unless "... they are so wholly unsupportable as to result in a denial of justice," and that the appellate court should exercise its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter ... ." [Citations omitted.]

See also Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 476 (1988); State v. Johnson, 42 N.J. 146, 162 (1964). So, too, here this Court should pay substantial deference to Judge Kennedy's findings of fact that Detective Ohnmacht was a former client of this firm; that he is not a key witness in this case; and that no fact exists which creates either a conflict of interest or appearance of impropriety.

As to the State's substantive arguments in support of its Motion to Disqualify this law firm, the State fails to discuss meaningfully the standard of review in a Motion to Disqualify counsel in a pending case.

In moving to disqualify defendant's chosen counsel, the State bears the burden of proving that the disqualification is justified. State v. Morelli, 152 N.J. Super. 67, 70 (App. Div. 1977); State v. Catanoso, 222 N.J. Super. 641, 644 (Law Div. 1987); State v. Needham, 298 N.J. Super. 100, 103 (Law Div. 1995).

The burden is further on the State of New Jersey to prove that disqualification is appropriate based either on an actual conflict of interest or on a justifiable appearance of impropriety that outweighs any unfair prejudice to the defendant. See, e.g., Carlyle Towers Condominium Association, Inc. v. Crossland Savings, F.S.B., 944 F.Supp. 341, 345 (D.N.J. 1996); Ciba-Geigy Corp. v. Alza Corp., 795 F.Supp. 711, 714 (D.N.J. 1992). The New Jersey Supreme Court has cautioned that the "appearance of impropriety must be something more than a fanciful possibility. It must have a reasonable basis." Ciba-Geigy Corp. v. Alza Corp., *supra*, at 719 (quoting Higgins v. Advisory Comm. on Professional Ethics, 73 N.J. 123, 129 (1977)). Such motions must be carefully scrutinized because "motions to disqualify are viewed with disfavor and disqualification is considered a drastic measure, which courts should hesitate to impose except when absolutely necessary." Carlyle Towers Condominium Association, Inc. v.

Crossland Savings, F.S.B., *supra*, at 345; Alexander v. Primerica Holdings, Inc., 822 F.Supp. 1090, 1114 (D.N.J. 1993).

Thus, for example, in Ciba-Geigy Corp. v. Alza Corp., *supra*, the court determined that two successive matters were not substantially related and that no reasonable and justifiable argument could be made as to an appearance of impropriety in successive representations of two clients in different litigation and, therefore, the application to disqualify counsel was denied. *Id.* See also, Carlyle Tower Condominium Association, Inc. v. Crossland Savings, F.S.B., *supra* (holding that a substantial relationship did not exist between the two matters, and therefore the law firm did not acquire any insight into the former client's "litigation philosophy or methods and procedures for conducting litigation defense" to conclude that there was an appearance of impropriety); Host Marriott Corporation v. East Food Operators, Inc., 891 F. Supp. 1002 (D.N.J. 1995) (finding that the lawsuit was not substantially related to the prior representation); McCarthy v. John T. Henderson, Inc., 246 N.J. Super. 225 (App. Div. 1991) (determining that even if the defendants were considered to be clients of the law firm in the first litigation, there was no basis to conclude that any information was conveyed to the law firm of the nature that could be used to defendants' disadvantage in the present case, since the two cases involve wholly unrelated matters).

Finally, the Court is respectfully requested to consider the out-of-state authority of State v. Outten, \_\_\_ Del. Super. \_\_\_ (1992), which is attached as part of Respondent's Appendix in the August 25, 1998 correspondence to Judge Kennedy, see Ra 40, and which is attached pursuant to R. 1:36-3, and in which the court there under analogous facts did not disqualify the defense attorney who had previously represented a witness in the case. In short, the mere allegation of an actual or apparent conflict of interest does not justify finding same. The State

holds the burden of demonstrating a justifiable and reasonable basis to find either an actual or apparent conflict of interest. The State has failed to sustain its burden in this case.

The State of New Jersey has improperly concluded that Detective Ohnmacht was a present client of this firm at the time that this firm undertook the representation of Gregory Bruno. Judge Kennedy has so found and his factual determination should not be disturbed here. Therefore, the Court's analysis should begin with a review of R.P.C. 1.9 and not R.P.C. 1.7, as the State incorrectly argues in this case.

Under R.P.C. 1.9(a), an attorney cannot represent a subsequent client "in the same or substantially related matter in which that client's interest are materially adverse to the interests of the former client. . ." absent full disclosure and consent of both clients, nor can the attorney use any information from the representation of the prior client against him in representing the succeeding client. Not only was Detective Ohnmacht a former client of this firm, but the former representation was not "the same or a substantially related matter."

The civil rights defense matter occurred years prior to the present matter and involved attorneys other than Mr. Hobbie and Mr. Bertucio in the handling of the litigation. The legal issues in the civil rights defense case were in no way related to Gregory Bruno or his present case. Nor did either of the attorneys who worked day to day on the case learn of any information that could in any way be used against Detective Ohnmacht or any other member of the Middletown Township Police Department in this case. In fact, neither of the attorneys involved in the civil rights case had any discussions with Detective Ohnmacht where such information would be learned. Mr. Ryan, one of the attorneys who worked on that case, and who filed the case dispositive motion, never even spoke to Detective Ohnmacht during the representation. Thus, Judge Kennedy properly found that no confidential information was exchanged which

could in any way be used against Detective Ohnmacht in the defense of Gregory Bruno in the present matter.

As to the worker's compensation case, that matter was handled exclusively by Mr. Tashjy. Neither Mr. Hobbie nor Mr. Bertucio had any involvement in that case. That matter certainly is not the same or substantially related to the present matter, State v. Bruno. The only similarity is that the same adversary was involved in both cases—the Middletown Township Police Department representing the State of New Jersey. Nor did Mr. Tashjy learn of any information or communicate any attorney-client confidential information to either Mr. Hobbie or Mr. Bertucio that could be used against Detective Ohnmacht in the present criminal case. Judge Kennedy found this as fact. T7-9-19. Therefore, neither R.P.C. 1.9(a)(1) or (2) applies in this matter and the Court should reject the State's attempt to apply incorrectly R.P.C. 1.7 and deny the State's Motion to Disqualify this firm and its lawyers from representation of Mr. Bruno in this case.

Even if R.P.C. 1.7 applied in any fashion, it is not dispositive on the State's position. R.P.C. 1.7 states that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client and then gives the conditions under which such representation can occur. [Emphasis added.] What is lost in the State's analysis is that Detective Ohnmacht is not the "plaintiff" or the "victim" in the matter of State v. Gregory Bruno. Nor is he the State's "client." He is merely a witness. Judge Kennedy found as fact that he is not a key witness and that there was no proof in the record that he is a key witness. As the correspondence attached to Respondent's opposition papers filed with the trial court demonstrates, this is not a case where Detective Ohnmacht was an eyewitness to the alleged crimes, nor is it a matter where he took an inculpatory statement from Mr. Bruno. The statement was a brief exculpatory one.



after which the police let Mr. Bruno go home. The defense does not intend to oppose its admission. According to Mr. Warshaw, as confirmed in correspondence to him, this case is a circumstantial "forensics" case and Detective Ohnmacht's function was mainly gathering evidence whose existence is not contested in this matter and taking or witnessing statements of collateral witnesses. Pa 13. As a witness, Detective Ohnmacht's only function is to testify truthfully. He is not a party to the criminal case. Therefore, the firm's present representation of Mr. Bruno is not "directly adverse" to another client (in this case Detective Ohnmacht).

As argued below to Judge Kennedy, this case is analogous to the attached Appellate Division opinion, Roth v. Herman, \_\_ N.J. Super. \_\_ (App. Div. 1996) (slip opinion attached pursuant to R.1:36-3 and contained in the August 25, 1998 letter within Respondent's Appendix, Ra 42. In Roth v. Herman, the attorney sought to be disqualified had previously defended a litigant in an automobile accident case. That matter was concluded and then the same attorney represented a subsequent client as plaintiff's counsel in a motor vehicle case against the prior client. There, the prior client was an actual named defendant in the subsequent case. Yet, the Court, in analyzing R.P.C. 1.9 and the case law surrounding same, found that the prior matter was not substantially related to the present matter, nor was any information from the prior representation potentially usable against the former client in the present matter. Thus, the Appellate Division denied the Motion to Disqualify plaintiff's counsel in the subsequent case. Significantly, the court found that the prior representation was pro forma. The Court further found that the contacts between the plaintiff's attorney in the subsequent case and the prior client were minimal. See, Roth v. Herman, supra, slip opinion at pages 2 and 3. Therefore, the Court in analyzing the R.P.C. and the case law determined:

"The trial judge was of the view, with which we agree, that the rule does not absolutely prohibit an attorney from representing a new

client whose interests are adverse to those of the former client but, rather, prohibits that representation only when the subject of the new representation is "substantially related" to the subject of the prior representation or when the attorney has, during the course of the prior representation, obtained information from the former client usable against the client in new representation." See, generally, Dewey v. R.J. Reynolds Tobacco Company, 109 N.J. 201 (1988); Reardon v. Marlayne, Inc., 83 N.J. 460 (1980). "Application of the Rule depends on the facts of each case. Its application here was without error . . .

Clearly, the subject matter of the Ravich representation of plaintiff in this action is not substantially related to the subject matter of its representation of defendant in the Grossberg matter. The two are not related at all . . . . While we understand that there might theoretically be facts regarding her physical condition or otherwise learned by Ravich during the first representation that might adversely affect her interest in this litigation, we are satisfied, as was the trial judge, that that concern is, indeed, theoretical only." Id. at slip opinion pp. 3 and 4.

Thus, the Appellate Division in Roth v. Herman denied the Motion to Disqualify counsel in a matter where the client previously represented was actually a named party in the subsequent litigation. Here, Detective Ohnmacht is merely a witness in the subsequent litigation. There is nothing from the prior representation of him that is related at all to the present criminal matter, nor is there any information from the prior representation that can in any way be used against him in the present representation. Therefore, this Court should find, as the court did in Roth v. Herman, *supra*, that R.P.C. 1.9 and the case law interpreting it does not preclude this firm's representation of Mr. Bruno in this matter.

The State attempts to circumvent the obvious factual determination by Judge Kennedy in this case and the legal analysis that flows therefrom in two ways. First, as aforementioned, the State disingenuously attempts to claim that Judge Kennedy did not make a factual determination that Detective Ohnmacht was a former client in this case. Rather, the State attempts improperly to claim that it is undisputed that Ohnmacht was a present client of the firm and therefore the

Court's review should be on the law without any due deference to the factual findings of Judge Kennedy. Again, this is disingenuous. Judge Kennedy clearly resolved the factual dispute in this case. The State contended that Detective Ohnmacht was a present client of the law firm and that R.P.C. 1.7 applied. The defense contended that Detective Ohnmacht was a former client of the firm and R.P.C. 1.9 applied. Judge Kennedy resolved this factual issue in favor of the defense, finding that Detective Ohnmacht was a former client of the firm, that the worker's compensation matter was resolved and the file closed in June of 1997, over six months prior to the homicide and subsequent retention of this firm in the Bruno case and that, therefore, R.P.C. 1.9 applied. That factual determination has clear support in the evidence and should not be disturbed. Rova Farms Resort v. Investors Insurance Company, *supra*, at 483-484; Meshinsky v. Nichols Yacht Sales, Inc., *supra*, at 475; State v. Johnson, *supra*, at 162.

Next, the State improperly urges this Court to reverse Judge Kennedy's factual finding that Detective Ohnmacht was a former client of this firm and to find that the "good practice" letters constituted continuing legal advice. The State cites Manoir-Electroalloys Corp. v. Amalloy Corp., 711 F.Supp. 183 (D.N.J. 1989) in support of this position. However, that case is clearly distinguishable. First, Manoir is a case from a federal district court in New Jersey. It is not binding precedent on this Court. Indeed, the Court there must look to this State's Appellate Courts for its guidance. Next, in Manoir, the disqualified law firm was suing its client, Mr. Iacono. Thus, there was a direct adversarial relationship to a past/present client. Here, Detective Ohnmacht is merely a witness and not even a key witness as Judge Kennedy ruled. Second, during the contract negotiations that preceded the filing of the lawsuit against the client, there were specific meetings and discussions between counsel from the disqualified law firm and the client about taking actual steps in pursuing a course of action and the giving of actual legal

advice. These discussions were by way of a meeting that occurred during the contract negotiations from which the subsequent litigation flowed. No such meetings occurred in this case. In fact, Detective Ohnmacht never responded to any of the "good practice" letters and absolutely no legal action was taken to reopen the claim on behalf of Detective Ohnmacht between June 1997, when the worker's compensation matter was closed and he ceased being a client of the firm, and February 4 of 1998, when this firm undertook the representation of Mr. Bruno. The last good practice letter was sent in January 1998, before Mr. Bruno was arrested and charged with homicide and before anyone from this firm met him or his family. Lastly, Manoir preceded the findings in other Federal Court cases from the District of New Jersey that stated the burden is on the party seeking disqualification to prove an actual or justifiable appearance of impropriety that outweighs any unfair prejudice to the defendant, Carlyle Towers Condominium Association v. Crossland Savings, F.S.B., supra (D.N.J. 1996); Ciba-Geigy Corp. v. Alza Corp., supra (D.N.J. 1992), as well as the language in those cases and other subsequent District of New Jersey cases stating that such motions must be scrutinized carefully because "motions to disqualify are viewed with disfavor and disqualification is considered a drastic measure, which courts should hesitate to impose except when absolutely necessary." Carlyle Towers Condominium Association, Inc. v. Crossland Savings, F.S.B., supra, at 345 (D.N.J. 1996); Alexander v. Primerica Holdings, supra, at 1114 (D.N.J. 1993). In fact, the case law recognizes that oftentimes Motions to Disqualify opposing counsel are filed for tactical reasons having to do with gaining an advantage in the litigation and not because of an actual conflict of interest or substantial appearance of impropriety. Dewey v. R.J. Reynolds Tobacco Company, supra, at 218; citing Bd. of Ed. of NY v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979); Evans v. Artek Systems Corp., 715 F.2d 788, 792 (2d Cir. 1983). Such appears to be the case here where

the State persists in pursuing this issue and attempting to withhold discovery to disrupt the preparation of the defense and divert counsel's time and resources away from preparing for trial. This is unfair to Mr. Bruno who wants counsel to remain.

It is also a position taken by the State against Mr. Bruno in this case that it did not take against Mr. Bruno's previous counsel, Mr. Mullaney, in a prior criminal case involving Mr. Bruno. The State did not oppose Mr. Mullaney's representation despite the facts that Mr. Mullaney: (1) was the former Monmouth County First Assistant Prosecutor; (2) had previously represented a Middletown Township Police Officer through a criminal trial; and (3) was representing Mr. Bruno in a matter investigated by the Middletown Township Police Department. Such selective enforcement of the Rules of Professional Responsibility suggest an attempt here to gain a tactical advantage over Mr. Bruno, not an actual or apparent conflict of interest.

In the last analysis, however, Judge Kennedy clearly made the appropriate decision that Detective Ohnmacht was a former client; that R.P.C. 1.9 applied; that this matter was not substantially related to any of the prior matters; that no confidential information was gained from the prior matters that in any way could be used against Detective Ohnmacht in this matter and, therefore, he properly denied the State's Motion to Disqualify this firm. The Appellate Division in this case should do the same.

POINT II

**THE TRIAL COURT PROPERLY DENIED THE STATE'S  
MOTION TO DISQUALIFY THIS LAW FIRM BECAUSE  
THERE IS NOT AN APPEARANCE OF IMPROPRIETY IN  
THE PRESENT REPRESENTATION OF GREGORY  
BRUNO IN THIS MATTER.**

The State also argues that, even if there is not an actual conflict of interest, there is an appearance of impropriety. Again, the State bears the burden of proof in this regard. State v. Morelli, supra; State v. Catanoso, supra; State v. Needham, supra.

In fact, without any factual basis to do so, the State alleges that this firm "abandoned" Detective Ohnmacht to pursue a "more lucrative opportunity" in representing Mr. Bruno. See Pb at 36. First, the State completely misconstrues its role in this matter. It is not counsel to Detective Ohnmacht, nor does it have standing to make such a claim on Detective Ohnmacht's behalf. Such claims are simply more name-calling by the State without factual basis. Nor is there any fact in this record from which the State can make a claim that Detective Ohnmacht was "abandoned" by this law firm for a "more lucrative opportunity." The undersigned defies the State to point to the facts in the record that support this bald assertion. In fact, Judge Kennedy found that Detective Ohnmacht was not abandoned. Rather, the worker's compensation matter simply terminated successfully on his behalf and the matter was closed. Another attorney, Mr. Rudnick, at another law firm, undertook the representation of Detective Ohnmacht and filed the reopener of his workers' compensation case. This happens every day in private practice. Such factual misstatements by the State are consistent with what occurred below in the record, where Detective Ohnmacht submitted a Certification claiming that he thought he was represented by this firm until July 14, 1998. See Pa 17, paragraph 12. Then, after Mr. Tashjy raised in his responding Certification that a meeting occurred on February 13, 1998, Detective Ohnmacht

acknowledged that, in fact, such a meeting did occur in February. See Detective Ohnmacht's Supplemental Certification, Pa 52. Thus, an incorrect impression was created by the State that this firm represented Detective Ohnmacht until July of 1998, when in fact that was untrue.

In addition, the State in its most recent Brief, deceptively argues that this firm's representation of Mr. Bruno and Detective Ohnmacht overlapped, claiming:

"The time period of the second representation overlapped with the firm's acceptance of the Bruno case. The last letter to Ohnmacht from the firm was dated January 26, 1998. The homicide occurred on January 18, 1998." Pb 40

This is a blatantly deceptive statement. In fact: (1) this firm's representation of Detective Ohnmacht ended in June 1997; (2) Mr. Bruno was not arrested until February 1, 1998; and (3) this firm was not retained until February 4, 1998. There was no overlap between Mr. Bruno retaining this firm and either: (1) this firm's representation of Detective Ohnmacht; or (2) any of Mr. Tashjy's letters. The State knows this, yet persists in its "overlap" argument without any factual basis.

Moreover, all of the case law cited by the State of New Jersey in support of the claimed appearance of impropriety is distinguishable.

The State cites State v. Morelli, 152 N.J. Super., 67 (App. Div. 1977) and State v. Catanoso, 222 N.J. Super. 641 (Law Div. 1987). These two cases deal with "side switching" by attorneys in the middle of the same case. In State v. Morelli, defense counsel had previously represented a key prosecution witness in the same matter. In addition, the defense attorney's law firm employed an attorney who formerly worked in the prosecutor's office, then investigated and charged the defendant while that investigation was occurring. This combined "side switching" caused the court to disqualify defense counsel.

Likewise, in State v. Catanoso, the court found that defense counsel had represented the State's key witness in the same case. Said counsel learned of confidences from that witness, because it involved the same matter that would necessarily be disclosed in the defense of the subsequent client. Thus, in both Morelli and Catanoso, the matters were substantially related. In this matter, however, neither the previous representation of the Detective Ohnmacht in the civil rights case, nor the previous representation in the worker's compensation case, has anything to do with the present matter. No information from those cases can be used in the present case against Detective Ohnmacht. The State argues without factual support that confidential information can be used against Detective Ohnmacht. However, Detective Ohnmacht never alleged this in his Certification. The Certifications of Mr. Ryan, Ms. Querques and Mr. Tashjy contradict this claim. There has been no "side switching" by this firm or any of its attorneys. Thus, those cases are not precedential to this matter.

The State also cites State v. Galati, 64 N.J. 572 (1974) as supportive of its position. However, Galati involved a defense attorney who represented Police Benevolent Associations and similar organizational entities. Thus his representation was wide ranging and often affected the labor agreements and "bread and butter" of all police officers. The defendant in Galati was himself a police officer, and the witnesses against him were police officers as well. In this matter, neither Mr. Hobbie nor Mr. Bertucio nor any other attorney in this firm represents any PBA or any police organizational entity. Thus, Galati is clearly not applicable to the case at hand. In addition, State v. Galati is instructive of the Court's recognition of extreme prejudice to a defendant whose counsel is disqualified. Mr. Bruno is on trial for murder. He could spend the rest of his natural life in jail if he loses the case. Counsel from the Giordano firm and its investigator have been involved in the matter for over a year. Extensive review of the discovery



and investigation of this matter by this firm has already occurred. Counsel has spent considerable time developing Mr. Bruno's and his family's trust and confidence, vital elements to a successful attorney-client relationship. To require new counsel to enter an appearance at this date and play catch up in a murder case and prepare an appropriate defense is extremely and unfairly prejudicial to Mr. Bruno.

Next, the State cites State v. Needham, 298 N.J. Super. 100 (Law Div. 1995). There, the defense counsel in question had defended a police officer in a criminal case against that officer which went to trial and ended in an acquittal. The defense attorney also represented the same officer in an internal affairs investigation, which also was successfully resolved in the officer's favor. The officer was then the victim of an assault and threats to commit crimes of violence against the officer and his family. On said facts, the court disqualified counsel. Aside from the obvious fact that State v. Needham is a law division opinion and not binding on this Court, it is factually dissimilar as well. Neither Mr. Hobbie nor Mr. Bertucio ever actually represented Detective Ohnmacht in either of the prior matters. The kind of lawyer-client bond that must have developed during a trial and acquittal and a subsequent and successful internal affairs investigation by the actual lawyer sought to be disqualified in the subsequent case is a far cry from being in a forty-five member law firm where two other attorneys represent Detective Ohnmacht in completely unrelated and rather minor and pro forma matters. To require Mr. Bruno in a murder case, where his freedom for the rest of his natural life is at stake, to forfeit counsel of choice because of such a tenuous prior connection, is unfairly prejudicial to him and not supported by the case law. Mr. Bruno has clearly been advised of and has waived any argument to claim that any actual or potential conflict of interest exists. In fact, he believes there is no conflict of interest or appearance of impropriety. See his Affidavit contained within

Respondent's Appendix at Ra 17, Exhibit "E." His family feels the same way. Ra 17, Exhibit "F."

Nor does Advisory Opinion 404 cited by the State compel this firm's disqualification. Advisory Opinion 404 involved a situation where the same attorney previously represented a police officer who then became a complaining witness in a subsequent case. This is not the situation here where Mr. Hobbie and Mr. Bertucio did not represent Detective Ohnmacht in either of the prior cases and where he is not the complainant. The State cites both State v. Needham and Advisory Opinion 404 to raise the issue of an appearance of impropriety: namely, whether the public knowing all the facts alleged to constitute an appearance of impropriety would reasonably believe that either the attorneys for Mr. Bruno or Detective Ohnmacht will in effect "pull a punch" and not aggressively, zealously and professionally pursue the truth on behalf of each side's respective interest. By the State's own admission, Pb 44, there has to be an "adequate factual basis" for an informed citizen to conclude there is a "high risk" of impropriety. Matter of Petition for Review of Opinion No. 569, 103 N.J. 325, 331 (1986).

A review of all of the Certifications and Affidavits submitted to Judge Kennedy below reveals that neither the State of New Jersey, Detective Ohnmacht, nor any of defense counsel representing Mr. Bruno in the homicide case have made any statements or raised any concern that Detective Ohnmacht will "pull a punch," or that counsel for Mr. Bruno will do so because of some prior relationship between Detective Ohnmacht and this firm. Neither Mr. Bruno's counsel, nor any member of the Bruno family or Mr. Bruno himself, expects Detective Ohnmacht to "go easy" on Gregory Bruno in this matter because of the prior representation of this law firm. To the contrary, it is expected that Detective Ohnmacht will zealously,

aggressively and professionally discharge his duties, even though the record reveals that he personally knows the Bruno family.

Likewise, no one can seriously question that Mr. Hobbie or Mr. Bertucio will not discharge their duty to defend Mr. Bruno aggressively and zealously, despite the fact that other attorneys in this firm represented Detective Ohnmacht in two prior matters unrelated to this case. The contentious nature of the debate of this issue proves that point. Both Mr. Bruno and his father as representing his family have indicated they do not have any such concerns. They have complete confidence that the attorneys' allegiance to Gregory Bruno is complete and unquestionable. If anyone in this matter had the right to raise an issue as to the allegiance of the attorneys in this firm, it is Gregory Bruno alone. However, he, his father and his family are all completely confident and have no issue as to Mr. Hobbie and Mr. Bertucio defending him in his case. That should settle the question. It is not for the State of New Jersey to attempt to intrude itself into that attorney-client relationship and interfere with same. In fact, the State has attempted to do so by not only filing this Motion and attempting to "divide the house" between Mr. Bruno and his counsel, but has further attempted to do so by unconstitutionally and in violation of the Court Rules attempting to withhold discovery in this case under the guise that it does not have to be provided until this disqualification issue is resolved. In fact, there is no stay of Judge Kennedy's Order below. Therefore, under R. 2:5-6(a) this matter must go forward at the trial level, notwithstanding the pendency of this Interlocutory Appeal. Yet, the effect of the State's application and all the delay it has caused is to prejudice Mr. Bruno's defense by diverting defense counsel's attention and resources to this issue and away from a timely and meaningful investigation and preparation of a defense of the murder charge against him.

Finally, the State persists, despite Judge Kennedy's finding to the contrary, that Detective Ohnmacht is a "key" witness. He is not. Judge Kennedy found he was not. As aforementioned, Detective Ohnmacht did not witness the crime, did not take any inculpatory statement from Mr. Bruno, and has not located any evidence to which the defense must contest its location or existence. The key evidence against Mr. Bruno will be testified to by members of the New Jersey State Police or Monmouth County Prosecutor's Office.

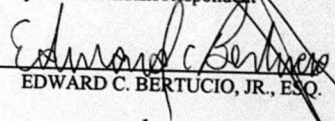
Therefore, the Court should promptly deny this Appeal so that this matter may proceed in the normal course.

**CONCLUSION**

For the foregoing reasons, Respondent respectfully requests this Court to affirm Judge Kennedy's Order Denying the State's Motion to Disqualify this law firm in this case, because:

(1) the State has not carried its burden of proof on the facts and law to prove a reason for disqualification; (2) Judge Kennedy's factual decisions are based on substantial and reliable evidence and adequately support his decision below; and (3) neither the facts established in this case nor the law applicable to it dictate a finding of either an actual conflict of interest or an appearance of impropriety.

Respectfully Submitted,  
GIORDANO, HALLERAN & CIESLA, P.C.,  
Attorneys for Defendant/Respondent

By:   
EDWARD C. BERTUCIO, JR., ESQ.

Dated: April 9, 1999

**CERTIFICATION OF SERVICE**

I, Edward C. Bertucio, Jr., Esq., an attorney at law in the State of New Jersey, hereby certify to the following:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C., counsel for Defendant/Respondent, Gregory S. Bruno, in the above-captioned matter.

2. On April 9, 1999, an original and four (4) copies of the attached Respondent's Brief and Appendix In Opposition To The State of New Jersey's Interlocutory Appeal Of The Trial Court's Order Denying The State's Application To Disqualify Defense Counsel were served, via hand-delivery, to Emille R. Cox, Clerk, Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market Street, Trenton, New Jersey 08625, and that a clear copy of all documents enclosed herewith were forwarded, via hand-delivery, to the Honorable James A. Kennedy, J.S.C., Monmouth County Superior Court, 71 Monument Park, Freehold, NJ and two copies were forwarded to Mary R. Juliano, Monmouth County Prosecutor's Office, 71 Monument Park, Freehold, New Jersey, on this date.

Dated: April 9, 1999

  
EDWARD C. BERTUCIO, JR., ESQ.



1 THE COURT: This is a reserved matter in the case  
2 entitled the State of New Jersey vs Gregory S. Bruno. Counsel  
3 are not present. I'm recording my findings. My law clerk will  
4 advise counsel of my decision and the availability of a  
5 transcript of my findings.

6 This is the State's motion to disqualify defense  
7 counsel from representing Gregory S. Bruno. Gregory S. Bruno has  
8 not yet been indicted but on February 1st of 1998 he was charged  
9 with murder, felony murder, armed robbery and possession of a  
10 knife for an unlawful purpose.

11 The charges stem from an alleged homicide that  
12 occurred on January 15 of 1998 in Middletown Township. On  
13 February 4th of 1998 Gregory Bruno and his family retained the  
14 law firm of Giordano, Halleran and Ciesla.

15 To my knowledge, again, the defendant has not been  
16 indicted as of the dictation of this decision. The State argues  
17 that the law firm of Giordano, Halleran and Ciesla should be  
18 disqualified from representing Gregory S. Bruno due to a  
19 potential conflict of interest and/or an appearance of  
20 impropriety.

21 The State argues that the Giordano firm represented  
22 Detective Ronald Ohnmacht, Middletown Township Police Officer  
23 assigned to investigate a part of the case against defendant  
24 Bruno.

25 The Giordano firm has previously represented Detective



1 Ohnmacht in two prior matters. The first matter the Giordano  
2 firm represented Ohnmacht in a civil rights action in which the  
3 detective was a defendant along with his employer Middletown  
4 Township Police Department. I believe that matter was resolved  
5 by summary judgment in favor of Detective Ohnmacht and the  
6 Middletown Township Police Department.

7 The Giordano firm represented the detective from  
8 October of 1993 until the case was dismissed, I believe, by  
9 summary judgment later that same year. The second matter  
10 involved a workers compensation claim filed by the Giordano firm  
11 on behalf of the defendant Ronald Ohnmacht. That claim was  
12 settled on June 24, 1997.

13 The prosecutor now claims that there is a continuing  
14 attorney/client relationship between the Giordano firm and  
15 Detective Ronald Ohnmacht which continued up until the time the  
16 Giordano firm was hired by the Bruno family. There are several  
17 letters marked in the file wherein the Giordano firm wrote to  
18 Ronald Ohnmacht requesting that he contact them with respect to  
19 a potential reopener of the workers compensation claim. In fact,  
20 the primary workers compensation claim was settled on June 24 of  
21 1997.

22 Detective Ohnmacht never responded to the several  
23 business letters sent by the Giordano firm inquiring about a  
24 possible reopener of the workers compensation claim.

25 The State, among other allegations, asserts that the

1 Giordano firm terminated its representation of Detective  
2 Ohnmacht over his objections once the firm was retained by the  
3 Bruno family.

4 The State also alleges that the Giordano firm learned  
5 integral information during its representation of Detective  
6 Ohnmacht that will be directly adverse to the detective's  
7 interest and materially affect the conduct of the criminal case  
8 against Gregory S. Bruno.

9 The State relies on the Rules of Professional Conduct,  
10 specifically RPC 1.7 which pertains to and governs conflicts of  
11 interest. The rule states that a law firm shall not represent a  
12 client if the representation of said client will be directly  
13 adverse to another client.

14 Additionally, the State relies upon State v. Needham,  
15 N-e-e-d-h-a-m, 98 N. J. Super 100 (Law Division 1966) in which  
16 the court held that a defense counsel should be dismissed due to  
17 a conflict of interest and/or the existence of an appearance of  
18 impropriety.

19 Defense counsel has made two arguments at least in  
20 opposition to the State's position. First, defense counsel has  
21 argued that their representation of Detective Ohnmacht had  
22 concluded prior to the retaining of the firm by the Bruno  
23 family.

24 Second, defense counsel argued that their  
25 representation of Detective Ohnmacht was neither the same nor

1 substantially related to the current representation of Gregory  
2 Bruno. The Giordano firm represented Detective Ohnmacht in a  
3 civil rights action and in a workers compensation case as  
4 discussed previously.

5           It is defense counsel's position that the Giordano  
6 firm no longer represented Detective Ohnmacht as his workers  
7 compensation claim had been settled and the detective had not  
8 made any attempts to reopen his case. Defense counsel has argued  
9 that Detective Ohnmacht did not respond or contact the Giordano  
10 firm until February 13th of 1998 after the defendant retained  
11 Giordano (February 4, 1998) and after a substitution of attorney  
12 was filed with the Criminal Case Management Office (February 10,  
13 1998).

14           It is noted and emphasized that the defendant Gregory  
15 Bruno has been charged with murder, felony murder, armed robbery  
16 and possession of a knife for an unlawful purpose. The exact  
17 factual allegations or details of the charges need not be spread  
18 upon this record.

19           The defendant has not yet been indicted and it is  
20 uncertain, although potentially likely, that the defendant may  
21 be subjected to the death penalty if it is determined ultimately  
22 that this is to be a capital murder case.

23           Under the Sixth Amendment, the defendant is guaranteed  
24 the right to assistance of counsel for his defense. The Sixth  
25 Amendment is applicable to the State via the Fourteenth

1 amendment; however, it is also well settled that the defendant's  
2 right to counsel does not include the right to counsel that has  
3 been disqualified. State vs. Lucarello, 135 N. J. Super 347.  
4 See also State vs Morelli, 152 N.J. Super 71. It is also now  
5 settled that the State bears the burden of proving  
6 disqualification of defense counsel. See also State vs Catanoso,  
7 222 N. J. Super, 641, (1987).

8 If the State satisfies this burden and there is a  
9 showing that there is an appearance of impropriety, defense  
10 counsel must be disqualified. See State vs Needham 298 N. J.  
11 Super, 100. Thus the court is relegated to decide if there is an  
12 actual appearance of impropriety.

13 The applicable standards to be used was set forth by  
14 our highest court In the Matter of Petition for Review of  
15 Opinion Number 569, 103 New Jersey 325 (1986). It is the  
16 viewpoint of the public from which the court must judge whether  
17 particular conduct would constitute an appearance of  
18 impropriety. The conduct must be viewed from the viewpoint of an  
19 informed and concerned private citizen and there must be  
20 consideration as to whether the reputation of the bar would be  
21 lowered if the representation were permitted.

22 Essentially I'm paraphrasing from page 331 of the case  
23 previously cited at 103 New Jersey. It has been held that  
24 disqualification of counsel is necessary where previous and  
25 present representations are substantially similar, Reardon vs

7

Decision

1 Marlayne, 83 New Jersey 460. A substantial relationship is one  
2 that "has created a climate of non-disclosure of relevant  
3 confidential information".

4           In this case, defense firm represented Ronald  
5 Ohnmacht, one of several detectives assigned to investigate the  
6 case against the defendant. As previously stated, the civil  
7 rights action was terminated years ago by summary judgment in  
8 favor of defendant and his employer.

9           From my reading of the various certifications, neither  
10 the civil rights action or the workers compensation case would  
11 have required the detective to reveal confidential information.  
12 As stated in the certifications of counsel, both representations  
13 appear to have been proforma in nature.

14           My review of the exhaustive certification gives rise  
15 to my conclusion that no member of the Giordano firm would now  
16 possess confidential information in reference to the detective  
17 that would serve to benefit defense counsel during  
18 cross-examination of that detective in the Bruno case if the  
19 State elected to call him to testify.

20           At this point, I digress because in the Needham  
21 decision where the law firm was disqualified, that law firm  
22 represented the State's investigating police officer in a  
23 criminal case wherein the police officer was charged with a  
24 crime and successfully defended. There one could easily conclude  
25 that certain confidential information passed between attorney

1 and client which would have jeopardized the integrity of that  
2 police officer as a chief witness in the State's criminal case.

3 The appearance of impropriety in Needham, I believe,  
4 was clear and the inference of impropriety clearly mandated. In  
5 my opinion, that is not the case here and that is a substantial  
6 distinguishing factor which does not make the Needham case  
7 binding upon me.

8 I find that there is no substantial relation between  
9 the prior representations of Detective Ohnmacht and the current  
10 representation of Gregory Bruno.

11 The State makes the argument that Detective Ohnmacht  
12 is a current client of the Giordano firm and therefore the  
13 entire Giordano firm should be therefore disqualified. I'm  
14 essentially finding based upon my review of the file that the  
15 Giordano firm's representation of Detective Ohnmacht terminated  
16 on or shortly after June 24, 1997 coincidentally with the  
17 settlement of the workers compensation claim.

18 The good practice letters cited by the State and sent  
19 by the Giordano firm to Detective Ohnmacht on September 29th  
20 1997, October 13, 1997, January 6, 1998 and January 26, 1998 do  
21 not change my opinion.

22 None of those letters received a response from  
23 Detective Ohnmacht. These letters essentially outline the  
24 conditions should Ohnmacht seek to reopen his workers  
25 compensation case. There was no response to Giordano that

1 Ohnmacht sought to reopen his compensation case. And I,  
2 therefore, find that the compensation case was not an open  
3 matter at the time the Giordano firm was retained by the Bruno  
4 family.

5 Again, although that might change the criteria, any  
6 reliance on Needham is not appropriate. The Needham case  
7 involved an attorney that had previously represented the State's  
8 key witness, Officer Warner. There is no indication here that  
9 Ohnmacht will be the State's (key witness).

10 No representations were made to that effect either in  
11 the certifications or at oral argument. He will no doubt be a  
12 witness. He has participated substantially in the investigation  
13 but I think the crux of the Needham decision was that Officer  
14 Warner was, in fact, the State's key witness.

15 Also, a distinguishing factor which I've previously  
16 cited is the intensity of the attorney/client relationship in  
17 Needham. Needham outlined a fact pattern much different than  
18 this. The attorney in the Needham case represented the key  
19 witness of the State in another criminal matter where the key  
20 witness was, in fact, accused of a crime.

21 It is much more likely there that the law firm  
22 obtained critical confidential information which would adversely  
23 affect the police officer's subsequent testimony in the criminal  
24 case. As previously stated, that's not so here.

25 To whatever extent necessary, it may be also a

*Abstract*

GIGLIANO, HALLINAN & CHESL

SUPERIOR COURT  
LAW DIVISION (CRIMINAL)  
MUMMOUTH COUNTY  
CASE NO. 78-00481  
WARRANT COMPLAINT

STATE OF NEW JERSEY  
JUL 15 1978  
MUMMOUTH COUNTY

CLERK OF COURT  
JAMES J. SAGLIANO  
MUMMOUTH COUNTY

STATE OF NEW JERSEY

Plaintiff

GREGORY S. BRIND

Defendant

ORDER DENYING APPLICATION  
TO LEGAL COUNSEL

This writ is returnable in the Court by John Kaye, Munnath County  
Prosecutor, Assistant Prosecutor Peter C. Williams, Jr., upon notice to and in the  
presence of defendant GREGORY S. BRIND and his attorney, Edward C.

Best, to, to, and

The Court having reviewed the case files and the proposed writ of habeas corpus and for a full and complete hearing, and there being no other legal grounds for the writ, the Court hereby DENIES the writ of habeas corpus and there copies of a

Continued: Defendant's Costs have been calculated and shall be paid by the return envelope  
reasonably necessary to be filed in the record on 7/15/78

*[Signature]*  
JAMES A. KENNEDY, J.S.C.

W. W. King  
County Clerk  
Gregory Brind  
1 Defendant

CLERK OF COURT  
JAMES J. SAGLIANO  
MUMMOUTH COUNTY  
CLIENT MATTER NO.  
11308 001

se Number XI00692,  
te of New Jersey,  
d in full  
for Judicial  
pressed transcript

3. 1998



GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - CRIMINAL PART  
: MONMOUTH COUNTY  
: Case No. 98-00489

: Criminal Action

: NOTICE OF CROSS-MOTION TO COMPEL  
: THE PRODUCTION OF DISCOVERY AND  
: FOR A SPEEDY INDICTMENT

TO: Criminal Motions Clerk  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728

The Honorable James A. Kennedy  
Judge of the Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728

Peter E. Warshaw, Jr.  
Assistant Prosecutor  
Monmouth County Prosecutor's Office  
East Wing, Courthouse, Third Floor  
Freehold, New Jersey 07728-1261

SIRS/MADAM:

PLEASE TAKE NOTICE that, on August 14, 1998, or a time to be set by the Court, counsel for defendant, Gregory S. Bruno, shall cross-move before the Honorable James A. Kennedy, J.S.C., for an Order compelling a speedy indictment and that the Monmouth County Prosecutor's Office produce complete discovery and a complete witness list in this matter.

In support of the aforesaid Cross-Motion, defendant shall rely upon the attached Certification in Lieu of Affidavit of Edward C. Bertucio, Jr., Esq. and Letter Brief.

Pursuant to the Court Rules, an original and two copies of a proposed form of Order is attached hereto and made a part hereof. Oral argument is hereby requested.

GIORDANO, HALLERAN & CIESLA, P.C.  
Attorneys for Defendant, Gregory S. Bruno

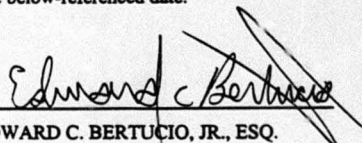
By:

*Edward C. Bertucio*  
EDWARD C. BERTUCIO, JR., ESQ.

Dated: August 5, 1998

**CERTIFICATION OF SERVICE**

I hereby certify that the original Notice of Cross-Motion, supporting papers, and proposed form of Order have been filed with the Criminal Motions Clerk, Monmouth County Courthouse, Freehold, New Jersey, via hand-delivery, on the below-referenced date. Clear copies have also been hand-delivered to The Honorable James A. Kennedy, J.S.C., Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey 07728, and Peter E. Warshaw, Jr., Assistant Prosecutor, Monmouth County Prosecutor's Office, East Wing, Courthouse, Third Floor, Freehold, New Jersey 07728-1261, on the below-referenced date.

  
EDWARD C. BERTUCIO, JR., ESQ.

Dated: August 5, 1998

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
EDWARD C. BERTUCIO, JR., ESQ.**

I, EDWARD C. BERTUCIO, JR., ESQ., an attorney-at-law in the State of New Jersey,  
hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C. As such, I am fully familiar with the facts I am about to relate.
2. Please accept the following attachments as Exhibits to be considered in opposition to the State of New Jersey's Motion to Disqualify counsel in this matter.
  3. Exhibit "A" is the Attorney's Certification of M. Scott Tashjy, Esq.
  4. Exhibit "B" is the Attorney's Certification of Norman M. Hobbie, Esq.
  5. Exhibit "C" is the Attorney's Certification of Guy Ryan, Esq.
  6. Exhibit "D" is the Attorney's Certification of Michelle Querques, Esq.
  7. Exhibit "E" is the Affidavit of Gregory Bruno.
  8. Exhibit "F" is the Affidavit of Robert Bruno.

9. I have been a member of this firm since June 19, 1995. I have never represented Detective Ronald D. Ohnmacht in any legal matter.

10. I do not represent any PBA's or police collective bargaining organizations.

11. I was not a member of this firm during the pendency of Ward v. Middletown Township, et al. in 1992.

12. I do not practice in the area of worker's compensation law. I have not had any connection to Detective Ohnmacht's worker's compensation case at any time.

13. I do not have any personal relationship with Detective Ohnmacht.

14. During my employment with Giordano, Halleran & Ciesla, P.C., I have not learned from any source any information regarding Detective Ohnmacht's investigative or interrogative techniques. I have not learned any attorney-client information regarding Detective Ohnmacht from any source.

15. Mr. Norman M. Hobbie, Esq. and I fully apprised our client, Gregory Bruno, and his family, of this firm's prior representation of Detective Ohnmacht and that Mr. Hobbie knew Detective Ohnmacht when Mr. Bruno first retained this firm to represent him in this matter.

16. Mr. Hobbie and I have kept Gregory Bruno and his family fully informed of the position of the Monmouth County Prosecutor's Office as to an alleged conflict of interest based on this firm's prior representation of Detective Ohnmacht and the suggestion that a personal friendship has created a conflict of interest.

17. At the time Mr. Bruno retained us to undertake his representation in State v. Bruno, he indicated that he did not see any actual or potential conflict of interest and wished this firm to enter an appearance as defense counsel in this matter.

18. Since the time of the initial retention of this firm, both Mr. Gregory Bruno and his family have insisted that Mr. Hobbie and I and this firm remain as counsel to Gregory Bruno in State v. Bruno.

19. On February 1, 1998, Gregory Bruno was arrested and charged with murder and related offenses. The charges expose Mr. Bruno to the death penalty. He is on trial for his life.

20. On February 4, 1998, this firm was retained to represent Gregory Bruno in the criminal matter, State v. Bruno.

21. On February 10, 1998 a Substitution of Attorney was filed with the Criminal Case Management Office, substituting this firm as counsel of record for the Monmouth County Trial Region of the Public Defender's Office.

22. For six months defendant has been incarcerated in lieu of bail, but has not been indicted.

23. This firm has not been provided with discovery.

24. In paragraph 4 of his Affidavit, Detective Ohnmacht represents the extent of his investigation in this case. No documentation or discovery is provided in support of Detective Ohnmacht's claims of the extent of his participation in this investigation.

25. In paragraph 10 of his Certification, Assistant Monmouth County Prosecutor Peter Warsaw states, "Upon information and belief, I assert that Giordano, Halleran & Ciesla has represented numerous Middletown Township police officers in the past, some of whom may be witnesses in this case." He then requests of the Court an Order that we provide a list of Middletown Township police officers that we have represented.

26. Without the discovery in this case, Mr. Hobbie and I and this firm must answer these allegations of an alleged or apparent conflict of interest without possession of specific facts surrounding the extent of Detective Ohnmacht's participation in this investigation. For example,

Detective Ohnmacht opines that he will be called to testify at a Miranda Hearing. However, the undersigned understands on information and belief that Mr. Bruno did not give an inculpatory statement, was questioned briefly by another officer while Detective Ohnmacht was present, and was allowed to leave the police department after the interview concluded. See Exhibit "C" of Assistant Monmouth County Prosecutor Warsaw's Certification. Thus, a factual question exists as to whether Detective Ohnmacht will, in fact, face any cross-examination as to any statements obtained from Mr. Bruno.

27. Likewise, without a list of the State's witnesses, this firm cannot advise Mr. Bruno properly on this case, nor can this firm properly discharge its duties as an officer of the Court in responding to this motion and distinguish between an alleged conflict of interest and, as the case law states, "a mere fanciful possibility." Thus, the Court should order a speedy grand jury presentation and, if an indictment is returned, immediate production of the discovery and a witness list so that, if necessary, any factual issues arising from the State's Motion to Disqualify Counsel may be settled on the actual facts and not on "imagined or fanciful possibilities."

28. On July 13, 1998, I wrote to Assistant Monmouth County Prosecutor Warsaw requesting discovery in this matter and alerting him of the continued delay in presenting this matter to the grand jury, and that same has hampered defendant's efforts to properly investigate the charges and pursue a defense. A copy of my correspondence is attached hereto as Exhibit "G."

29. On July 17, 1998, Assistant Prosecutor Warsaw responded to my correspondence, stating, "This office will not provide discovery until the time of the arraignment and certainly not until the issue of representation is resolved." A copy of his letter is attached as Exhibit "H."

30. The delay in presenting this matter to a grand jury and, upon return of an indictment, in presenting the discovery has hampered Mr. Bruno and his attorneys in (1) responding to the present motion within a fact based context and not on imagined conflicts and (2) in properly investigating this matter and preparing a defense to a capital murder prosecution.

31. Therefore, it is respectfully requested that the State of New Jersey's Motion to Disqualify this firm from representing Mr. Bruno be denied and that defendant's cross-motion for a speedy grand jury presentation and, upon indictment, immediate supplying of discovery be granted. Should there be an actual or apparent conflict of interest after review of the discovery, as Officers of the Court, Mr. Hobbie and I will be in a position to so inform counsel and the Court.

I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

  
Edward C. Bertucio, Jr., Esq.

Dated: August 5, 1998



Exhibit A

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Lincroft, N.J. 07738  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Civil Action

**CERTIFICATION IN LIEU  
OF AFFIDAVIT OF  
M. SCOTT TASHJY, ESQ.**

1. I, M. Scott Tashjy, of full age, do hereby certify and state:
2. I am an attorney-at-law in the State of New Jersey and a Shareholder with the law firm of Giordano, Halleran & Ciesla, P.C.
3. Pursuant to my position, I am responsible for overseeing the day to day operations of the Workers' Compensation Department for our firm. I am the only attorney in our firm who represents clients in Workers' Compensation claims. My practice is limited strictly to Workers' Compensation, Personal Injury and Social Security/Retirement Disability practice.
4. In this capacity, I represented Detective Ohnmacht in a Workers' Compensation claim which was settled before the Honorable Neale F. Hooley via an Order Approving

Settlement, on June 24, 1997. (See Exhibit "A.") At that time the Workers' Compensation file for Detective Ohnmacht was closed.

5. On or about February 13, 1998, I was contacted by Detective Ohnmacht and asked to discuss the potential of reopening his claim in accordance with the New Jersey Workers' Compensation Law. I advised Detective Ohnmacht that our firm could not represent him in the reopener of his Worker's Compensation matter because I was advised by my office of the representation of Gregory Bruno by Norman Hobbie and Edward Bertucio of my office. I was made aware that Detective Ohnmacht was involved in the Bruno investigation and because of that our office could not represent him in any matter whatsoever. I suggested various other attorneys in other law firms with expertise in Workers' Compensation for him to contact, at his convenience, to pursue his claim. I took no affirmative action after our February 13, 1998 meeting to pursue a reopener or any other claim for Workers' Compensation benefits on behalf of Detective Ohnmacht.

6. In reviewing the submissions of the State of New Jersey, I note that within the Affidavit of Detective Ohnmacht, specifically the attachment denoted as A-3, there is a typographical error in the first line of that letter of October 13, 1997, whereby same should have read:

"Please be advised that we have not filed a Reopener Claim Petition with regard to your Workers' Compensation claim".

A fair reading of that letter in its entirety clearly indicates that I contacted Detective Ohnmacht as a follow-up to my September 29, 1997 letter to determine whether a basis existed for the reopening of his Workers' Compensation claim. Further, attachments A-4 and A-5 to Detective Ohnmacht's Affidavit support the fact that I was attempting to get information from

Detective Ohnmacht to determine a basis for filing a Reopener Petition. Detective Ohnmacht did not respond to any of these letters until the February 13, 1998 conversation aforesated.

7. Mr. Hobbie and Mr. Bertucio had no part in the representation of Detective Ohnmacht regarding his Workers' Compensation claim. Mr. Hobbie and Mr. Bertucio did not take any action in pursuing said claim. They never appeared in Court on said claim and never negotiated on behalf of Detective Ohnmacht. I was solely responsible for the handling of this matter.

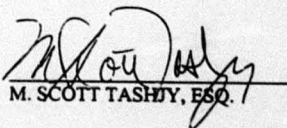
8. The facts of Detective Ohnmacht's Workers' Compensation case in no way involved or related to the criminal case of State v. Bruno, and I have absolutely no involvement in Mr. Hobbie's and Mr. Bertucio's representation of Mr. Bruno in his criminal case, nor do I have any direct or indirect representative duties or obligations on behalf of Mr. Bruno in his criminal case.

9. My questioning of Detective Ohnmacht in his Workers' Compensation claim had no bearing on any testimony he may give in a criminal case, particularly the case of Mr. Bruno. Nor did I ever learn of any investigative or interrogative techniques of Detective Ohnmacht at any time during my representation of him. I have never discussed any attorney-client information involving Detective Ohnmacht with either Mr. Hobbie or Mr. Bertucio.

The above statements are true to the best of my knowledge. If any of the above statements made are willfully false, I am subject to punishment.

DATED: August 5, 1998

:ODMA\PCDOCS\GHCDPCS\92571

  
M. SCOTT TASHY, ESQ.

State of New Jersey  
Department of Labor  
DIVISION OF WORKERS' COMPENSATION

ORDER

JUDGMENT  
 APPROVING SETTLEMENT  
 DISMISSAL

DISCONTINUANCE

CASE NO.'S 94-009203

District Office: FA441.260

SOCIAL SECURITY NUMBER <u>148-34-9700</u>	
NAME <u>RONALD D. OHNMACHT</u>	AGE <u>51</u>
ADDRESS (Including County) <u>15 MOHAWK AVENUE MIDDLETOWN, NJ - 07701</u>	

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER <u>70-234750 AG-116</u>	
NAME <u>GIDY AND HALLMAN &amp; PLESIA</u>	
ADDRESS <u>P.O. BOX 190 MIDDLETOWN, NJ 07748</u>	
APPEARING <u>M. SPOT TASHJY ESQ.</u>	

NAME <u>TOWASH, P O: MIDDLETOWN</u>	
ADDRESS (Including County) <u>1 KING'S HIGHWAY MIDDLETOWN, NJ. 07748</u>	
NAME <u>DOWD + REILLY, P.O.</u>	
ADDRESS (Including County) <u>90 MAPLE AVENUE MIDDLETOWN, NJ 07701</u>	
APPEARING <u>JAN LANG, Esq.</u>	

NAME (Indicate if Not Covered or If Self-Insured) <u>SELF INSURED (PMA Admin)</u>	
DATE OF ACCIDENT: OR OCCUPATIONAL EXPOSURE: <u>6/11/93</u>	
DESCRIBE (Briefly) <u>1-ALL DOWN</u> <u>2-Nick - 4</u>	

Weekly Wages: 11006.00 Rate(s) 4/3 1 Max

IF RE-OPENED PETITION, INDICATE FOR LAST AWARD: DATE: \_\_\_\_\_ PERMANENT: \$ \_\_\_\_\_ TEMP: \$ \_\_\_\_\_

This matter having come on before the Court on this 24<sup>th</sup> day of JUN, 1997

ORDER FOR JUDGMENT:

It appearing that the Petitioner suffered a compensable injury on the above mentioned date while in the employ of respondent; it is Ordered and Adjudged that petitioner be awarded compensation benefits, payable as indicated on Page 2.

ORDER APPROVING SETTLEMENT:

The parties having settled the matter and a finding by the Court having been made that the terms of the settlement are fair and just; it is Ordered that this settlement be approved and the petitioner be paid as indicated on Page 2.

ORDER FOR DISMISSAL:

This matter having come on for hearing upon the respondent's motion for Dismissal which was made and duly served and there being good cause shown, the claim petition herein is hereby dismissed for

- 1. Lack of Prosecution
- 2.

ORDER FOR DISCONTINUANCE

This matter having come on before the Court and the Court having received evidence that this matter should be discontinued and for good cause shown. It is ORDERED AND ADJUDGED that this matter be discontinued for the following reasons:

It is FURTHER ORDERED that the payment indicated on Page 2 be made a part of the Order for Discontinuance for petitioner's disability. (Percentages and members involved.)

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE RECEIPT OF A COPY. (Sign if applicable)

\_\_\_\_\_  
(PETITIONER'S ATTORNEY)

\_\_\_\_\_  
PETITIONER (Where Applicable)

\_\_\_\_\_  
(RESPONDENT'S ATTORNEY)

STENO FEE \_\_\_\_\_

Nicki Mackey Gladys  
(JUDGE OF COMPENSATION) (DATE)

Noble P. Hooley  
NAME (PRINT OR TYPE)

State of New Jersey  
Department of Labor  
DIVISION OF WORKERS' COMPENSATION

CONTINUATION  
ORDER  
 JUDGMENT  
 APPROVING SETTLEMENT  
 DISMISSAL  
 DISCONTINUANCE

CASE NO.'S 94-009303

D.O. FEB 11 1960

Permanent Disability (Describe Percentages, Nature and extent of Disability, and Members Involved)

30 1/2 % PERMANENT TOTAL DISABILITY FOR REASONS OF CERVICAL  
THORACIC DISC AT C6-C7 AND DUMP VANDUS TRAUMATOSIS  
RIGHT LEG (22 1/2 % PERMANENT TOTAL IN NECK, 15% OF LEGS) W/ PAIN IN  
PT-C RND

DISABILITY AWARDED

AS ADOQUATE

TEMPORARY: \_\_\_\_\_ Weeks at \$ \_\_\_\_\_ - \$ \_\_\_\_\_ less \$ \_\_\_\_\_ paid - Balance due \$ \_\_\_\_\_

PERMANENT: 183 Weeks at \$ 201.22 - \$ 36,783 less \$ 6,900.00\* paid - Balance due \$ 29,883.00

Medical Bills (Doctors and/or Institutions)

(\* CHECK FOR EXISTING NECK INJURY)

PENSIONER WILL PAY LEO BANK ENDORSE BILL FOR ~~630.00~~ 630.00

ALL OTHER AUTHORIZED BILLS HAVE BEEN PAID OR WILL  
BE PAID

MEDICAL FEE ALLOWED (Expert and/or Testimony)	TOTAL AMT. ALLOWED	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
DR. THOMAS (TESTIMONY) (LITIGATION TO BIGNARD & MANSER)	450.00	225	225
DR. GOODWIN (LITIGATION TO BIGNARD & MANSER)	200.00	100	100
TR. LITIGATION TO BIGNARD & MANSER	366.00	366	—
ATTORNEY'S FEE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
CONRAD LITIGATION & MANSER, P.A.	6100	2440	3660
STENOGRAPHIC SERVICE	TOTAL	PAYABLE BY PETITIONER	PAYABLE BY RESPONDENT
J. Thomas	225	—	225

WE HEREBY CONSENT TO THE ENTRY AND FORM OF THIS ORDER AND ACKNOWLEDGE A COPY.

(JUDGE OF COMPENSATION)

(DATE)

(PETITIONER'S ATTORNEY)

(RESPONDENT'S ATTORNEY)

PETITIONER (Where Applicable)

Exhibit B

ALU 014117 USA 98020 980 001 RECYCLED



**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
NORMAN M. HOBBIE, ESQ.

I, NORMAN M. HOBBIE, ESQ., an attorney-at-law in the State of New Jersey, hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C., counsel to Gregory Bruno in the above-captioned matter. As such, I am fully familiar with the facts I am about to relate.
2. On or about February of 1998, this firm was retained to represent Mr. Bruno in the above-captioned case.
3. It has been asserted by Mr. Warshaw that this firm presently represents Detective Ohnmacht and that Detective Ohnmacht selected this firm for representation because of my professional reputation and because he personally knows me. In addition, Mr. Warshaw suggests that the foregoing constitutes a potential conflict and as such this firm should be disqualified from representing Mr. Bruno.



4. On or about October of 1992, Giordano, Halleran & Ciesla, P.C. undertook the representation of Detective Ronald Ohnmacht in Ward v. The Township of Middletown, et al. Two attorneys in the firm at the time, Michele Querques, Esq., who is a member of the firm, and Guy P. Ryan, Esq., a former associate with the firm, were assigned the matter.

5. Ms. Querques and Mr. Ryan were responsible for the litigation of this matter to its conclusion.

6. The matter was resolved, in 1993, by a case dispositive motion on the papers.

7. During 1996 and 1997, this firm represented Detective Ohnmacht in a worker's compensation matter. The matter was assigned to M. Scott Tashjy, Esq., a member of this firm. Mr. Tashjy is the only attorney at this firm who handles workers' compensation cases.

8. The worker's compensation matter was handled exclusively by Mr. Tashjy.

9. It is my understanding that Detective Ohnmacht's worker's compensation matter was closed during the Summer of 1997. To date, the case has not been reopened. (See Certification of M. Scott Tashjy, Esq.)

10. I do not possess any information from the foregoing that can in any way be used against Detective Ohnmacht to impeach or cross-examine him or anyone else in or the Middletown Township Police Department in the prosecution of State v. Gregory Bruno.

11. All of the above issues have been fully discussed with Gregory Bruno and his parents. Mr. Bruno and his parents all have indicated to me that the issues involving Detective Ohnmacht suggested by the State to create a conflict of interest, have been fully explained to them, they understand the scope and terms of same, and they have insisted that I remain as counsel in State v. Gregory Bruno.

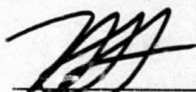
12. Neither I nor Edward C. Bertucio, Jr., Esq., another member of this firm, represent any Police Benevolent Associations (PBA's) in the State of New Jersey.

13. No one else in Giordano, Halleran & Ciesla, P.C., represents any PBA organization or police collective bargaining entity.

14. I fully expect Detective Ohnmacht, despite his long-standing personal relationship with the family of Gregory Bruno, to fully and zealously pursue the investigation and prosecution of Mr. Bruno with the utmost integrity and professionalism.

15. Likewise, I intend to fully and zealously represent Gregory Bruno in this matter. Nothing will cause me in any way to fail to discharge fully my obligations to Gregory Bruno and to defend him as aggressively and completely as I can, and with the utmost in professionalism and integrity.

I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.



Norman M. Hobbie, Esq.

Dated: August 4, 1998

\\ODMA\PCDOCS\GHCDOCS\10569\1

Exhibit C

AL 10/10/17 USA 80/20 2014 50% RECYCLED

**CERTIFICATION OF GUY P. RYAN, ESQ.**

I, GUY P. RYAN, ESQ., an attorney at law in the State of New Jersey, hereby certify the following facts to be true:

1. I am a former associate to the law firm of Giordano, Halleran & Ciesla, P.C. I was assigned to handle the file of Ward v. Township of Middletown, et al. during my employment at Giordano, Halleran & Ciesla, P.C. As such, I am fully familiar with the facts I am about to relate.

2. Michele A. Querques, Esq., a member of Giordano, Halleran & Ciesla, P.C., and I were the attorneys assigned to handle the defense of this matter. Norman M. Hobbie, Esq. did not participate in the actual defense of Detective Ohnmacht in Ward v. Township of Middletown.

3. The representation was pro forma. There was a brief period of discovery, followed by a case dispositive motion from which the matter was dismissed.

4. During the entire time that I handled this matter, I never had any personal meetings or telephone contact with Detective Ohnmacht. All communication with him was by way of correspondence from me to him as to the status of this case.

5. Once this matter was closed, I did not have any meetings or telephone contact with Detective Ohnmacht.

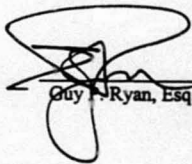
6. At no time during the pendency of Ward v. Township of Middletown did I ever learn, either through Detective Ohnmacht or anyone else, of any investigative techniques or interrogative techniques employed by Detective Ohnmacht or any other member of the Middletown Township Police Department. My representation of Detective Ohnmacht was relatively brief and conducted through the mail and in court on the papers. I never

communicated any attorney-client information to Mr. Hobbie regarding Detective Ohnmacht during my representation of him, nor did I ever learn of any such information.

7. I have since left my association with Giordano, Halleran & Ciesla and work in another law firm.

8. At no time, either during my association with Giordano, Halleran & Ciesla, P.C., or at any time thereafter, have I ever communicated any attorney-client confidential information, or any other information with regard to Detective Ohnmacht, to Norman M. Hobbie, Esq. or Edward C. Bertucio, Jr., Esq. I never learned of any such information in the first place.

I hereby certify the foregoing facts to be true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.



Guy P. Ryan, Esq.

Dated: August 3, 1998

EXHIBIT D

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-20-09 BY 60322/UCB



**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
MICHELE A. QUERQUES, ESQ.**

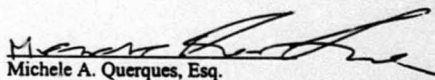
I, MICHELE A. QUERQUES, ESQ., an attorney-at-law in the State of New Jersey,  
hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C. As such, I am fully familiar with the facts I am about to relate. I was assigned to handle the file of Ward v. Township of Middletown, et al., along with a former associate of this firm Guy P. Ryan, Esq. Mr. Ryan and I handled the actual defense of Detective Ohnmacht in Ward v. Township of Middletown, et al. Norman M. Hobbie, Esq., did not participate in the day-to-day defense of Detective Ohnmacht in said matter.
2. The representation was pro forma. After a brief period of discovery, a case dispositive motion was filed by this firm and the matter was dismissed.
3. During the entire time that I handled this matter, I never learned, either from Detective Ohnmacht or anyone else, of any investigative techniques or interrogative techniques employed by Detective Ohnmacht or any other member of the Middletown Township Police Department.

My representation of Detective Ohnmacht was relatively brief and was conducted mainly through mailings and filing of discovery and court papers. I never communicated any attorney-client information to Mr. Hobbie regarding Detective Ohnmacht during my representation of him. I never learned of any such information to communicate same to Mr. Hobbie.

4. At no time during my representation of Detective Ohnmacht, nor at any time thereafter, have I ever communicated any attorney-client confidential information, or any other information with regard to Detective Ohnmacht, to either Mr. Hobbie or to Edward C. Bertucio, Jr., Esq. of this firm. I never learned of any such information in the first place.

I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I may be subject to punishment.

  
Michele A. Querques, Esq.

Dated: August 3, 1998



Exhibit E

ALL OTHERS (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) (L) (M) (N) (O) (P) (Q) (R) (S) (T) (U) (V) (W) (X) (Y) (Z) (AA) (AB) (AC) (AD) (AE) (AF) (AG) (AH) (AI) (AJ) (AK) (AL) (AM) (AN) (AO) (AP) (AQ) (AR) (AS) (AT) (AU) (AV) (AW) (AX) (AY) (AZ) (BA) (BB) (BC) (BD) (BE) (BF) (BG) (BH) (BI) (BJ) (BK) (BL) (BM) (BN) (BO) (BP) (BQ) (BR) (BS) (BT) (BU) (BV) (BW) (BX) (BY) (BZ) (CA) (CB) (CC) (CD) (CE) (CF) (CG) (CH) (CI) (CJ) (CK) (CL) (CM) (CN) (CO) (CP) (CQ) (CR) (CS) (CT) (CU) (CV) (CW) (CX) (CY) (CZ) (DA) (DB) (DC) (DD) (DE) (DF) (DG) (DH) (DI) (DJ) (DK) (DL) (DM) (DN) (DO) (DP) (DQ) (DR) (DS) (DT) (DU) (DV) (DW) (DX) (DY) (DZ) (EA) (EB) (EC) (ED) (EE) (EF) (EG) (EH) (EI) (EJ) (EK) (EL) (EM) (EN) (EO) (EP) (EQ) (ER) (ES) (ET) (EU) (EV) (EW) (EX) (EY) (EZ) (FA) (FB) (FC) (FD) (FE) (FF) (FG) (FH) (FI) (FJ) (FK) (FL) (FM) (FN) (FO) (FP) (FQ) (FR) (FS) (FT) (FU) (FV) (FW) (FX) (FY) (FZ) (GA) (GB) (GC) (GD) (GE) (GF) (GG) (GH) (GI) (GJ) (GK) (GL) (GM) (GN) (GO) (GP) (GQ) (GR) (GS) (GT) (GU) (GV) (GW) (GX) (GY) (GZ) (HA) (HB) (HC) (HD) (HE) (HF) (HG) (HH) (HI) (HJ) (HK) (HL) (HM) (HN) (HO) (HP) (HQ) (HR) (HS) (HT) (HU) (HV) (HW) (HX) (HY) (HZ) (IA) (IB) (IC) (ID) (IE) (IF) (IG) (IH) (II) (IJ) (IK) (IL) (IM) (IN) (IO) (IP) (IQ) (IR) (IS) (IT) (IU) (IV) (IW) (IX) (IY) (IZ) (JA) (JB) (JC) (JD) (JE) (JF) (JG) (JH) (JI) (JJ) (JK) (JL) (JM) (JN) (JO) (JP) (JQ) (JR) (JS) (JT) (JU) (JV) (JW) (JX) (JY) (JZ) (KA) (KB) (KC) (KD) (KE) (KF) (KG) (KH) (KI) (KJ) (KK) (KL) (KM) (KN) (KO) (KP) (KQ) (KR) (KS) (KT) (KU) (KV) (KW) (KX) (KY) (KZ) (LA) (LB) (LC) (LD) (LE) (LF) (LG) (LH) (LI) (LJ) (LK) (LL) (LM) (LN) (LO) (LP) (LQ) (LR) (LS) (LT) (LU) (LV) (LW) (LX) (LY) (LZ) (MA) (MB) (MC) (MD) (ME) (MF) (MG) (MH) (MI) (MJ) (MK) (ML) (MM) (MN) (MO) (MP) (MQ) (MR) (MS) (MT) (MU) (MV) (MW) (MX) (MY) (MZ) (NA) (NB) (NC) (ND) (NE) (NF) (NG) (NH) (NI) (NJ) (NK) (NL) (NM) (NN) (NO) (NP) (NQ) (NR) (NS) (NT) (NU) (NV) (NW) (NX) (NY) (NZ) (OA) (OB) (OC) (OD) (OE) (OF) (OG) (OH) (OI) (OJ) (OK) (OL) (OM) (ON) (OO) (OP) (OQ) (OR) (OS) (OT) (OU) (OV) (OW) (OX) (OY) (OZ) (PA) (PB) (PC) (PD) (PE) (PF) (PG) (PH) (PI) (PJ) (PK) (PL) (PM) (PN) (PO) (PP) (PQ) (PR) (PS) (PT) (PU) (PV) (PW) (PX) (PY) (PZ) (QA) (QB) (QC) (QD) (QE) (QF) (QG) (QH) (QI) (QJ) (QK) (QL) (QM) (QN) (QO) (QP) (QQ) (QR) (QS) (QT) (QU) (QV) (QW) (QX) (QY) (QZ) (RA) (RB) (RC) (RD) (RE) (RF) (RG) (RH) (RI) (RJ) (RK) (RL) (RM) (RN) (RO) (RP) (RQ) (RR) (RS) (RT) (RU) (RV) (RW) (RX) (RY) (RZ) (SA) (SB) (SC) (SD) (SE) (SF) (SG) (SH) (SI) (SJ) (SK) (SL) (SM) (SN) (SO) (SP) (SQ) (SR) (SS) (ST) (SU) (SV) (SW) (SX) (SY) (SZ) (TA) (TB) (TC) (TD) (TE) (TF) (TG) (TH) (TI) (TJ) (TK) (TL) (TM) (TN) (TO) (TP) (TQ) (TR) (TS) (TT) (TU) (TV) (TW) (TX) (TY) (TZ) (UA) (UB) (UC) (UD) (UE) (UF) (UG) (UH) (UI) (UJ) (UK) (UL) (UM) (UN) (UO) (UP) (UQ) (UR) (US) (UT) (UU) (UV) (UW) (UX) (UY) (UZ) (VA) (VB) (VC) (VD) (VE) (VF) (VG) (VH) (VI) (VJ) (VK) (VL) (VM) (VN) (VO) (VP) (VQ) (VR) (VS) (VT) (VU) (VV) (VW) (VX) (VY) (VZ) (WA) (WB) (WC) (WD) (WE) (WF) (WG) (WH) (WI) (WJ) (WK) (WL) (WM) (WN) (WO) (WP) (WQ) (WR) (WS) (WT) (WU) (WV) (WW) (WX) (WY) (WZ) (XA) (XB) (XC) (XD) (XE) (XF) (XG) (XH) (XI) (XJ) (XK) (XL) (XM) (XN) (XO) (XP) (XQ) (XR) (XS) (XT) (XU) (XV) (XW) (XX) (XY) (XZ) (YA) (YB) (YC) (YD) (YE) (YF) (YG) (YH) (YI) (YJ) (YK) (YL) (YM) (YN) (YO) (YP) (YQ) (YR) (YS) (YT) (YU) (YV) (YW) (YX) (YZ) (ZA) (ZB) (ZC) (ZD) (ZE) (ZF) (ZG) (ZH) (ZI) (ZJ) (ZK) (ZL) (ZM) (ZN) (ZO) (ZP) (ZQ) (ZR) (ZS) (ZT) (ZU) (ZV) (ZW) (ZX) (ZY) (ZZ)

GIORDANO, HALLERAN & CIESLA, P.C.  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**AFFIDAVIT OF  
GREGORY BRUNO**

I, GREGORY BRUNO, of full age and having been duly sworn according to my oath hereby depose and say:

1. I am the defendant in the above-captioned matter, State v. Gregory Bruno.
2. After an extensive search for counsel, I retained Norman M. Hobbie, Esq. to represent me in the above-captioned matter.
3. He has been my attorney since February 4, 1998.
4. From that time period to present, Mr. Hobbie and Mr. Bertucio have been extensively involved in the preparation of my defense. We have had numerous meetings, have discussed strategy and, through a private investigator, have taken extensive steps in the conduct of our own investigation into this matter.

5. I retained Mr. Hobbie because I understand this matter will be prosecuted as a capital offense. I am on trial for my life. Mr. Hobbie is the attorney that I have selected to defend me in this matter.

6. It would be an extreme hardship and devastating to my defense to lose the services of Mr. Hobbie and Mr. Bertucio at this point in the case. They are both extensively involved in my defense. I have complete trust and confidence in them, and to be forced to change lawyers now when my life is at stake would be extremely unfair and prejudicial to me in the preparation of my defense.

7. Both Mr. Hobbie and Mr. Bertucio have fully informed me of the prior representation of Detective Ohnmacht and the suggested personal friendship between Detective Ohnmacht and Mr. Hobbie. I do not see any actual or potential conflict of interest in their representation of me. I have complete confidence that they will represent me aggressively and zealously, despite the prior representation and the suggested friendship of Detective Ohnmacht by the Giordano firm.

8. I have previously directed them to represent me and have waived any alleged or perceived conflict of interest (even though I do not allege or perceive any myself).

9. Mr. Hobbie and Mr. Bertucio have explained to me that the Monmouth County Prosecutor's office for the last several months has maintained that a conflict of interest exists and that they intended to file a motion to disqualify Mr. Hobbie and Mr. Bertucio from this case. I instructed Mr. Hobbie and Mr. Bertucio to remain on this case and insisted that they continue their representation of me.

10. I respectfully request the Court not to place an extreme hardship upon me or unfairly prejudice my defense in this capital murder case by ordering the removal of my counsel. To do so would have a devastating impact on my defense by interrupting their efforts and by forcing

Exhibit F

GIOVANNI HALLERIN & CRESIA, P.C.

Main St. P.O. Box 199 Middletown, N.J. 07042  
Del. office: 125 Half Mile Road, Middletown, N.J. 07042  
(732) 441-9800

Answers for Defendant Gregory S. Brenneke to the Interrogatories of the State of New Jersey filed with the Clerk of the Superior Court of the County of Essex, New Jersey, on 11/11/93.

STATE OF NEW JERSEY, Plaintiff, v. Defendant, ROBERT ARONSON, Defendant, and Defendant, GREGORY S. BRENNKE.

Defendant, Gregory S. Brenneke, is the son of Defendant, Robert Aronson, and the Defendant, Norman M. Haber, Esq., is the Defendant, Gregory S. Brenneke's attorney.

Defendant, Gregory S. Brenneke, is a resident of New Jersey and is currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

GREGORY S. BRENNKE

Answers for Defendant Gregory S. Brenneke to the Interrogatories of the State of New Jersey filed with the Clerk of the Superior Court of the County of Essex, New Jersey, on 11/11/93.

Defendant, Gregory S. Brenneke, is the son of Defendant, Robert Aronson, and the Defendant, Norman M. Haber, Esq., is the Defendant, Gregory S. Brenneke's attorney.

Defendant, Gregory S. Brenneke, is a resident of New Jersey and is currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

1. I am the father of Gregory S. Brenneke, who was born on 11/11/68 in Middletown, New Jersey. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

2. As my son was being engaged with my daughter, I was contacted in person and searched interview necessary for the bond process. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

3. After my extensive search, I was able to find the bond process. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

4. At the time I retained Mr. Haber, Esq., as my attorney, I was aware of the fact that he had done in the past representation of Detective Ronald Christy by Giovanni Hallerin & Cresia, P.C., and of the personal friendship suggested by the State to create a conflict of interest.

5. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

6. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

7. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

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18. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

19. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

20. I am currently residing at 125 Half Mile Road, Middletown, New Jersey 07042.

I hereby swear that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

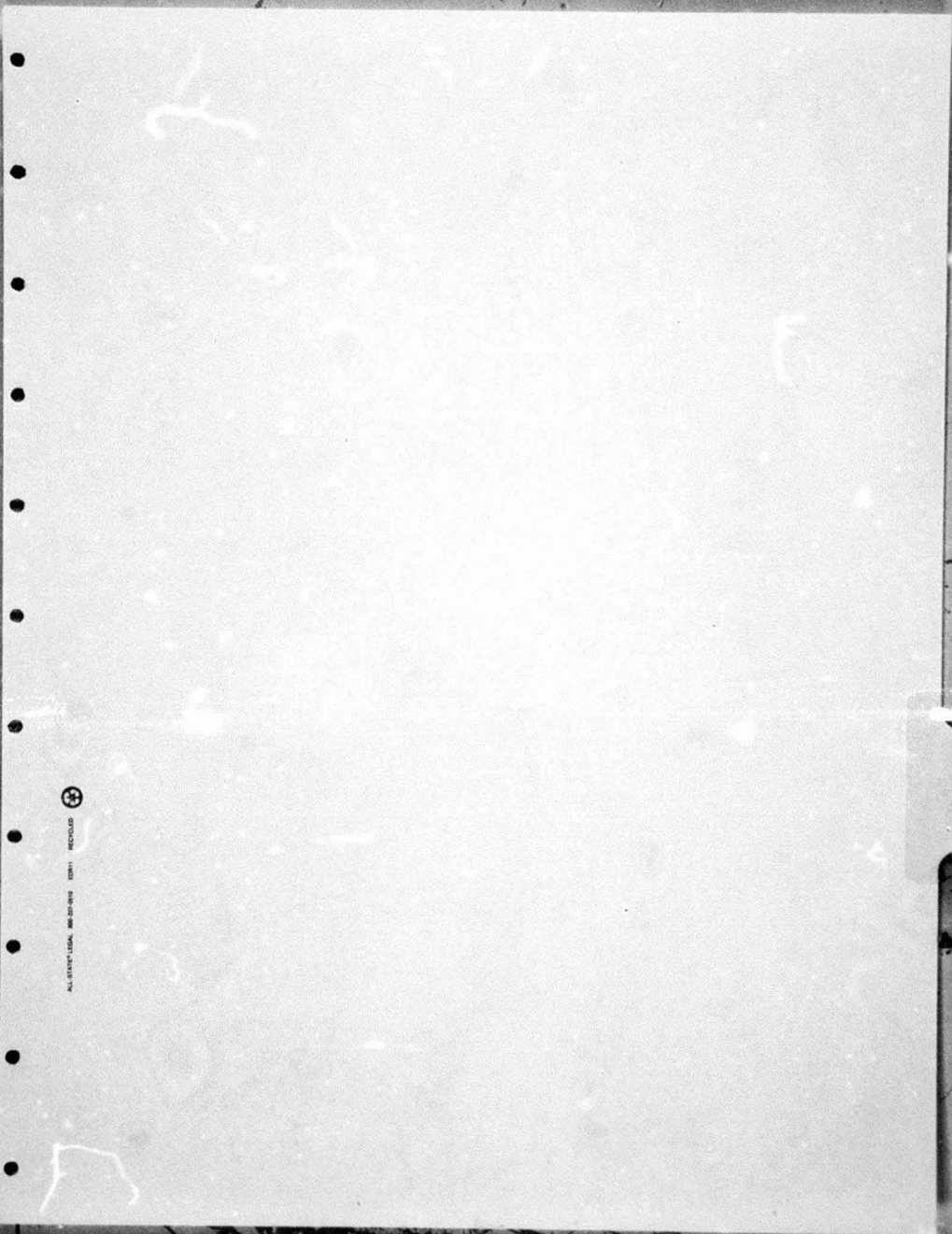
*Robert Bruno*

Robert Bruno

Sworn to and subscribed to before  
me this 3<sup>rd</sup> day of August, 1998

*Carolyn Ciavarella*

CAROLYN CIAVARELLA  
A Notary Public of New Jersey  
My Commission Expires 8/17/98



ALCANTARA S.p.A. - 36010 BASSANO DEL GRAPPA (VI) - ITALIA

Exhibit G

# GIORDANO, HALLERAN & CIESLA

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
125 HALF MILE ROAD  
POST OFFICE BOX 190

MIDDLETOWN, NEW JERSEY 07748

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FAX: (732) 224-6399

441 EAST STATE STREET  
TRENTON, NEW JERSEY 08611  
(609) 693-3900

PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER: \_\_\_\_\_

DIRECT E-MAIL: \_\_\_\_\_

JOHN C. GIORDANO, JR.  
JOHN E. HALLERAN  
FRANK E. CIESLA  
BERNARD J. HEBBY, JR.  
THOMAS A. PLISEIN  
JOHN A. ABELLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN DA  
GEORGE J. TYLER  
JOHN A. GIUNCO  
NORMAN W. HOSSIE DA  
EDWARD S. HADELBY  
STEVEN M. BEHLIN D  
SHARLENE A. HUNT

NICHOLAS P. KAPUR  
LAURA M. ANDERSON  
PAUL V. FERNICOLA D  
JAY E. BECKER  
TIMOTHY D. LYONS  
SEAN E. REGAN  
DEBRA J. RUBINSTEIN  
GERALD P. LALLY  
MICHAEL A. PANE

PHILIP D. FOALENEA  
MICHAEL J. CANNING D  
PAUL H. SCHNEIDER  
M. SCOTT TASHBY  
MICHELE A. QUERQUEZ  
DAVID F. CORRIGAN D  
EDWARD C. BEYUCIO, JR. A  
ANDREW B. ROSINS  
MICHAEL A. BRUNO  
MARGARET S. GAMBELLI  
KURT E. ANDERSON  
PAUL V. COSELLA  
STEVEN J. BRODMAN

J. SCOTT ANDERSON  
CRAIG S. VIRGIL  
CHARLES A. CERUSSI  
MICHAEL J. FITTELO  
PATRICK E. CONVERY  
JACQUELINE DECARLO  
NICOLE DEVANEY

COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT E. LINDEN  
JOANNE E. GRAY  
.....  
OF COUNSEL:  
S. THOMAS GAGLIANO  
.....  
JOHN C. GIORDANO  
(1971-1997)

OCERTIFIED CIVIL  
TRIAL ATTORNEY  
& CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.

11308/001

July 13, 1998

Peter Warsaw, Assistant Prosecutor  
Monmouth County Prosecutor's Office  
Court House, East Wing, Third Floor  
71 Monument Park  
Freehold, New Jersey 07728-1261

Re: State v. Gregory Bruno  
Prosecutor's Case No.: 98-00489

Dear Mr. Warsaw:

It has been sometime since I have heard from you with regard to the above-referenced matter, specifically, the Prosecutor's Office's Motion to have this firm disqualified as counsel for Defendant, Gregory Bruno. Moreover, I still have not received the requested discovery in this matter.

As you are aware, my receipt of the discovery in this matter is imperative for two reasons, specifically:

1. It will allow this firm to properly respond to your anticipated Motion to disqualify this firm; and
2. It will allow this firm to properly investigate this matter (i.e., the continual delay in presenting this matter before the Grand Jury and supplying this firm with the requested discovery has hampered Defendant's attempts to properly investigate the charges and pursue a defense).

Accordingly, if we do not receive the requested discovery within seven days from the date of your receipt of this letter, Defendant will file a motion to compel the production of same.

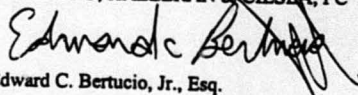
**GIORDANO, HALLERAN & CIESLA**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Peter Warsaw, Assistant Prosecutor  
July 13, 1998  
Page 2

Should you have any questions or concerns with regard to the foregoing, please contact me forthwith.

Very truly yours,

GIORDANO, HALLERAN & CIESLA, PC



Edward C. Bertucio, Jr., Esq.

ECB/mem

::ODMA\PCDOCS\GHCDOCS\74001



ALL STATE LOCAL AND COUNTY RECYCLED

Exhibit H



JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

**OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH**

71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1261  
(908) 431-7160  
FAX (908) 409-3673  
FAX (908) 409-4830

ALTON D. KENNEY  
FIRST ASSISTANT PROSECUTOR  
ROBERT A. HONECKER, JR.  
SECOND ASSISTANT PROSECUTOR  
WILLIAM D. GUIDRY  
DIRECTOR OF TRIAL DIVISION  
WILLIAM P. LUCIA  
CHIEF OF INVESTIGATIONS

July 17, 1998

Edward C. Bertucio, Jr., Esq.  
GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road, P.O. Box 190  
Middletown, New Jersey 07748

Re: State of New Jersey v. Gregory Bruno  
Case No. 97-00489

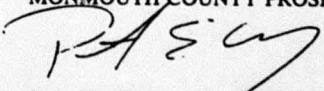
Dear Mr. Bertucio:

I received your letter dated July 13, 1998, subsequent to our telephone conversation of July 17, 1998. As we discussed, the motion to disqualify counsel was filed on July 16 and is returnable before The Honorable John A. Ricciardi, P.J.Cr. on August 7, 1998. This office will not provide discovery until the time of the arraignment and certainly not until the issue of representation is resolved.

I can be reached directly at 577-6790 and look forward to hearing from you at your earliest convenience regarding this matter.

Very truly yours,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

  
By: Peter E. Warsaw, Jr., Assistant Prosecutor  
Director, Major Crimes Unit

PEW:pl

**GIORDANO, HALLERAN & CIESLA**

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PLEASE REPLY TO: MIDDLETOWN

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DIRECT E-MAIL:

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BERNARD J. BERRY, JR.  
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EDWARD S. RADZELY  
STEVEN M. BEHLIN D  
ISABELLE A. HUNT

NICHOLAS P. KAPUR  
LAURA N. ANDERSON  
PAUL V. PERMICOLA D  
JAY S. BECKER  
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MICHAEL A. PARE  
J. SCOTT ANDERSON

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MICHAEL J. CANNING D  
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W. SCOTT TAINIY  
MICHELE A. QUERQUES  
DAVID F. CORRIGAN D  
EDWARD C. BERTUCIO, JR. A  
ANDREW B. ROBINI  
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JOHN C. GIORDANO  
(1921-1999)

CERTIFIED CIVIL  
TRIAL ATTORNEY  
A CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.

11308/001

August 4, 1998

**VIA HAND-DELIVERY**

Honorable James A. Kennedy, J.S.C.  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728

Re: State of New Jersey v. Gregory S. Bruno

Dear Judge Kennedy:

Please accept this letter in lieu of a more formal brief in opposition to the State's Motion to Disqualify this firm and its attorneys from representation of Defendant in this matter and in support of Defendant's Cross-Motion for a speedy presentation of this matter to a Monmouth County Grand Jury and for the provision of discovery to the defense.

For a recitation of the applicable procedural and factual history surrounding the State's Motion and Defendant's Cross-Motion, the Court is respectfully directed to the Attorney's Certification in Lieu of Affidavit of Edward C. Bertucio, Jr., Esq., together with all supporting

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Attorneys' Certifications and Affidavits attached thereto, all of which are incorporated herein by reference in lieu of repetition.

The State has argued that this firm and its attorneys must be disqualified from representation of Gregory Bruno in this matter because (1) Rule of Professional Conduct (hereinafter "RPC") 1.7 mandates the disqualification of this firm; (2) an appearance of impropriety exists that mandates the disqualification of this firm; and (3) existing case law and advisory opinions of the Committee on Professional Responsibility in New Jersey mandate the disqualification of this firm and its lawyers. All of these arguments are meritless.

In addition, Defendant, in his Cross-Motion for a speedy presentation of this matter to a Grand Jury and for the receipt of discovery, argues that, although there is no basis on the present record to disqualify this firm, this matter should proceed to immediate Grand Jury review, Indictment if the Grand Jury so votes, and provision of discovery to the defense. This will avoid any further unfair delay to Defendant and, if the Court requires it, allow any issues of actual or apparent conflict of interest to be resolved within the context of the actual facts of this case and not upon "fanciful possibilities."

As to the Motion to Disqualify this firm, the State fails in its Brief to discuss meaningfully the standard of review in a motion to disqualify counsel in a pending case. In moving to disqualify Defendant's chosen counsel, the State bears the burden of proving that disqualification is justified. State v. Morelli, 152 N.J. Super. 67, 70 (App. Div. 1977); State v.

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Catanoso, 222 N.J. Super. 641, 644 (Law Div. 1987); State v. Needham, 298 N.J. Super. 100, 103 (Law Div. 1996).

The burden is further on the State of New Jersey to prove that disqualification is appropriate based either on an actual conflict of interest or on a justifiable appearance of impropriety that outweighs any unfair prejudice to the Defendant. See, e.g., Carlisle Towers Condominium Assoc., Inc. v. Crossland Savings, FSB, 944 F.Supp. 341, 345 (D.N.J. 1996); Ciby-Geigy Corp. v. Alza Corp., 795 F.Supp. 711, 714 (D.N.J. 1992). The New Jersey Supreme Court has cautioned that the "appearance of impropriety must be something more than a fanciful possibility. It must have a reasonable basis." Ciby-Geigy v. Alza Corp., *supra*, at 719 (quoting Higgins v. Advisory Comm. On Professional Ethics, 73 N.J. 123, 129 (1977)). Such motions must be carefully scrutinized because "motions to disqualify are viewed with disfavor and disqualification is considered a drastic measure, which courts should hesitate to impose except when absolutely necessary." Carlisle Towers Condominium Assoc., Inc. v. Crossland Savings, FSB, *supra*, at 345; Alexander v. Primerica Holdings, Inc., 822 F. Supp. 1099, 1114 (D.N.J. 1993).

➔ Thus, for example, where in Ciby-Geigy Corp. v. Alza Corp., *supra*, the court determined that two successive matters were not substantially related and that no reasonable and justifiable argument could be made as to an appearance of impropriety in successive representations of two clients in different litigation, then the application to disqualify counsel should be, and was in that case, denied. *Id.* See also, Carlisle Towers Condominium Assoc., Inc. v. Crossland Savings,

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ESB, supra (holding that a substantial relationship did not exist between the two matters, and therefore the law firm did not acquire any insight into the former client's "litigation philosophy or methods and procedures for conducting litigation defense" to conclude that there was an appearance of impropriety); Host Marriott Corp. v. Fast Food Operators, Inc., 891 F.Supp. 1002 (D.N.J. 1995) (finding that the lawsuit was not substantially related to the prior representation); McCarthy v. John T. Henderson, Inc., 246 N.J. Super. 225 (App. Div. 1991) (determining that even if the defendants were considered to be clients of the law firm in the first litigation, there was no basis to conclude that any information was conveyed to the law firm of the nature that could be used to defendant's disadvantage in the present case, since the two cases involved wholly unrelated matters).

Finally, the Court is respectfully requested to consider the out-of-state authority of State v. Outten, \_\_\_\_\_ Del. Super. \_\_\_\_\_ (1992), which is attached pursuant to R. 1:36-3, and which this Court there under analogous facts did not disqualify the defense attorney who had previously represented a witness in the case.

In short, the mere allegation of an actual or apparent conflict of interest does not justify finding same. The State holds the burden of demonstrating a justifiable and reasonable basis to find either an actual or an apparent conflict of interest. The State fails to sustain its burden in this case.

First, the State of New Jersey has improperly concluded that Detective Ronald Ohnmacht is a present client of this firm and, therefore, that RPC 1.7 applies. In fact, Detective Ohnmacht

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is a former client of this firm and the Court's analysis should begin with a review of RPC 1.9 and not 1.7.

RPC 1.7 is the rule that applies to present representation of a client that creates an actual or an apparent conflict with another client who is presently represented by the same attorney or law firm. However, a review of the Attorneys' Certifications and attachments clearly demonstrates that Detective Ohnmacht is not presently a client of this firm. In fact, his Worker's Compensation matter was closed in the summer of 1997. Although M. Scott Tashjy, Esq., of this firm sent Detective Ohnmacht correspondence with regard to the Worker's Compensation matter, no action was ever taken by any attorney in this law firm to reopen the matter. Thus, it was closed and Detective Ohnmacht was not a client of this firm at the time this firm undertook the representation of Gregory Bruno in State v. Bruno.

Detective Ohnmacht's assertion that he understood that he was still a client of this firm until July 1998 is belied by the various letters sent by Mr. Tashjy to which he did not respond and by Mr. Tashjy's own Certification. In said Certification, Mr. Tashjy indicates that, contrary to Detective Ohnmacht's Affidavit, the two conversed in February 1998. Mr. Tashjy informed Detective Ohnmacht that neither he nor this firm could continue to represent the Detective in view of the present representation of Gregory Bruno. Mr. Tashjy recommended other attorneys at other law firms to whom Detective Ohnmacht could turn should he desire to reopen his Workers' Compensation claim. It is quite clear that Detective Ohnmacht is no longer a client of

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this firm and, therefore, the requirement of RPC 1.7 that all presently represented clients in a potential conflict situation consent to same is not required in this case.

Rather, RPC 1.9 applies. Under RPC 1.9(a) an attorney cannot represent a subsequent client "in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client . . ." absent full disclosure and consent of both clients, nor can the attorney use any information from the representation of the prior client against him in representing the succeeding client. A fair review of all the documentation submitted in this motion clearly indicates that not only is Detective Ohnmacht a former client, but the former representation was not "the same or a substantially related matter."

The civil rights defense matter occurred years prior to the Bruno matter and involved attorneys other than Mr. Hobbie and the undersigned in the handling of the litigation. The legal issues in the civil rights case were in no way related to Gregory Bruno or his present case. Nor did either of the attorneys who worked day to day on the case learn of any information that could in any way be used against Detective Ohnmacht or any other member of the Middletown Township Police Department in this case. In fact, neither of the attorneys involved in the civil rights case had any discussions with Detective Ohnmacht where such information would be learned. Guy Ryan, Esq., who filed the case dispositive motion, never even spoke to Detective Ohnmacht.

As to the Worker's Compensation case, that matter was handled exclusively by M. Scott Tashjy, Esq. Neither the undersigned nor Mr. Hobbie had any involvement in that case. That



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matter certainly is not the same or substantially related to the present matter, State v. Bruno. The only similarity is that the same adversary was involved in both cases, the Middletown Township Police Department representing the State of New Jersey. Nor did Mr. Tashjy learn of any information or communicate any attorney/client confidential information to either Mr. Hobbie or the undersigned that could be used against Detective Ohnmacht in the present criminal case. Therefore, neither RPC 1.9(a)(1) or (2) applies to this matter and the Court should reject the State's attempt to apply RPC 1.7 and deny the State's Motion to Disqualify this firm and its lawyers from representation of Mr. Bruno in this case.

The State next argues that an appearance of impropriety exists and, therefore, this firm and its attorneys must be disqualified from representing Mr. Bruno, even if there is no actual conflict of interest. While the State cites to RPC 1.7, the more proper citation is to RPC 1.9(b). However, the same burden of persuasion applies to the State of New Jersey as the party moving to disqualify adverse counsel. The appearance of impropriety cannot be a mere "fanciful possibility." In support of its argument that an appearance of impropriety exists, the State relies upon several Court opinions as well as Advisory Opinion 404 of the Advisory Committee on Professional Ethics. However, all of those opinions are distinguishable from this case.

First, unlike every opinion cited by the State, in which the attorney in question in said opinions had been the actual attorney representing the police officer in the prior representation and the actual attorney representing an adverse party subsequently, in this matter Mr. Hobbie and the undersigned did not represent Detective Ohnmacht in either of the previous matters which are

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the subject of this motion. Rather, Ms. Querques and Mr. Ryan represented Detective Ohnmacht in a pro forma representation of a civil rights defense case and Mr. Tashjy represented Detective Ohnmacht in his Worker's Compensation matter.

Thus, this case is analogous to the attached Appellate Division Opinion, Roth v. Herman, \_\_\_ N.J. Super. \_\_\_ (App. Div. 1996) (slip opinion attached pursuant to R. 1:36-3). In Roth v. Herman, the attorney sought to be disqualified had previously defended a litigant in an automobile accident case. That matter was concluded and then the same attorney represented a subsequent client as plaintiff's counsel in a motor vehicle case against the prior client. There, the prior client was an actual named defendant in the subsequent case. Yet, the court, in analyzing RPC 1.9 and the case law surrounding same, found that the prior matter was not substantially related to the present matter, nor was any information from the prior representation potentially usable against the former client in the present matter and denied the motion to disqualify plaintiff's counsel in the subsequent case. Significantly, the court found that the prior representation was pro forma. The court further found that the contacts between the plaintiff's attorney in the subsequent case and the prior client were minimal. See Roth v. Hermann, supra, slip opinion at pp. 2 and 3. Thus, the court in analyzing the RPC and the case law determined:

The trial judge was of the view, with which we agree, that the rule does not absolutely prohibit an attorney from representing a new client whose interests are adverse to those of the former client but, rather, prohibits that representation only when the subject of the new representation is "substantially related" to the subject of the prior representation or when the attorney has, during the course of the prior representation, obtained information

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from the former client usable against the client in the new representation. See generally Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201 (1988); Reardon v. Mariavne, Inc., 83 N.J. 460 (1980). Application of the rule depends on the facts of each case. Its application here was without error . . .

Clearly the subject matter of the Ravich representation of plaintiff in this action is not substantially related to the subject matter of its representation of defendant in the Grossberg matter. The two are not related at all . . .

While we understand that there might theoretically be facts regarding her physical condition or otherwise learned by Ravich during the first representation that might adversely affect her interests in this litigation, we are satisfied, as was the trial judge, that that concern is, indeed, theoretical only. [Id. at slip opinion pp. 3 and 4 [emphasis added].

Thus, the Appellate Division in Roth v. Herman denied the motion to disqualify counsel in a matter where the client previously represented was actually a named party in the subsequent litigation. Here, Detective Ohnmacht is merely a witness in the subsequent litigation. There was nothing from the prior representation of him that is related at all to the present criminal matter, nor is there any information from the prior representation that can in any way be used against him in the present representation. Interestingly, Detective Ohnmacht has not identified any such information in his Affidavit to the Court. Therefore, this Court should find, as the Court did in Roth v. Herman, supra, that RPC 1.9 and the case law interpreting it, does not preclude this firm's representation of Mr. Bruno in this matter.

In addition, a close reading of the cases the State cites in support of its motion demonstrates that all of them are distinguishable from the present case.

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The State cites State v. Morelli, 152 N.J. Super. 67 (App. Div. 1977) and State v. Catanoso, 222 N.J. Super. 641 (Law Div. 1987). These two cases deal with "side switching" by attorneys in the middle of the same case. In State v. Morelli, defense counsel had previously represented a key prosecution witness in the same matter. In addition, the defense attorney's law firm employed an attorney who formerly worked in the prosecutor's office that investigated and charged the defendant while that investigation was occurring. This combined "side switching" caused the court to disqualify defense counsel.

Likewise, in State v. Catanoso, the court found that defense counsel had represented a state's key witness in the same case. Said counsel learned of confidences from the witness that, because it involved the same matter, would necessarily be disclosed in the defense of the subsequent client. Thus, in both Morelli and Catanoso, the matters were substantially related. In this matter, however, neither the previous representation of Detective Ohnmacht in the civil rights case nor the previous representation in the Worker's Compensation case has anything to do with the present matter. No information from those cases could in any way be used against Detective Ohnmacht in this case. There has been no "side switching" by this firm or any of its attorneys. Thus, those cases are not precedential to this matter.

The State also cites State v. Galati, 64 N.J. 572 (1974) as supportive of its position. However, Galati involved a defense attorney who represented Police Benevolent Associations and similar organizational entities. Thus, his representation was wide ranging and often affected the labor agreements and "bread and butter" of all police officers. The defendant in Galati was

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himself a police officer, and the witnesses against him were police officers as well. Thus, the defense attorney's extremely wide ranging and influential representation of the PBA (all law enforcement officers) led the court to conclude that, but for his substantial involvement as defense counsel at the time of the motion, he would have been precluded. In this matter, neither the undersigned nor Mr. Hobbie nor any other attorney in this law firm represents any PBA or any police organizational entity. Thus, Galati is clearly not applicable to the case at hand. In addition, State v. Galati is instructive of the court's recognition of the extreme prejudice to a defendant whose counsel is disqualified. Mr. Bruno is on trial for his life. Counsel from the Giordano firm have been involved in the investigation for over six months. To require new counsel to enter an appearance at this late date and to play catch up in a capital murder investigation and defense is potentially lethal to Mr. Bruno and completely unfair to him.

Next, the State cites State v. Needham, 298 N.J. Super. 100 (Law Div. 1995). There, the defense counsel in question had defended a police officer in a criminal case against that officer which went to trial and ended in an acquittal. The defense attorney also represented the same officer in a internal affairs investigation which also was successfully resolved in the officer's favor. The officer then was the victim of an assault and threats to commit crimes of violence against the officer and his family. On said facts, the court disqualified counsel. Aside from the obvious fact that State v. Needham is a Law Division opinion and not binding on this Court, it is factually dissimilar as well. Neither the undersigned nor Mr. Hobbie ever actually represented Detective Ohnmacht in either of the prior matters. The kind of lawyer-client bond that must

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have developed through a trial and acquittal and subsequently a successful internal affairs investigation by the actual lawyer sought to be disqualified in the subsequent case is a far cry from being in a 45-member law firm where two other attorneys represented Detective Ohnmacht in completely unrelated and rather minor and pro forma matters. To require Mr. Bruno in a death penalty case where his life is at stake to forfeit counsel because of such a tenuous prior connection is unfairly prejudicial to him and not supported by the case law including State v. Needham. Frankly, the defense does not understand why the State would wish in such an important case to create an issue for the Defendant before the matter is even indicted as to whether he received the legal representation he sought in defense of a capital murder charge.

In State v. Needham and Advisory Opinion 404 cited by the State, which again involves a situation where the same attorney previously represented a police officer who is now a complaining witness in a case, which is not the situation here where Mr. Hobbie and the undersigned did not represent Detective Ohnmacht in either of the prior cases, there is the issue of appearance of impropriety: namely, whether the public knowing all the facts alleged to constitute an appearance of impropriety would reasonably believe that either the attorney or Detective Ohnmacht will in effect "pull a punch" and not aggressively, zealously and professionally pursue the truth on behalf of each side's respective interests.

A review of the Certifications and Affidavits in this case reveals that Detective Ohnmacht, despite a close and long-standing family relationship with the Brunos, nevertheless investigated Gregory Bruno and, while he was not the complaining witness who signed the

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complaints, caused Mr. Bruno to be arrested for capital murder. Neither Mr. Bruno's counsel, nor any member of the Bruno family or Mr. Bruno himself, expects Detective Ohnmacht to "pull any punches" or "go easy" on Gregory Bruno because of that prior relationship. To the contrary, it is expected that Detective Ohnmacht will zealously, aggressively and professionally discharge his duties.

Likewise, no one can seriously question that the undersigned and Mr. Hobbie will not discharge our duty to aggressively and zealously defend our client, despite the fact that other attorneys in this firm represented Detective Ohnmacht in two previous minor matters. Contained within the attachments to this brief are the Affidavits of Gregory Bruno and his father, Robert Bruno. In addition, a review of Mr. Hobbie's and the undersigned's Attorney's Certifications clearly reveal that the Brunos have been fully apprised of the prior representations and suggested friendship with Detective Ohnmacht that the State now raises as a conflict of interest since the inception of this firm's representation of Gregory Bruno. They have complete confidence that the attorneys' allegiance to Gregory Bruno is complete and unquestioned. If anyone in this matter in which a person's life is at stake had the right to raise an issue as to the allegiance of the attorneys in this firm, it is Gregory Bruno alone. However, he, his father and his family are all completely confident and have no issue as to the undersigned and Mr. Hobbie defending him in this case, despite the issues the State raises. That should settle the question. Frankly, it is not for the State of New Jersey to attempt to intrude itself into that attorney-client relationship. The undersigned and Mr. Hobbie are officers of the Court. We understand the rules of professional

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responsibility and our obligations under them. Should there ever arise a real conflict of interest or a legally significant appearance of impropriety, as officers of the Court, that issue will be raised by the attorneys in the Giordano firm without any prompting. There is absolutely no possibility that any member of the public reviewing all the facts developed in the record in this matter would believe that any appearance of impropriety exists here. To the contrary, the public would have complete confidence in both Detective Ohnmacht's loyalties and professional integrity as well as that of the undersigned and Mr. Hobbie.

For the foregoing reasons, the State of New Jersey's Motion to Disqualify this firm's attorneys from representing Gregory Bruno should be denied.

In addition, with respect to the Cross-Motion for a speedy presentation of this matter to the Grand Jury and, if indictment results, immediate provision of discovery to defense counsel, it is essential to remember that in order to safeguard defense counsel's ability to provide effective assistance guaranteed by the United States Constitution that he be permitted full investigative latitude in developing a meritorious defense on his client's behalf. State v. Mingo, 77 N.J. 576, 581 (1978). The failure to indict promptly this matter and provide discovery is contrary to Defendant's right to effective assistance of counsel who cannot be effective without receiving, reviewing and investigating the State's discovery.

As to whether a delay in the institution of prosecution requires Court action, four factors must be considered: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant resulting from the delay. State v.



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Cappadona, 127 N.J. Super. 555, 558 (App. Div.) certif. den. 65 N.J. 574 (1974), cert. den. 419 U.S. 1034 (1975); State v. Szima, 70 N.J. 196 (1976) (the same standards apply with respect to an undue delay between arrest and indictment as apply to an undue delay between indictment and trial).

In this matter, not only has defense counsel been stymied in its investigation and defense of this case by the unreasonable delay of presenting this matter to a Grand Jury, but defense counsel has been further hampered in proving there is no conflict of interest in this case by the lack of discovery. Should the Court have any serious questions (and defense counsel submits that on this record, the motion to disqualify counsel should be denied) as to an actual or apparent conflict of interest, then discovery should be provided so that defense counsel may argue against such an application in the context of the facts. For example, Detective Ohnmacht implies in his Affidavit that he will be a central witness in a Miranda hearing and that the prior representation of him by this firm therefore creates an actual or apparent conflict of interest as to that issue. However, it is the understanding of the undersigned that no inculpatory statement was taken from Gregory Bruno, that he was briefly questioned by another police officer in the presence of Detective Ohnmacht and then was released from the police station that same evening. Such factual issues can only be resolved through a review and development of the discovery.

R. 3:25-2 and 3 discuss dismissal of charges for delay in either the institution of the prosecution or the commencement of trial. Defendant, pursuant to the aforesaid case law, hereby asserts his right to a speedy presentation of this matter to a Grand Jury and further asserts that

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unfair prejudice is occurring to him by preventing defense counsel from continuing its investigation. Now, instead of immediately indicting this matter and providing discovery to allow an investigation to continue and develop, the State of New Jersey wishes to further prejudice the Defendant by removing his counsel and forcing new counsel to play catch up and recommence an investigation six months after the alleged crimes have occurred. This kind of prejudice in a capital murder case should not be allowed by the Court.

Therefore, it is respectfully requested that in addition to denying the Motion to Disqualify this firm's lawyers, the Court should grant Defendant's Motion for a speedy presentation of this matter to the Grand Jury and, if an Indictment is returned, for the immediate provision of discovery to defense counsel.

Should there be any real conflicts of interest, same would be apparent in the discovery and, as members of the Court, the undersigned and Mr. Hobbie would appropriately discharge our ethical duties. Otherwise, this matter should simply proceed with this firm as counsel and with the Indictment, if it is to occur, and the provision of discovery to be supplied as quickly as possible.

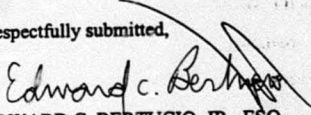
For all of the foregoing reasons, the State of New Jersey's Motion to Disqualify this firm as counsel should be denied and this firm's Motion on behalf of Defendant to have a speedy

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presentation of this matter to the Grand Jury and for the immediate provision of discovery should  
be granted.

Respectfully submitted,

  
EDWARD C. BERTUCIO, JR., ESQ.

ECB/job  
Enclosures

cc: Peter E. Warshaw, Jr., Assistant Prosecutor  
Gregory Bruno

.ODMA\PCDOCS\GHCDPCS\110761

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STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - CRIMINAL PART
	:	MONMOUTH COUNTY
v.	:	
GREGORY S. BRUNO,	:	Case No. 98-00489
Defendant.	:	<u>Criminal Action</u>
	:	<b>ORDER COMPELLING A SPEEDY</b>
	:	<b>INDICTMENT AND PRODUCTION OF</b>
	:	<b>DISCOVERY</b>

THIS MATTER, having been opened to the Court upon the application of Edward C. Bertucio, Jr., Esq. of the law firm of Giordano, Halleran & Ciesla, P.C., attorneys for Defendant, Gregory S. Bruno, on notice to the State of New Jersey and the Monmouth County Prosecutor's Office, and the Court having considered the papers filed by counsel, and good cause having been shown;

IT IS on this \_\_\_\_ day of August, 1998,

ORDERED that there will be a speedy presentation of this matter for indictment within 30 days; and

ORDERED that the Monmouth County Prosecutor's Office produce its discovery to defendant for review pursuant to R. 3:13 and the tenets of Brady v. Maryland, et al., within \_\_\_\_ days hereof; and

IT IS HEREBY FURTHER ORDERED that a copy of this order be served upon all counsel of record within \_\_\_\_ days hereof.

\_\_\_\_\_  
HONORABLE JAMES A. KENNEDY, J.S.C.

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COUNSEL  
ELIZABETH CHRISTIAN  
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JOANNE S. GRAY  
-----  
OF COUNSEL  
S. THOMAS GAGLIANO  
-----  
JOHN C. GIORDANO  
(1921-1995)

CERTIFIED CIVIL  
TRIAL ATTORNEY  
& CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.

11308/001

August 25, 1998

Honorable James A. Kennedy  
Judge of the Superior Court of  
New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728

Re: State v. Gregory Bruno  
Case No. 97-00489

Dear Judge Kennedy:

I have received correspondence from Peter Warshaw, Assistant Monmouth County Prosecutor, with regard to my response to his motion to disqualify this firm and this firm's cross motion for a speedy presentation of this matter to the Grand Jury and production of discovery.

A copy of the letter is attached for Your Honor's easy reference. It requests copies of the two unpublished to which I referred in my legal brief: Roth v. Herman; and State v. Outten, a Delaware case.

Copies of both opinions are attached hereto pursuant to R.1:36-3.

GIORDANO, HALLERAN & CIESLA  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Honorable James A. Kennedy  
August 25, 1998  
Page 2

Thank you for your attention to this matter.

Respectfully submitted,

GIORDANO, HALLERAN & CIESLA, PC

*Edward C. Bertucio, Jr.*

Edward C. Bertucio, Jr., Esq.

ECB/job  
Enclosures

cc: Peter E. Warshaw, Jr., Assistant Prosecutor (w/encs.)

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NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-6875-95T3P

GARY ROTH and ANDREA P. ROTH,  
his wife,

Plaintiffs-Respondents,

v.

MARITA J. HERMAN,

Defendant-Appellant,

and

NEW JERSEY MANUFACTURERS INSURANCE  
CO., JOHN DOE 1-X, JANE ROE 1-X,  
ABC CORP. 1-X, and XYZ Corp.  
1-X, said names being fictitious,

Defendants.

Submitted December 3, 1996 - Decided **DEC. 16. 1996**

Before Judges Pressler and Stern.

On appeal from the Superior Court of New Jersey,  
Law Division, Union County.

Mortenson and Pomoroy, attorneys for appellant  
(Daniel J. Pomeroy, on the brief).

Ravich, Koster, Tobin, Oleckna, Reitman &  
Greenstein, attorneys for respondents  
(Cornelius W. Caruso, Jr., on the brief).

PER CURIAM

Defendant Marita J. Herman appeals, on leave granted, from an  
order of the trial court denying her motion for the  
disqualification of plaintiffs' attorney on the ground of conflict  
of interest. We affirm.

Defendant was involved in an intersection accident with one Michael Grossberg on November 24, 1991. She apparently sustained some soft-tissue injury and retained the firm of Ravich, Koster, Tobin, Oleckna, Reitman and Greenstein (Ravich) to represent her against Grossberg, who pleaded guilty in the municipal court to a charge of disregarding a stop sign. The facts of that representation appear in the copy of Ravich's file, represented to be complete, annexed to its certification in opposition to defendant's disqualification motion.

According to that file, the Grossberg matter was assigned to Michael Tobin, a Ravich partner, who undertook the representation on a one-third contingency retainer. The representation was virtually pro forma. Defendant had her own personal injury protection coverage, limiting her claims against Grossberg to noneconomic damages. Grossberg's policy, issued by Amgro Insurance Company as a servicing carrier for the Market Transition Facility, had a \$5,000 coverage limit. Tobin negotiated with Amgro's adjustor, reaching a settlement of \$10,000, obviously satisfactory to defendant. The settlement was evidently based on Grossberg's clear liability and the submission to the carrier by Tobin of a medical report and an indication of the medical expenses defendant incurred. Suit was never started. No discovery was ever engaged in. The contacts between the Ravich firm and defendant were minimal, and the firm closed its file in the spring of 1993.

On September 11, 1995, defendant, while driving her car, struck a pedestrian, plaintiff Gary Roth, who sustained serious



injuries. Roth retained the Ravich firm. A partner other than Tobin undertook the representation. Suit against defendant was commenced in October 1995.

It appears from the certification herein filed that when defendant presented herself at the Ravich office in April 1996 for the taking of her deposition, she advised her attorney of that firm's prior representation of her and, according to her attorney, said that "she felt uncomfortable with this and she asked [him] if it was 'some sort of conflict of interest.'" We gather that defendant's attorney and Tobin then met privately in an adjacent room to discuss the matter, heated words were exchanged, and defendant apparently overheard some of the conversation.

This motion by defendant ensued. We affirm the order denying it substantially for the reasons stated by the trial judge. We add only the following observations.

R.P.C. 1.9(a) provides that an attorney who has represented a client in a matter shall not thereafter:

(1) represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client consents after a full disclosure of the circumstances and consultation with the former client; or

----- (2) ----- use information relating to the representation to the disadvantage of the former client except as RPC 1.6 would permit with respect to a client or when the information has become generally known.-----

The trial judge was of the view, with which we agree, that the rule does not absolutely prohibit an attorney from representing a

new client whose interests are adverse to those of the former client but, rather, prohibits that representation only when the subject of the new representation is "substantially related" to the subject of the prior representation or when the attorney has, during the course of the prior representation, obtained information from the former client usable against the client in the new representation. See generally Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201 (1988); Reardon v. Marlayne, Inc., 83 N.J. 460 (1980). Application of the rule depends on the facts of each case. Its application here was without error.

Clearly the subject matter of the Ravich representation of plaintiff in this action is not substantially related to the subject matter of its representation of defendant in the Grossberg matter. The two are not related at all. The issue then is whether, during the course of its representation of defendant in the Grossberg matter, the firm obtained or was in a position to obtain any information about or communication from defendant that might adversely affect her in this matter. We have reviewed Ravich's file in the Grossberg matter attached to its certification. While we understand that there might theoretically be facts regarding her physical condition or otherwise learned by Ravich during the first representation that might adversely affect her interests in this litigation, we are satisfied, as was the trial judge, that that concern is, indeed, theoretical only. Nothing appears in the file that potentially can fit that category.

That being so, the representation of the instant plaintiff against defendant is not interdicted.

-----The order appealed from is affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

*R. E. Miller*

----- Clerk -----

Not Reported in A.2d  
(Cite as: 1992 WL 390660 (Del.Super.))

STATE of Delaware

v.  
Jack Foster OUTTEN, Jr., Steven W. Shelton,  
Nelson Walter Shelton, Defendants.

CR. A. Nos. IN-92-01-1144 to IN-92-01-1158.

Superior Court of Delaware, New Castle  
County.

Submitted: Nov. 23, 1992.

Decided: Dec. 1, 1992.

Upon Motion of the State to Disqualify  
Counsel for Defendant Steven W. Shelton--  
Denied.

James B. Ropp, and William L. George, Jr.,  
Deputy Attys. Gen., Dept. of Justice, for State  
of Delaware.

John M. Willard, of Wilmington, for  
defendant Steven W. Shelton.

R. David Favata, Asst. Public Defender,  
Office of the Public Defender, for Nelson  
Walter Shelton.

Anthony A. Figliola, Jr., of Figliola &  
Facciolo, for defendant Jack Foster Outten, Jr.

#### MEMORANDUM OPINION

HERLIn Y, Judge.

\*1 The State has moved to disqualify counsel  
for defendant Steven W. Shelton (Steven),  
John M. Willard, who is privately retained.  
The State contends that Mr. Willard  
interviewed a State's witness, Christine  
Gibbons (Ms. Gibbons), and it and/or a  
codefendant will call him as a witness. Thus,  
the State argues Mr. Willard is disqualified  
pursuant to Delaware Rules of Professional  
Conduct 3.7, 1.6, 1.7, 1.9 and 1.16.

The codefendant who may wish to call Mr.  
Willard as a witness, Nelson Walter Shelton  
(Nelson), Steven Shelton's brother, does not  
now join in the motion to disqualify.  
Previously, Nelson's counsel indicated they

*Del. Case -  
example of  
unrelated cases*

*Rule  
1-9 similar  
Page 1 to N*

would move for disqualification. The apparent  
change in position is due to their belief that  
there is no rule prohibition and the  
imminency of jury selection in a capital case.

Counsel for the third defendant, Jack Foster  
Outten, Jr. (Outten), does not seek Mr.  
Willard's disqualification. The probable  
reason will become apparent during the  
recitation of facts, see infra at 2-3.

#### FACTS

In a disqualification analysis, the Court must  
make a painstaking examination of the facts.  
Duncan v. Merrill Lynch, Pierce, Fenner and  
Smith, 646 F.2d 1020, 1029 (5th Cir.1981).

These three defendants are charged with the  
murder of Wilson Mannon, Jr. (Mannon).  
Mannon's death occurred during the early  
morning hours of January 12, 1992. Around  
that time and for a period prior thereto, Ms.  
Gibbons was a girlfriend of and living with  
Nelson. Later on January 12, 1992, she was  
questioned by the New Castle County and  
Wilmington Police in connection with the  
homicide. She implicated all three in  
Mannon's murder, particularly and primarily  
Steven and Outten.

Between January 30, 1992 and March 6, 1992  
when this Court held its first office conference,  
[FN1] Mr. Willard was privately retained to  
represent Steven. Mr. Willard appeared at the  
office conference on behalf of Steven. He has  
taken an active part in the case since being  
retained and corresponded with the Court  
between March 6, 1992 and the next office  
conference held on May 1, 1992.

A proof positive hearing was held on May 18,  
1992. Mr. Willard played an active role in  
that hearing. Prior to the hearing, Ms.  
Gibbons had been picked up and detained on a  
material witness warrant. [FN2] Ms. Gibbons  
testified at the proof positive hearing.

Before Ms. Gibbons was held in default of bail  
on the warrant, she visited Mr. Willard at his  
law office. The crux of that conversation,  
which is the basis for the State's motion, will



be described in detail momentarily.

At the bail hearing, Ms. Gibbons testified [FN3] to a different version of events involving Mannon's murder. Contrary to what she told the police, she testified that Nelson fully participated in the fatal beating of Mannon and actively encouraged Outten in his part of the beating. She said Steven was off in the woods or bushes the whole time of Mannon's beating and took no part in the murder. The Court determined that all three defendants would be held without bail.

\*2 Subsequent to the bail hearing, there were additional office conferences and exchanges of correspondence, all of which Mr. Willard participated in. Further issues concerned severance, reconsolidation of the trial and the State's motion to take Ms. Gibbons' trial deposition. Her deposition started on October 2, 1992 and concluded several days later. During the course of the deposition, the meeting between Ms. Gibbons and Mr. Willard in early 1992 became a significant issue. While the Court has not reviewed any transcription of her testimony, the Court understands Ms. Gibbons basically maintained her version minimizing Steven's involvement in this case.

Based on the representations presented to the Court, Mr. Willard represented Ms. Gibbons on a motor vehicle matter about a year prior to Mannon's death. Further, his representation had ended. When she came to his law office earlier this year, Mr. Willard told Ms. Gibbons he could not represent her. According to Mr. Willard, she related to him that what she told the police was "false".

There was no third party present. At some point in her conversation, Mr. Willard turned on a tape recorder and recorded their conversation. That statement was introduced during her trial deposition. Also introduced were copies of Mr. Willard's notes of his conversation with Ms. Gibbons prior to turning on the recorder.

During her trial deposition, Ms. Gibbons testified that she had no current recollection of

the pre-tape-recorded conversation with Mr. Willard. It is her inability to recall that conversation and the obvious impact on Nelson that prompts Nelson's counsel to indicate they want to call Mr. Willard as a witness. They would ask him about what Ms. Gibbons said.

It would appear that Mr. Willard relates that Ms. Gibbons told him what she repeated on tape. At one time, Nelson's counsel indicated they would seek to disqualify Mr. Willard since they intended to call him as a witness. However, they have now indicated they no longer seek his disqualification.

Jury selection in this capital case is scheduled to begin on January 8, 1993. That date was set at the initial office conference on March 6, 1992 and primarily reflects the scheduling difficulties of so many counsel and the Superior Court's murder caseload. On August 7, 1992, this Court denied Nelson's motion to sever. *State v. Outten, et al.*, Del.Super., C.A. No. IN. 92-01-1144-1158, Herlihy, J. (August 7, 1992).

As noted, the State seeks Mr. Willard's disqualification. While contemplating calling him as a witness, counsel for Nelson do not seek his disqualification. Counsel for Outten takes no position on the disqualification application but he does "strenuously" object if disqualification causes any delay in the trial of his client.

#### DISCUSSION

As the State's application clearly influences the orderly administration of justice because of its obvious potential impact on the trial date or severance, [FN4] this Court has jurisdiction to entertain this motion. Cf. *Appeal of Infotechnology, Inc.*, Del.Super., 582 A.2d 215, 221 (1990).

#### A

- \*3 Rule 3.7 states:  
(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:  
(1) the testimony relates to an uncontested



issue;

\*\*\*

(3) disqualification of the lawyer would work substantial hardship of the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

"The main concern behind Rule 3.7(a) is that a lawyer who attempts to double as a witness will perhaps interject unsworn testimony into his cross-examination or summation, end up arguing his own credibility to the jury, or be tempted to distort the truth for the benefit of his client." *Cardoni v. Power International, et al.*, Del.Super., C.A. No. 88C.MY.141, at 2 Bifferato, J. (March 27, 1990). Mr. Willard is the only person of the two involved in the unrecorded conversation who is able to testify about what occurred before the recorder was turned on.

Nelson and the State's interest in Mr. Willard's testimony is obvious. Starting with the meeting with Mr. Willard, Ms. Gibbons pointed the finger at Nelson and not Steven contrary to her initial statement to the police. Since Mr. Willard already represented Steven, the thrust of any questioning of him would be to see if he exerted any influence on her to redirect her finger pointing. Arguably, in part, the implication might arise because of their prior attorney-client relationship.

In not seeking Mr. Willard's disqualification, Nelson's counsel indicate that what Ms. Gibbons told Mr. Willard is not contested. She has indicated that prior to seeing Mr. Willard, she contacted the police to tell them she had been wrong in her initial statement and wanted to change it. Nothing happened so she went to Mr. Willard.

On the other hand, the State argues that the conversation prior to the tape recording "may be disputed". Thus, it contends no exception applies under Rule 3.7(1). It offers no particulars, only that conclusory statement. Outten is unconcerned because Ms. Gibbons' redirected finger pointing concerning the

Shelton brothers leaves another finger still pointed at him.

In this analysis, the Court will assume Mr. Willard is called to the stand. At that point, he will have taken an active advocacy role in the presence of the jury. Having read his version of the conversation he had with Ms. Gibbons, the testimony she offered during the proof positive hearing, the existence of the tape-recorded statement, the production of Mr. Willard's notes (not taken with the view that they would later be made public) and Mr. Willard's representations of what was discussed, the Court is convinced that Rule 3.7(a) is applicable. No showing has been made that his testimony will relate directly to a contested issue, i.e., no one will testify to the contrary regarding the pre-recorded conversation with Ms. Gibbons.

\*4 While the Court is not pleased with the visual impact of Mr. Willard changing roles from advocate to witness back to advocate, the Court views that portion of the upcoming trial to be insignificant. Mr. Willard, of course, will be barred from discussing that portion of his meeting with Ms. Gibbons in any questioning of her or in any argument to the jury.

In addition, the hardship on Steven is potentially substantial. He has been held in jail since mid-January 1992. Mr. Willard is privately retained and has invested much time and effort in this case and if he is now removed, new counsel would most likely receive a continuance. Mr. Willard has been privately retained at some probable great expense, considering this is a capital case. The Court is unable to say if new counsel would be private or appointed from among the contract counsel (there being a Public Defender conflict).

If contract counsel need be appointed, after presumably an unknown time in a search for private counsel, and this Court having been directed to appoint two counsel, an examination of pending murder cases alone shows a multi-month continuance would be needed in order to have a four-to-five week

slot available for contract counsel. All of this combined operates to work a substantial hardship on Steven. Rule 3.7(3).

There are two additional factors which weigh against disqualifying Mr. Willard. First, he is a sole practitioner and it is not possible to have someone else in his firm represent Steven or otherwise during the trial. Second, and more importantly, to disqualify Mr. Willard in the context of his interview with Ms. Gibbons creates significant practical burdens on lawyers and a potential chilling effect on pre-trial preparation.

Mr. Willard had a right to interview Ms. Gibbons pre-trial and the State could not instruct her not to answer his questions. *Wisniewski v. State*, Del.Super., 138 A.2d 333, 338 (1957). (FN5) Many times lawyers, be they sole practitioners or members of large firms, interview witnesses pre-trial without third parties being present. Often such presence is impractical.

Disqualifying Mr. Willard, because, in effect, he did not have a secretary or a private investigator present to avoid his becoming a witness, would send a clear message that a third person must always be present. There is no escaping this implication from a ruling disqualifying Mr. Willard.

While better practice might lead an attorney to have a third person present, that is not ethically required or always possible. In the context of this case, the Court cannot see how Mr. Willard could have done more in any practical or common sense way. Further, prosecutors would be hindered in their interviews of witnesses and victims if a third party would always have to be present.

B

The State also argues that other rule provisions require Mr. Willard's disqualification. It cites Rules 1.6, 1.7, 1.9 and 1.16.

It is not clear how Rule 1.6 (FN6) disqualifies Mr. Willard. At the time she came to see him,

apparently for legal advice about her statement and changing it, Mr. Willard already was representing Steven. His representation of Ms. Gibbons had ended many months before and he told her he could not represent her.

\*5 Mr. Willard did not talk to her as an attorney would to or with a client. Her motor vehicle matter from before and Steven's arrest for murder in the first degree were and are unrelated. Her role as a witness to the murder does not bring this situation within Rule 1.6. He does not have to reveal privileged information.

Nor is the State's reliance upon Rule 1.7 (FN7) any better. Ms. Gibbons had not been a client of Mr. Willard for some time. He did not undertake to represent her in connection with anything involving this murder and represents he affirmatively told her that. As noted earlier, Ms. Gibbons has had her own counsel since May. Therefore, this is not a situation of representing two clients at once.

The State also cites Rule 1.9 (FN8) in its disqualification argument. The record is not clear when Ms. Gibbons was a client of Mr. Willard. The record shows that the prior representation was for a traffic offense and was concluded many months, perhaps a year, before Ms. Gibbons came to his office on this case.

The record is devoid of any fact or hint that Mr. Willard learned anything from that prior representation which would be materially adverse to Ms. Gibbons. Further, these two matters are not "the same or substantially related". Rule 1.9(a).

Some interrelationship between Rules 1.7 and 1.9 apparently exists in that similar tests are judicially used in deciding disqualification questions. *Nemours Foundation v. Gilbane, Aetna, Federal Ins.*, D.Del., 632 F.Supp. 418, 423 (1986). Therefore, even though Rule 1.7 is a general conflict of interest rule, an analysis under Rule 1.9 may also lead to disqualification under Rule 1.7.

Similar to NJ#



An analysis under Rule 1.9 demonstrates no grounds for disqualification. The two matters are not the same or similar and the record reveals no information which Mr. Willard could use to the disadvantage of Ms. Gibbons. Her motor vehicle conviction, if there were one, is not admissible under D.R.E. 609(a). Accordingly, Rule 1.9 alone, or in conjunction with Rule 1.7, does not disqualify Mr. Willard.

Finally, the State cites Rule 1.16 [FN9] in which it argues that Mr. Willard knew the only witness not charged to the murder was Ms. Gibbons and because she was a former client, he should not have undertaken Steven's representation or should have withdrawn early in the case.

In order to reach that argument, the State must show Mr. Willard's situation meets one of the three grounds under Rule 1.16. Specifically, the only applicable rule is 1.16(a)(1). The Court has ruled that no violation of the Rules of Professional Conduct has occurred.

The State's argument is that Mr. Willard took a statement which could form the basis for a charge of hindering prosecutions or falsely reporting an incident. That argument is preposterous. If a lawyer, including a prosecutor, were to be disqualified every time a witness changes his or her earlier statement or recanted, the system would collapse. In addition, Ms. Gibbons testified under oath at the proof positive hearing along the lines of her statement tape recorded earlier by Mr. Willard.

#### CONCLUSION

\*6 Accordingly, the Court finds no basis under the Delaware Rules of Professional Conduct to disqualify Mr. Willard. The Court does deem it desirable that two steps be taken. First, Mr. Willard is to submit an affidavit outlining the matter or matters for which he represented Ms. Gibbons, the beginning and ending dates thereof, the nature of the matter and the result. Second, Mr. Willard will obtain a written consent from Steven Shelton for his continued representation in this matter

to be filed with the Court. The consent must show also (1) ratification of prior representation in this matter, (2) clear knowledge of Mr. Willard's prior representation of Ms. Gibbons and (3) that Steven Shelton has seen Ms. Gibbons' statement to the police and her tape statement to Mr. Willard.

These two items must be supplied promptly. Failure to supply the consent or indication that such consent will not be forthcoming will necessarily require reconsideration of this Court's decision.

#### IT IS SO ORDERED.

FN1. Counsel for Outen was not appointed until March 4, 1992. Separate counsel was needed because the Public Defender represented Nelson.

FN2. This Court recused itself from this procedure because of the State's need to make ex parte representations to obtain the warrant.

FN3. Prior to her testimony, the Court appointed Ms. Gibbons her own counsel. While substitute counsel had to be appointed for her prior to her trial deposition this Fall, she has been independently represented throughout all court proceedings in this case.

FN4. A severance now would also put this case outside the one year guideline for capital cases set out in Administrative Directive 88. Also, considering the Chief Justice's communication of concern to the Superior Court of exceeding that guideline, the impact on the orderly administration of justice is further impacted.

FN5. As to the impact of his prior representation of Ms. Gibbons and his ability to question her, see infra at 8-9.

FN6. (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b). (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (1) to prevent the client from committing a criminal



act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or  
(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.  
Rule 1.6.

FN7. (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

\*\*\*

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected;  
Rule 1.7.

FN8. A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.  
Rule 1.9.

FN9. (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged. (b) Except as stated in

paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's service to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective that the lawyer considers repugnant and imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.  
Rule 1.16.

END OF DOCUMENT



**GIORDANO, HALLERAN & CIESLA**

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JOHN C. GIORDANO  
(1921-1997)

CERTIFIED CIVIL  
TRIAL ATTORNEY  
A CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.  
11308-0001

September 8, 1998

**VIA HAND-DELIVERY**

Honorable James A. Kennedy, J.S.C.  
Judge of the Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728

Re: State v. Gregory Bruno  
Case No. 97-00489

Dear Judge Kennedy:

Enclosed please find the attorney's Certifications in Lieu of Affidavits of M. Scott Tashby, Esq. and Edward C. Bertucio, Jr., Esq.

Said Certifications are submitted in response to the Supplemental Affidavit of Detective Ronald Ohnmacht and Supplemental Attorney's Certification of Assistant Monmouth County Prosecutor Peter Warsaw in relation to the State's Notice of Motion to disqualify this law firm from representing Gregory Bruno in the above-captioned matter.

Respectfully submitted,

*Edward C. Bertucio, Jr.*  
Edward C. Bertucio, Jr., Esq.

FCB/job  
Enclosures

cc: Assistant Prosecutor Peter Warsaw (w/encs.)

Gregory Bruno

ODMA\PCDOCS\GHCDOCS\18612\1

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Lincroft, N.J. 07738  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Civil Action

**CERTIFICATION IN LIEU  
OF AFFIDAVIT OF  
M. SCOTT TASHJY, ESQ.**

1. I, M. Scott Tashjy, of full age, do hereby certify and state:
2. I am an attorney-at-law in the State of New Jersey and a Shareholder with the law firm of Giordano, Halleran & Ciesla, P.C.
3. I am responsible for overseeing the day to day operations of the Workers' Compensation Department for our firm. I am the only attorney in our firm who represents clients in Workers' Compensation claims. My practice is limited strictly to Workers' Compensation, Personal Injury and Social Security/Retirement Disability practice.
4. I have reviewed the Supplemental Affidavit of Ronald Ohnmacht. In paragraph 3 thereof, Detective Ohnmacht now recollects the conversation we had in February, 1998, which

conversation he did not relate to the Court in his original Affidavit. It was during this conversation that I told him this firm could not represent him in the reopening of his claim because of this firm's representation of Gregory S. Bruno in State v. Bruno. Detective Ohnmacht relates that during our February conversation he stated that he "...objected to the Giordano firm representing Bruno and indicated that (he) did not wish to switch lawyers". He further indicated that he stated, "It is my recollection that I expressly indicated that I wanted Giordano, Halleran & Ciesla to continue to represent me."

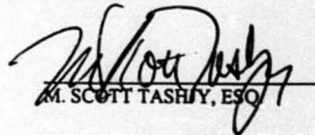
5. As I advised Detective Ohnmacht at that time, our firm ended our representation of him with the settlement of his Workers' Compensation case on or about June 24, 1997. At that point, Detective Ohnmacht was free to ask any other attorney to undertake the reopening of his claim. Subsequent to June 24, 1997, this firm no longer represented Detective Ohnmacht regarding his Workers' Compensation claim. I told Detective Ohnmacht in February, 1998, that I could recommend him to several competent Workers' Compensation attorneys.

6. The process of reopening a claim on behalf of a Workers' Compensation client can be done by the attorney that originally represented that individual in his or her Workers' Compensation claim, or by an attorney not associated with the original prosecution of that individual's claim. There is absolutely no prejudice visited upon Detective Ohnmacht by having a law firm other than Giordano, Halleran & Ciesla reopen his claim. I have represented a number of Workers' Compensation clients in the reopening of their claims when I had not handled the original claim. There is absolutely no disadvantage to a client in such a situation. In such a situation, the Petitioner (Detective Ohnmacht) is not assessed additional fees, nor is there any delay associated with his matter being reopened by another attorney. As long as the attorney

reopening the claim is versed in the law of Workers' Compensation, Detective Ohnmacht's interests will be protected.

7. Once Detective Ohnmacht's case was settled on June 24, 1997, his case was over at that time. The "reopening" of a claim is not mandatory. Further, in the majority of the cases that I have handled, reopeners are not filed. Any attorney versed in the law of Workers' Compensation would be able to properly evaluate Detective Ohnmacht's claim and advise him as to whether or not he has a basis to in fact reopen his claim. If such a basis exists, that attorney would be adequately versed to pursue that claim and protect all of Detective Ohnmacht's interests.

The above statements are true to the best of my knowledge. If any of the above statements made are willfully false, I am subject to punishment.

  
M. SCOTT TASHIY, ESQ.

DATED: September 8, 1998

:OC\* DOCS/GHCDPCS1879111

**GIORDANO, HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**ATTORNEY'S CERTIFICATION  
IN LIEU OF AFFIDAVIT OF  
EDWARD C. BERTUCIO, JR., ESQ.**

I, Edward C. Bertucio, Jr., Esq., an attorney-at-law in the State of New Jersey, hereby certify the following facts to be true:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, P.C., counsel to Defendant Gregory Bruno in the above-captioned matter. As such, I am fully familiar with the facts I am about to relate.
2. I have reviewed the Supplemental Certification of Assistant Monmouth County Prosecutor Peter Warsaw, Jr. dated August 27, 1998.
3. Assistant Prosecutor Warsaw continues to maintain incorrectly that Norman M. Hobbie, Esq. conducted the actual representation of Detective Ronald Ohnmacht in the matter of Ward v. Township of Middletown, et al., despite the attorney's Certifications of Mr. Hobbie,

Guy P. Ryan, Esq. and Michelle A. Querques, Esq., all of which are attached to Defendant's original response to the State's Motion to Disqualify this law firm.

4. Attached hereto as Exhibits "A", "B" and "C" are copies of correspondence from Michelle A. Querques, Esq. regarding documentary discovery issues in the matter of Ward v. Township of Middletown.

5. Attached hereto as Exhibit "D" is correspondence from an attorney regarding the substitution of attorney to which Assistant Prosecutor Warsaw refers, which correspondence is addressed to Guy P. Ryan, Esq.

6. Attached hereto as Exhibit "E" is correspondence from Mr. Ryan to Detective Ohnmacht as to the disposition of the matter by way of a successful motion for summary judgment, which correspondence is dated July 9, 1993.

7. Thus, as Mr. Hobbie, Ms. Querques and Mr. Ryan have previously stated in the Certifications attached to the original responsive papers of this firm, Ms. Querques and Mr. Ryan were in fact the counsel who litigated the matter of Ward v. Township of Middletown on a day to day basis.

8. Mr. Warsaw further implies incorrectly that the law firm of Giordano, Halleran & Ciesla has a "close connection" to the PBA of the Middletown Township Police Department because of a seminar given by Mr. Hobbie in March of 1997.

9. What Assistant Prosecutor Warsaw fails to inform the Court is that in or about 1992-1993 Mr. Hobbie, along with several other Monmouth County criminal defense attorneys, was invited and solicited by the Monmouth County Prosecutor's Office to speak at a training seminar.

10. In response to an invitation from the Monmouth County Prosecutor's Office, Mr. Hobbie volunteered his time as a public service to the law enforcement community. Mr. Hobbie's speaking partner was Monmouth County head of Homicide, Detective Michael Dowling.

11. Judge Anthony Mellaci, then Assistant Prosecutor Mellaci, was the moderator or organizer of the training seminar.

12. The seminar focused on defense litigation's techniques and cross-examination strategies. The specific purpose was to assist the detectives to let them know what the defense attorneys in the county expected and looked for in a litigation matter so as to better prepare the law enforcement community. At no time did any member of the Prosecutor's Office state that giving such a seminar would in fact constitute a conflict of interest which would prevent the defense attorneys from participating in litigated matters. In fact, the Monmouth County Prosecutor's Office solicited Mr. Hobbie's participation.

13. After this seminar, a number of law enforcement personnel who attended the meeting thanked Mr. Hobbie and asked him if he would ever be interested in giving such a seminar to members of the respective departments. Thereafter, when a request was made, Mr. Hobbie would volunteer his time and give a seminar to the any department at no charge and with no contingencies (emphasis added).

14. The Prosecutor's Office has been aware of this for more than five years and at no time has notified Mr. Hobbie that they objected to this type of seminar or indicated that it would constitute a conflict.

15. The seminar conducted on March 24, 1997 was also given voluntarily as a service to the law enforcement community with the same understanding by this law firm that existed when



Mr. Hobbie was invited to conduct the seminar for the Monmouth County Prosecutor's Office, namely, that the seminar was appreciated and a service to the law enforcement community. Nothing more; nothing less.

16. Nor was any attorney/client relationship involved. In fact, a number of officers, who attended the March 24, 1997, seminar, were not from Middletown. Moreover, a number of the officers who attended, were represented by other attorneys or use other lawyers in other matters. To suggest that as a result of the seminar there is any attorney/client relationship or other influential situation is without merit and pure creative speculation. Mr. Hobbie has not spoken to a number of the attendees since that seminar. This was a training seminar and in no way an attorney/client meeting. Nor was there any information discussed about pending law enforcement cases. The format of the seminar provided for the distribution of booklets, the officers read the booklet and asked questions. The majority of the seminar involved Mr. Hobbie explaining cases that he had had and where the various witnesses had made mistakes and how those mistakes should have been avoided.

17. No information was learned at that seminar about any investigative or interrogative techniques of any Middletown police officer. In fact, it was the police officers who learned of the techniques and strategies of the defense attorneys. The seminar was also attended by members of other law enforcement communities in addition to Middletown Township.

18. Assistant Prosecutor Warsaw also fails to inform the Court that the law firm of Klatsky & Klatsky represents the Middletown Township PBA. Said law firm has acted in that capacity for a number of years. This law firm does not represent Middletown PBA or any PBA organizations.

19. Mr. Hobbie's public service in conducting a seminar sanctioned by the Prosecutor's Office, should not now be used as a "sword" in litigation to attempt to remove an adversary from a death penalty case. Mr. Bruno, the client, should have that decision.

20. Significantly, the original focus of the State's Motion to disqualify this firm was based on the allegation that this firm presently represents Detective Ohnmacht. It is now clear that this firm does not presently represent Detective Ohnmacht. The Prosecutor's Office's assertion was inaccurate and its application should be denied.

21. Yet, the Monmouth County Prosecutor's Office persists in this eleventh hour creative attempt to disqualify this firm where there is no basis to do so. Such an application in a capital murder case such as this one is unprecedented. In fact, previous cases have shown that the Monmouth County Prosecutor's Office does not make such applications against the other attorneys who participated in the seminar or represent law enforcement officers.

22. For example, Gregory Bruno was previously represented in an unrelated criminal case by John T. Mullaney, Jr., Esq. in Indictment 95-07-1117 involving criminal charges that allegedly occurred in the Township of Middletown. The State's witness list in that matter, a copy of which is attached hereto as Exhibit "F," named a number of Middletown Township police officers as witnesses.

23. It is well-known that Mr. Mullaney was previously the First Assistant Monmouth County Prosecutor and in that position had a supervising relationship with all members of law enforcement in Monmouth County, including Middletown Township. In addition, Mr. Mullaney previously represented a Middletown Police Officer in a criminal case. See Exhibit "G." Yet, no application to disqualify Mr. Mullaney was ever made by the Monmouth County Prosecutor's Office when Mr. Mullaney represented Mr. Bruno to the conclusion of that previous matter.

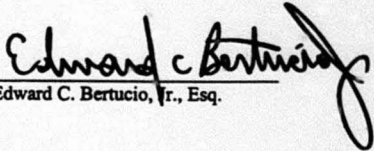
24. Moreover, the Prosecutor's Office has been aware of Mr. Hobbie's seminars to different law enforcement personnel for many years. Not once has the Prosecutor's Office objected, even when Mr. Hobbie represented other criminal clients where Middletown Police Officers were the investigating officers. It is respectfully requested that the Court look at the genuine motives of the prosecution. There are numerous attorneys, who were long standing members of the Prosecutor's Office, who went into private practice and have very extensive criminal defense practices. It is clear that these attorneys, as Assistant Prosecutors, developed much more extensive relationships with law enforcement officers from the various towns. Yet, these attorneys are not conflicted out of cases because they gave a seminar or represented an officer in the past.

25. Despite this contrary precedent, the Monmouth County Prosecutor's Office persists in pursuing this Motion in a capital murder case against this law firm without basis.

26. Mr. Warshaw has previously indicated in Paragraph 9 of his Certification to his original Motion to disqualify this law firm that "I am not in any way asserting, directly or indirectly, that Mr. Hobbie or Mr. Bertucio have deliberately committed an ethics violation. To the contrary, I have known and respected both attorneys for many years. This is very simply a question of law."

27. It is the expectation of this firm as counsel for Gregory Bruno that this application is not a personal attack upon counsel representing Mr. Bruno in this case. It is not the intention of this law firm to allow this issue to degenerate into personal attack on any attorney. However, in view of the foregoing facts, the undersigned cannot understand the State's persistence in pursuing this issue which is clearly without merit.

28. I hereby certify that the foregoing facts are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing facts is willfully false, I am subject to punishment.

  
Edward C. Bertucio, Jr., Esq.

Dated: September 8, 1998

\\ODMA\PCDOCS\GHCDPCS\1855\1

Exhibit A

♻️  
AUSTRALIA'S WASTE RECYCLING PROGRAM

**GIORDANO, HALLERAN & CIESLA**

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ATTORNEYS AT LAW

125 HALF MILE ROAD

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MIDDLETOWN, NEW JERSEY 07748

(908) 741-3900

FAX (908) 224-6599

PLEASE REPLY TO: MIDDLETOWN  
DIRECT DIAL NUMBER:

MERCER COUNTY OFFICE  
441 EAST STATE STREET  
TRENTON, NEW JERSEY 08628  
(609) 899-3600

OCEAN COUNTY OFFICE  
200 MAIN STREET  
TOWNS RIVER, NEW JERSEY 08753  
(908) 341-9600

FILE NO.

December 24, 1992

Patricia B. Quelch, Esq.  
Assistant Prosecutor  
Monmouth County Prosecutor's Office  
Monmouth County Court House  
Freehold, New Jersey 07728-1261

Re: State of N.J. v. Ward, et al.  
Indictment Nos. 89-09-1641 and 89-10-1799  
Case Nos. 89-03324 and 89-03350  
U.S.D.C. Civil Action No. 92-1712 (GEB)

Dear Ms. Quelch:

Thank you for forwarding copies of the documents pertaining to the civil action in the above-referenced matter. Enclosed is this firm's check in the amount of \$114.50 to cover the cost of same.

Thank you for your assistance and cooperation in this regard.

Very truly yours,

  
MICHELE A. QUERQUES

MAQ/SK/sk  
Enc.

cc: Bernard M. Reilly, Esq.

Exhibit B

♻️  
ALL OTHER PAPER, 80-20-80S, 50% RECYCLED

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ATTORNEYS AT LAW

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LINCROFT, NEW JERSEY 07738

(908) 741-3900

FAX: (908) 224-6399

441 EAST STATE STREET  
TOWNSHIP, NEW JERSEY 08625  
(908) 888-3900

800 MAIN STREET  
TOWNSHIP, NEW JERSEY 08753  
(908) 341-9600

PLEASE REPLY TO:  
POST OFFICE BOX 190  
MIDDLETOWN, NEW JERSEY 07748

DIRECT DIAL NUMBER:

January 4, 1993

JOHN C. GIORDANO, JR.  
JOHN P. HALLERAN  
FRANK R. CIESLA  
BEARD J. BERRY, JR.  
THOMAS A. PUSKIN  
JOHN A. AIELLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN  
GEORGE J. TYLER  
MARK S. BELLIN  
LOIS D. SHAFIR  
JOHN A. GIUNGO  
NORMAN H. HOBBIE  
EDWARD S. RADELY  
STEVEN M. BERLIN  
SHARLENE A. HUNT  
CHARLES D. CONWAY  
WICHI JAN ISLER  
PHILIP D. FORLEZZA  
WILLIAM J. BOWE  
TOBI E. GRAFF  
MICHAEL J. CANNING  
RICHARD D. STANZIONE  
PAUL H. SCHNEIDER

OF COUNSEL:  
S. THOMAS GAGLIANO

JOHN C. GIORDANO  
(908-1999)

ELIZABETH DUBANIEWSKY  
MICHELE A. QUERQUES  
JOHN F. HARLEY III  
ANTHONY R. CARUSO  
SHERRY L. SPENCER  
W. SCOTT TASHBY  
DEBBIE KRAMES GREGG  
STEVEN J. BRODMAN  
ANDREW S. ROBINS  
MICHAEL A. BRUNO  
SUSAN D. DAVIS  
MARGARET S. CARNELI  
KURT E. ANDERSON  
PAUL T. COLELLA  
JODY V. WILSON  
JOANNE S. GRAY  
ROBERT J. BLACKWELL  
LISA A. BUTTO  
GUY P. RYAN  
ROBERT J. BURNS  
GREGG M. HOBBIE  
DAVID H. NACHMAN  
PATRICK J. COTTLELL  
LAURA A. LANE  
PAUL V. FERRICOLA  
LAWRENCE J. SHARON  
TRACY A. ARMSTRONG  
SUSAN A. SCHEMER  
BRYAN R. SCHULMAN  
SEAN E. REGAN

FILE NO.

John Richard Ward  
N.J.S.P. #230300  
Southern State Correctional Facility  
Post Office Box #150  
Phase II-Unit #10-L  
Delmont, New Jersey 08314

Re: Ward adv. Ohnmacht, et al.

Dear Mr. Ward:

Enclosed please find the following discovery requests to be answered by you within thirty (30) days of your receipt of same:

1. Defendant, Ronald D. Ohnmacht's First Set of Interrogatories to Plaintiff;
2. Defendant, Ronald D. Ohnmacht's First Notice to Produce on Plaintiff.

Very truly yours,

*Michele A. Querques*  
MICHELE A. QUERQUES

MAQ/SK/sk

Enc.

cc: Bernard M. Reilly, Esq.

Receipt of the within interrogatories is acknowledged this  
\_\_\_\_\_ day of January, 1993.

\_\_\_\_\_  
JOHN RICHARD WARD



EXHIBIT C

♻️  
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FAX: (908) 224-6599

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(908) 689-3900

200 MAIN STREET  
TOWNSHIP OF TOWNSHIP RIVER, NEW JERSEY 08753  
(908) 341-9800

PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER:

(908) 219-5481

January 25, 1993

8239/001

JOHN T. GIORDANO, JR.  
JOHN R. HALLERAN  
FRANK R. CIESLA  
BERNARD J. BERRY, JR.  
THOMAS A. PLSIRIN  
JOHN A. AIELLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN  
GEORGE J. TYLER  
MARR S. BELLIN  
LOIS D. SHAFIR  
JOHN A. GIUNCO  
NORMAN M. HOBBS  
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STEVEN M. BERLIN  
SHARLENE A. HUNT  
CHARLES D. CONWAY  
VICTOR J. ISLER  
PHILIP S. FORLENZA  
WILLIAM J. BOWE  
TOM E. GRAFF  
MICHAEL J. CANNING  
RICHARD D. STANZIONE  
PAUL H. SCHNEIDER  
N. SCOTT TASHJY

OF COUNSEL  
S. THOMAS SAGLIANO

JOHN C. GIORDANO  
(192-1989)

ELIZABETH DUBANIBSKY  
MICHELE A. QUERQUES  
JOHN F. VARLEY III  
SHERRY L. SPENCER  
DEBBIE KRANER GREGG  
STEVEN J. BRODMAN  
ANDREW S. ROBINS  
MICHAEL A. BRUNO  
SUSAN G. DAVIS  
MARGARET S. CARNELI  
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JODY W. WILSON  
JOANNE S. GRAY  
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PAUL V. FERRICOLA  
LAWRENCE J. SHARON  
TRACY A. ARMSTRONG  
SUSAN S. DOWDEN  
BRYAN H. SCHULMAN  
SEAN E. REGAN  
DEBRA J. RUBENSTEIN  
WILLIAM M. HEALEY  
GERALD P. LALLY

FILE NO.

John Richard Ward  
N. J. S. P.#230300  
Southern State Correctional Facility  
P. O. Box 150  
Phase II Unit 10-L  
Delmont, New Jersey 08314

RE: WARD VS. RONALD D. OHNMACHT  
CIVIL ACTION NO. 92-1712(GEB)

Dear Mr. Ward:

Enclosed please find and original and one copy of Defendant,  
Ronald Ohnmacht's Answers to Plaintiff, John Ward's First Set of  
Interrogatories.

Very truly yours,

*Michele A. Querques*  
MICHELE A. QUERQUES

MAQ:kd

Enc.

cc: Bernard M. Reilly, Esq.

Exhibit D

♻️  
RECYCLED PAPER  
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100% RECYCLED PAPER

*Dowd & Reilly*  
*Counselors At Law*

WILLIAM F. DOWD  
N.J. & N.Y. BARS  
BERNARD M. REILLY

JOHN T. LANE, JR.  
N.J. & L.A. BARS

*30 Maple Avenue*  
*Red Bank, NJ 07701*  
*(908) 530-7777*  
*Fax (908) 530-8113*

March 23, 1993

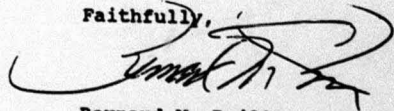
Guy Ryan, Esquire  
Giordano, Halleran & Ciesla  
125 Half Mile Road  
Box 190  
Middletown, NJ 07748

RE: Ward v. Middletown, et al  
Civil Action No. 92-1712 (GEE)

Dear Mr. Ryan:

Enclosed please find three copies of Substitution of Attorney for  
the above captioned matter.

Faithfully,



Bernard M. Reilly

Exhibit E

ALL STATE LOCAL AND FEDERAL GOVERNMENTS USE RECYCLED PAPER



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(609) 893-3900 (808) 341-9600

PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER:

JOHN C. GIORDANO, JR.  
JOHN R. HALLERAN  
FRANK A. LEE, A  
BENJAMIN J. BENTON, JR.  
TODD A. PLESNIK  
JOHN A. AIELLO  
MICHAEL J. BRODS  
RICHARD L. FRIEDMAN  
GEORGE J. TYLER  
MARK S. BELLIN  
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EDWARD S. RADZELY  
STEVEN M. BERLIN  
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WILLIAM J. BOVE  
TOBI E. GRAFF  
MICHAEL J. CANNING  
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M. SCOTT TASHLY  
MICHELE A. QUERQUES

OF COUNSEL  
S. THOMAS DAGLIANO

JOHN C. GIORDANO  
(192-1989)

ELIZABETH DUBANOWSKI  
JOHN F. VORLEY III  
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MICHAEL A. BRUND  
SUSAN S. DAVIS  
BARBARA S. CARMEL  
CURT E. ANDERSON  
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JOSEY V. WILSON  
DAVID M. SPETEN  
JOANNE E. GRAY  
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LISA A. BUTTO  
DAVID M. RICHMAN  
THOMAS J. MULLIGAN  
GUY P. RYAN  
ROBERT J. BURRO  
GREGG M. HOBBIE  
PATRICIA J. COTTRELL  
LAURA A. LANE  
PAUL V. FERRICOLA  
LAWRENCE J. SHARON  
TRACY A. CONYTONS  
SUSAN S. DOWDIN  
JANE E. ROGAN  
DEBRA J. DUBENSTEIN  
WILLIAM H. HEALTY  
GERALD P. LALLY  
TODD A. STAREY

FILE NO.

July 9, 1993

8239/001

Detective Ronald D. Ohnmacht  
Middletown Township Police Department  
Kings Highway  
Middletown, NJ 07748

RE: Ward v. Township of Middletown, et al  
Civil Action No.: 92-1712(GEB)

Dear Detective Ohnmacht:

I am pleased to advise you that the United States District Court has granted Summary Judgement in your favor in the above-referenced law suit. Enclosed please find a copy of a Memorandum and Order by the Honorable Garrett E. Brown, Jr., U.S.D.J. As you can see, we successfully moved for Summary Judgement in your favor.

It is possible that John Ward could file an appeal from this Order, but that appeal would most likely have to await the outcome of his claim against the other defendants. Accordingly, Summary Judgement does not become a final judgement until the conclusion of the law suit against the remaining defendants. Please contact me if you have any questions in this regard.

Very truly yours,

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation,

By:   
GUY P. RYAN, ESQ.

GPR:jmk  
Enclosure  
cc: Norman M. Hobbie, Esc.

EXHIBIT F

♻️ RECYCLED  
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100% RECYCLED PAPER



JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH

71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1291  
(908) 431-7160  
FAX (908) 409-3673  
FAX (908) 409-4830

ALTON D. KENNEY  
FIRST ASSISTANT PROSECUTOR  
ROBERT A. HONECKER, JR.  
SECOND ASSISTANT PROSECUTOR  
WILLIAM D. GUIDRY  
DIRECTOR OF TRIAL DIVISION  
WILLIAM P. LUCIA  
CHIEF OF INVESTIGATIONS

To Defense Counsel:

Re State of New Jersey v. GREG BRUNO  
Indictment No. 95-07-1117

Pursuant to R. 3:13-3(a) the State of New Jersey hereby furnishes the defendant with copies of all relevant papers, records, and documents now in the possession or control of the prosecuting attorney. Any books, tangible objects, buildings, or places referred to in the enclosed papers as being within the custody or control of the State will be made available for inspection by the defendant upon receipt of notice given two days in advance of the date requested for inspection.

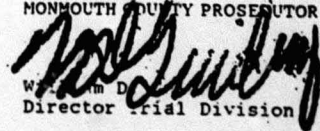
The State further provides the defendant with a list containing the names and addresses of all persons known to have relevant information in regard to the above matter, including therein a designation of those persons whom the State may call as witnesses. This list may be amended as the result of subsequent investigation.

The State of New Jersey requests reciprocal Discovery pursuant to R. 3:13-3(b) by way of formal answer within twenty days from the receipt of this letter.

The State of New Jersey also requests that if the defendant is to rely in any way on the defense of alibi, the defendant comply with the provisions of R. 3:11-1.

Very truly yours,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

By:   
Director Trial Division

WDG:md



Page 2

GRAND JURY MINUTES WERE TAKEN ON: 6-20-95

GRAND JURY STENOGRAPHER: Terry Gribben Transcribing Service  
111 Sand Spring Drive  
Eatontown, NJ 07724  
908 542-5282

WITNESSES:

Cpl. John Bauers	Middletown PD
Sgt. John Lenge	Middletown PD
DSG Michael Cerame	Middletown PD
Det. Frederic Deickmann	Middletown PD
Robert Tomkins	670 Monmouth Dr. Ft. Monmouth
Edward Franchek	1272 Hwy 36, Hazlet Trailer Pk #7, Hazlet
Robert Feldman, DDS	207 Maple Ave, Red Bank
Andrew Farkas, M.D.	Riverview Med. Ctr., 1 Riverview Plaza, Attn: Emergency Dept.
Robert Wold M.D.	Red Bank Radiology, 6 Riverview Plaza, Red Bank
Kelly Meed, RN	Riverview Med. Ctr. 1 Riverview Pl.

ENCLOSURES:

1 pg Waiver of Immunity signed by Gregory Bruno  
25 pg Medical records of Robert Tomkins from Riverview Med.  
3 pgs Arrest report of Gregory Bruno  
16 pg Invest report  
4 pg Statement of Gregory Bruno dtd 12/11/94  
3 pg Statement of Robert Tomkins dtd 2/7/95  
2 pgs Rap sheet of Gregory Bruno dtd 5/3/95  
1 pg Rap sheet of Gregory Bruno dtd 12/22/94  
Plea offer letter

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Exhibit G

THE STATE OF NEW JERSEY

v.  
STEVEN XANTHOS,

69

FILED  
MONMOUTH COUNTY

MAY 13 1986

*[Signature]*  
County Clerk

NEW JERSEY SUPERIOR COURT  
MONMOUTH COUNTY

LAW DIVISION - CRIMINAL

S.B.I. No. Not Available

DATE OF ARREST 9/4/85

JUDGMENT OF CONVICTION

Defendant

The defendant on August 22, 1985 was indicted on Indictment ~~was assessed~~ on Accusation # 1173-8-85

The defendant on September 9, 1985 entered a plea of not guilty to the Indictment

~~was assessed~~ for the crime(s) of: (Please include Title, Statute and Degree)

Aggravated Assault (ct.1) (2nd degree) N.J.S.2C:12-1b(1)  
Official Misconduct (cts. 2 & 3) (2nd degree) N.J.S.2C:30-2b

and the defendant having on March 6, 10, 11, 12, 13, 17 & 18, 1986

RETRACTED PLEA OF NOT GUILTY AND ENTERED A PLEA OF GUILTY TO:

~~BEEN TRIED~~ <sup>without</sup> with A JURY AND A ~~verdict~~ <sup>finding</sup> OF ~~GUILTY~~ Not Guilty of ct.1 but Guilty of a lesser included offense of Simple Assault, Guilty on ct. 2 and Not Guilty on ct. 3 but Guilty of a Lesser included offense of Accomplice having been rendered on March 18, 1986

IT IS THEREFORE, on May 9, 1986

Ordered and Adjudged that the defendant be and is sentenced as follows:  
Count 1 merges with ct.2(2nd degree)- to serve 250 hours of Community Service and is to forfeit office and is to pay a Fine of \$2500 and \$14.00 costs of court (N.J.S.A. 22A:3-1, 52; N.J.S.A. 22A:3-2, 512).  
Ct.3 a lesser included offense - 250 hours of Community Service and is to run concurrently with count 2.

A penalty of \$25 is imposed on each count on which the defendant was convicted unless the box below indicates a higher penalty pursuant to N.J.S.A. 2C:43-3.1.

penalty imposed on count(s) is \$ . respectively.

gb Total Fine \$2500 . Total Restitution 0 . Total VCCB Penalty \$50.00

Installment payments, if applicable, are due at the rate of \$ per

STATEMENT OF REASONS REQUIRED BY R. 3:21-4(e) APPEARS ON THE REVERSE SIDE

70

ATTORNEY FOR DEFENDANT  
Upon entry of Guilty Plea or Conviction

Defendant to receive 5 3:21-R credit  
for time spent in custody

From \_\_\_\_\_ to \_\_\_\_\_

John Mullaney, Attorney  
At time of Sentencing

Days credit None

John Mullaney, Attorney

Case J. [Signature]  
County Clerk  
May 9, 1986  
Date

**STATEMENT OF REASONS, R. 3:21-4(e)**

The aggravating factors: There is a need to punish this defendant. There is a need to deter others. There is a need for retribution. A lesser sentence would deprecate the seriousness of the offense.

The mitigating factors: The defendant is a high school graduate with college credits. He has an excellent character. The defendant is a veteran of the U.S. Army with no previous record. The offense was the result of unusual circumstances. The victim induced the commission of the offense. It is unlikely to commit another offense. The defendant's character and condition of the defendant are such that his imprisonment would be an injustice which overrides the need to punish others.

[Signature]  
MICHAEL D. FARREN, J.S.C. JMS:GX

ORIGINAL  
MONMOUTH COUNTY  
DEC 24 1998  
WILLIAM W. CAFFREY  
Deputy C.  
Superior C.

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY, : SUPERIOR COURT OF NEW JERSEY  
 : LAW DIVISION - CRIMINAL PART  
 : MONMOUTH COUNTY  
 Plaintiff, : Case No. 98-00489  
 :  
 v. : Criminal Action  
 :  
 GREGORY S. BRUNO, : **NOTICE OF MOTION TO COMPEL THE**  
 : **PROVISION OF ALL DISCOVERY TO**  
 Defendant. : **DEFENDANT**

TO: Criminal Motions Clerk  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728  
  
The Honorable James A. Kennedy  
Judge of the Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey 07728

Peter E. Warshaw, Jr.  
Assistant Prosecutor  
Monmouth County Prosecutor's Office  
East Wing, Courthouse, Third Floor  
Freehold, New Jersey 07728-1261

SIRS/MADAM:  
*February 5, 1999*  
PLEASE TAKE NOTICE that, on ~~January 8, 1999~~, or a time to be set by the Court,  
Giordano, Halleran & Ciesla, P.C., counsel for Defendant, Gregory S. Bruno, shall move before

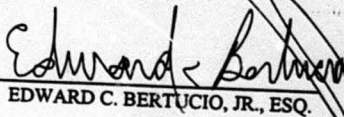
the Honorable James A. Kennedy, J.S.C., for an Order compelling the immediate provision of  
all discovery to the defense in connection with the Indictment brought against Defendant.

In support of the foregoing Motion, the Defendant shall rely upon the attached  
Attorney's Certification in Lieu of Affidavit of Edward C. Bertucio, Jr., Esq., and Letter Brief.

Pursuant to the Court Rules, an original and two copies of a proposed form of Order is  
attached hereto and made a part hereof. Oral argument is hereby requested.

GIORDANO, HALLERAN & CIESLA, P.C.  
Attorneys for Defendant, Gregory S. Bruno

By:

  
EDWARD C. BERTUCIO, JR., ESQ.

Dated: December 22, 1998

ORIGINAL FILED  
MONMOUTH COUNTY  
DEC 24 1998  
WILLIAM DISCENTER

CERTIFICATION OF SERVICE

I hereby certify that the original Notice of Motion, supporting papers, and proposed form of Order have been filed with the Criminal Motions Clerk, Monmouth County Courthouse, Freehold, New Jersey, via Lawyers Service, on the below-referenced date. Clear copies have also been forwarded, via Lawyers Service, to The Honorable James A. Kennedy, J.S.C., Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey 07728, and Peter E. Warsaw, Jr., Assistant Prosecutor, Monmouth County Prosecutor's Office, East Wing, Courthouse, Third Floor, Freehold, New Jersey 07728-1261, on the below-referenced date.

*Edward C. Bertucio*  
EDWARD C. BERTUCIO, JR., ESQ.

Dated: December 22, 1998

ODMA\PCD\CS\GHCDOS\424361

**GIORDANO, HALLERAN & CIESLA**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
125 HALF MILE ROAD  
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FAX: (732) 324-6599  
441 EAST STATE STREET  
TRENTON, NEW JERSEY 08625  
(609) 693-3900  
PLEASE REPLY TO: MIDDLETOWN

DIRECT DIAL NUMBER  
(732) 219-5848

DIRECT E-MAIL

JOHN C. GIORDANO, JR.  
JOHN S. HALLERAN  
FRANK I. CIESLA  
BERNARD J. BERRY, JR.  
THOMAS A. FLISHEIM  
JOHN A. AIELLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN DA  
GEORGE J. TILLY  
JOHN A. GIUNCO  
NORMAN M. HOBBS DA  
EDWARD I. RADZELY  
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SEAN E. REGAN  
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MICHAEL A. FAME  
J. SCOTT ANDERSON  
CRAIG I. VIRGIL

MICHAEL J. CANNING G  
PAUL N. SCHMEIDER  
W. SCOTT TASHNY  
MICHELLE A. QUEIROZ  
DAVID P. CORRIGAN C  
EDWARD C. BERTUCIO, JR. A  
ANDREW B. ROBINS  
MICHAEL A. BRUNO  
MARGARET B. CARMELI  
KURT E. ANDERSON  
PAUL T. COLELLA  
STEVEN J. SROOGMAN  
GERALD F. LALLY

CHARLES A. CERUSI  
PATRICE A. FORD  
PATRICE I. CONVERY  
JACQUELINE DECARLO  
GREGORY A. PETROFF  
STEVEN M. DALTON  
NICOLE DEVANEY  
AMY E. WEEDMAN  
EDWARD C. NORMANDIN

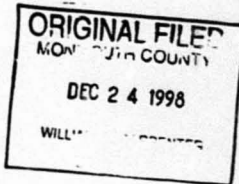
COUNSEL:  
ELIZABETH CHRISTIAN  
JOANNE I. GRAY  
OF COUNSEL:  
S. THOMAS GAGLIANO  
JOHN C. GIORDANO  
(1971-1999)

CERTIFIED CIVIL  
TRIAL ATTORNEY  
& CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.  
11308-0001

December 22, 1998

VIA LAWYERS SERVICE  
Honorable James A. Kennedy, J.S.C.  
Monmouth County Superior Court  
71 Monument Court  
Freehold, New Jersey 07728



Re: State of New Jersey v. Gregory S. Bruno  
Case No. 98-00489

Dear Judge Kennedy:

Please accept this letter in lieu of a more formal brief in support of Defendant's Motion to Compel the State to provide discovery. For a recitation of the relevant procedural and factual history in connection with this Motion, the Court is respectfully directed to the Attorney's Certification in Lieu of Affidavit of Edward C. Bertucio, Jr., Esq., which is incorporated herein by reference in lieu of repetition.

After an indictment has been returned, a copy of the Indictment together with discovery for each defendant named therein shall be delivered to defendant's counsel within 28 days of the return of the indictment. R. 3:9-1(a). Such discovery is further commanded by R. 3:13-3(b), which also requires that discovery be available within 28 days of the return of the Indictment.

In addition, Defendant has a Constitutional right to prepare for the trial of his case. State v. Mingo, 77 N.J. 576, 581-582 (1978), states:



GIORDANO, HALLERAN & CIESLA  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Honorable James A. Kennedy, J.S.C.

December 22, 1998

Page 2

"The right to counsel afforded to criminal defendants by the Sixth Amendment of the United States Constitution and by Article One, Paragraph 10 of the New Jersey Constitution comprehends the right to effective assistance of counsel. To safeguard the defense attorney's ability to provide effective assistance guaranteed by these Constitutional provisions, it is essential that he be permitted full investigative latitude in developing a meritorious defense in his client's behalf."

Thus, the defense needs access to the discovery early in the case to most effectively represent the defendant, investigate this matter, and prepare the defense in this case.

In this case, Assistant Prosecutor Warsaw has indicated that the Monmouth County Prosecutor's Office intends to act in circumvention of both Constitutional commandment and the New Jersey Rules of Court. The Court should not countenance this violation of the discovery rules. Therefore, the Defendant's Motion in this matter must be granted. Further, this matter should not be stayed. Mr. Bruno has been incarcerated in lieu of a very high cash bail for nearly one year. Yet, we are still at the outset of this case where only the Indictment has been returned and he has not even had the opportunity to look at discovery. This is unfairly prejudicial to his ability and right to conduct a timely investigation of the State's allegations and to develop a meritorious defense on his behalf. State v. Mingo, supra, at 582. Thus, any application for a stay in response to this Motion should be denied by this Court as well.

Respectfully submitted,

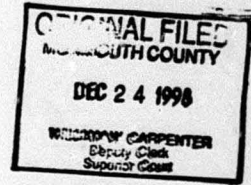
  
Edward C. Bertucio, Jr., Esq.

ECB/job

cc: Peter Warsaw, Assistant Monmouth County Prosecutor  
::ODMA/PCDOCS/GHCDOCS424451

GIORDANO, HALLERAN & CIESLA, P.C.  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.



STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

**CERTIFICATION IN LIEU  
OF AFFIDAVIT OF  
EDWARD C. BERTUCIO, JR., ESQ.**

I, Edward C. Bertucio, Jr., Esq., of full age, an attorney-at-law in the State of New Jersey, hereby certify the following facts to be true to the best of my knowledge, information and belief:

1. I am a member of the law firm of Giordano, Halleran & Ciesla, a Professional Corporation, attorneys for the Defendant, Gregory Bruno, in the within litigation. As such, I am fully familiar with the facts set forth herein.
2. On January 18, 1998, the State alleges that a homicide occurred in Middletown Township.
3. On February 1, 1998, Defendant, Gregory Bruno, was arrested and charged with murder and other offenses. He has been held continuously since the date of his arrest at the Monmouth County Correctional Institution in lieu of an extremely high cash bail. Shortly after his arrest, Defendant retained this firm to represent him in this matter.

4. Beginning in April 1998, the Monmouth County Prosecutor's Office assumed the erroneous position that this law firm could not represent Mr. Bruno in this matter because of a supposed conflict of interest. In approximately July of 1998, the Monmouth County Prosecutor's Office filed a Motion attempting to disqualify this firm from representation of Mr. Bruno in this matter. While the Motion was pending, the undersigned requested discovery in this matter. The letter requesting same is attached as Exhibit "A." The Prosecutor's Office refused to provide same. Their letter is attached as Exhibit "B."

5. This firm opposed the Motion to Disqualify and filed a Cross-Motion requesting an Order that the matter be presented to the Grand Jury in a speedy fashion and that discovery be immediately provided in this case.

6. In September of 1998, the Motions were argued by the parties before the Honorable James A. Kennedy, J.S.C.

7. On December 11, 1998, the undersigned learned that the Court had denied the Prosecutor's Motion to Disqualify this law firm from representing Mr. Bruno in this matter. Therefore, this law firm is counsel of record in this case.

8. On December 14, 1998, the undersigned learned from Assistant Monmouth County Prosecutor Peter Warshaw that Defendant has been indicted in this matter. On December 22, 1998 the Asbury Park Press reported the return of the Indictment.

9. Assistant Monmouth County Prosecutor Warshaw further indicated on December 14, 1998 that the State intends to appeal the Court's denial of its Motion to Disqualify this law firm and that the Prosecutor's Office further intends to withhold discovery in this matter pending its appeal of the disqualification motion. Assistant Monmouth County Prosecutor Warshaw indicated that a Motion for discovery would be necessary for the defense in this matter. Finally,

he indicated that should said Motion be granted to the defense, the Prosecutor's Office intends to appeal that Motion as well.

10. There is not a stay of proceedings in this matter. Defendant is apparently indicted for murder and, therefore, there cannot be a stay of proceedings in this matter, lest his right to a speedy trial be violated. The Court should not entertain any application to stay these proceedings, nor order a stay of these proceedings.

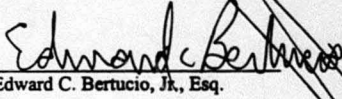
11. Since this firm was retained in this matter, it retained an investigator to investigate this matter on Defendant's behalf. That investigation has been ongoing since the initiation of this firm's representation in this matter. However, it has been extremely restricted and limited because the defense does not have discovery in this case. This is to the prejudice of the Defendant who has been incarcerated for nearly one year without the benefit of the provision of discovery, let alone the trial of this matter.

12. Without the discovery, the Defendant has been stymied in his efforts to prepare a defense to the murder charge.

13. The State's intention to withhold discovery unilaterally without any legal order or legal basis to do so is in clear contravention of Defendant's Constitutional rights and his rights under R. 3:9-1(a) and R. 3:13-3.

14. Wherefore, Defendant respectfully requests this Court to grant his Motion compelling the immediate provision of discovery to the defense, so the Defendant may meaningfully prepare for trial as is his absolute right. It is further respectfully requested that any application for a stay of these proceedings be opposed.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Edward C. Bertucio, Jr., Esq.

Dated: December 22, 1998

::ODMA\FCDOS\GHCDOCS\42441\1

Exhibit A

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



# GIORDANO, HALLERAN & CIESLA

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
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PLEASE REPLY TO MIDDLETOWN

DIRECT DIAL NUMBER:

DIRECT E-MAIL:

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JOHN B. HALLERAN  
FRANK B. CIESLA  
BERNARD J. SEERY, JR.  
THOMAS A. FLISHEM  
JOHN A. AISLLO  
MICHAEL J. GROSS  
RICHARD L. FRIEDMAN DA  
GEORGE J. TYLER  
JOHN A. CIUNCO  
HOWARD W. HOBBS DA  
EDWARD J. LABIELLY  
STEVEN M. BERLIN D  
SHARLENE A. HUNT

NICHOLAS P. RAPUS  
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JAY E. SECKER  
TIMOTHY B. LYONS  
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MICHAEL A. PANE

PHILIP B. POLENZA  
MICHAEL J. CANNING D  
PAUL W. SCHNEIDER  
B. SCOTT TALMAY  
MICHAEL A. QUERQUEZ  
DAVID P. CORRIGAN D  
EDWARD C. SESTUCCIO, JR. A  
ANDREW S. ROBINI  
MICHAEL A. BRUNO  
MARGARET B. COHNELI  
COURT E. ANDERSON  
P. UL T. COLELLA  
STEVEN J. BRODMAN

J. SCOTT ANDERSON  
 CRAIG I. VIRGIL  
CHARLES A. CERUSI  
MICHAEL J. VITIELLO  
PATRICK S. CONVERY  
JACQUELINE DECARLO  
NICOLE DEVANEY

COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT E. LINDIN  
JOANNE I. GRAY  
.....  
OF COUNSEL  
I. THOMAS GAGLIANO  
.....  
JOHN C. GIORDANO  
(1973-1998)

OCERTIFIED CIVIL  
TRIAL ATTORNEY  
& CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.

11308/001

July 13, 1998

Peter Warsaw, Assistant Prosecutor  
Monmouth County Prosecutor's Office  
Court House, East Wing, Third Floor  
71 Monument Park  
Freehold, New Jersey 07728-1261

Re: State v. Gregory Bruno  
Prosecutor's Case No.: 98-00489

Dear Mr. Warsaw:

It has been sometime since I have heard from you with regard to the above-referenced matter, specifically, the Prosecutor's Office's Motion to have this firm disqualified as counsel for Defendant, Gregory Bruno. Moreover, I still have not received the requested discovery in this matter.

As you are aware, my receipt of the discovery in this matter is imperative for two reasons, specifically:

1. It will allow this firm to properly respond to your anticipated Motion to disqualify this firm; and
2. It will allow this firm to properly investigate this matter (i.e., the continual delay in presenting this matter before the Grand Jury and supplying this firm with the requested discovery has hampered Defendant's attempts to properly investigate the charges and pursue a defense).

Accordingly, if we do not receive the requested discovery within seven days from the date of your receipt of this letter, Defendant will file a motion to compel the production of same.

**GIORDANO, HALLERAN & CIESLA**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

Peter Warsaw, Assistant Prosecutor

July 13, 1998

Page 2

Should you have any questions or concerns with regard to the foregoing, please contact me forthwith.

Very truly yours,

GIORDANO, HALLERAN & CIESLA, PC

*Edward C. Bertucio, Jr.*

Edward C. Bertucio, Jr., Esq.

ECB/mem

::ODMAVPCDCGSHCDOCS74001



Exhibit B

100% RECYCLED PAPER



JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

OFFICE OF THE COUNTY PROSECUTOR  
COUNTY OF MONMOUTH

71 MONUMENT PARK  
FREEHOLD, NEW JERSEY 07728-1261

(908) 431-7180  
FAX (908) 409-3673  
FAX (908) 409-4830

ALTON D. KENNEY  
FIRST ASSISTANT PROSECUTOR  
ROBERT A. HONECKER, JR.  
SECOND ASSISTANT PROSECUTOR  
WILLIAM D. GUIDRY  
DIRECTOR OF TRIAL DIVISION  
WILLIAM P. LUCIA  
CHIEF OF INVESTIGATIONS

July 17, 1998

Edward C. Bertucio, Jr., Esq.  
GIORDANO, HALLERAN & CIESLA  
125 Half Mile Road, P.O. Box 190  
Middletown, New Jersey 07748

Re: State of New Jersey v. Gregory Bruno  
Case No. 97-00489

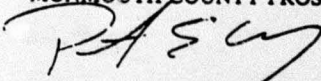
Dear Mr. Bertucio:

I received your letter dated July 13, 1998, subsequent to our telephone conversation of July 17, 1998. As we discussed, the motion to disqualify counsel was filed on July 16 and is returnable before The Honorable John A. Ricciardi, P.J.Cr. on August 7, 1998. This office will not provide discovery until the time of the arraignment and certainly not until the issue of representation is resolved.

I can be reached directly at 577-6790 and look forward to hearing from you at your earliest convenience regarding this matter.

Very truly yours,

JOHN KAYE  
MONMOUTH COUNTY PROSECUTOR

By:  Assistant Prosecutor  
Director, Major Crimes Unit

PEW:pl

GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
125 Half Mile Road  
P.O. Box 190  
Middletown, New Jersey 07748  
(732) 741-3900  
Attorneys for Defendant, Gregory S. Bruno

STATE OF NEW JERSEY

v.

GREGORY S. BRUNO,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - CRIMINAL PART  
: MONMOUTH COUNTY

: Case No. 98-00489

: Criminal Action

: **ORDER COMPELLING PROVISION  
OF DISCOVERY**

THIS MATTER, having been opened to the Court upon Defendant's Motion for the immediate provision of discovery. Giordano, Halleran & Ciesla, P.C., attorneys for Defendant, Gregory S. Bruno, on notice to the State of New Jersey and the Monmouth County Prosecutor's Office, and the Court having considered the papers filed by the parties and their arguments in open Court; and good cause having been shown,

IT IS on this        day of                    1999,

ORDERED that the Monmouth County Prosecutor's Office shall provide all discovery to counsel for Defendant within \_\_\_\_ days hereof;

IT IS HEREBY FURTHER ORDERED that the above-captioned matter is not stayed pending any appeals by any parties of any issues in the matter;

IT IS HEREBY FURTHER ORDERED that a copy of this order be served upon all  
counsel of record within \_\_\_ days hereof.

HONORABLE JAMES A. KENNEDY, J.S.C.

:ODMA\PCDOCS\GHCDOCS\42439\1

**APPLICATION FOR REVIEW OR  
 MODIFICATION OF FORMAL AWARD**

**PETITIONER**

SOCIAL SECURITY NUMBER  
148-34-9700

NAME  
Ronald Ohnmacht

ADDRESS (including County) Monmouth  
15 Mohawk Avenue  
Red Bank, NJ 07701

**ATTORNEY FOR PETITIONER**

NEW JERSEY  
 REGISTRATION NUMBER

OR

FEDERAL EMPLOYER  
 IDENTIFICATION NUMBER

NAME  
Rudnick, Addonizio, Pappa & Comer

ADDRESS  
25 Village Court  
Hazlet, NJ 07730

TELEPHONE (Area Code)  
(732) 264-4400

vs.

**RESPONDENT**

NAME  
Township Of Middletown

ADDRESS (including County) Monmouth  
1 Kings Highway  
Middletown, NJ 07748

NEW JERSEY  
 REGISTRATION NUMBER

OR

FEDERAL EMPLOYER  
 IDENTIFICATION NUMBER

**INSURANCE CARRIER**

NAME (Indicate if Not Covered or Self-Insured)  
Self-Insured

ADDRESS

CARRIER'S CLAIM FILE NUMBER

TO THE DIVISION OF WORKERS' COMPENSATION: (Applicant) Ronald Ohnmacht hereby makes application to the Division of Workers' Compensation to review the Order entered on 6/24/97 by Neale F. Hooley, J.W.C. and respectfully states:

APPLICANT'S ADDRESS: 15 Mohawk Avenue, Red Bank, New Jersey 07701.

As to Claim Petitioner	Age	Sex	Marital Status	Date of Injury	Date of Last Compensation Paid	Present Employment Status
	53	M	M	6/11/93		

Copy of previous award and ~~medical reports~~ submitted are attached.  Yes  No  
 This is the first (Number) application for Review or Modification of this award.

List all prior applications for Review or Modification of the Award.

       Date        Place of Hearing        Hearing Official

The following is an accurate, succinct description of the Factual, Medical, and Legal reasons for the relief sought in the Application: (Use additional sheets, if necessary). The Petitioner's condition has worsened with respect to injuries sustained on 6/11/93. Therefore, the Petitioner is entitled to additional compensation.   
 WC-14 - Application for Review or is entitled to additional compensation.   
 Modification of Formal Award (Rev. 12/97)   
 Rev. 4/97 Print date 4/97

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 (800) 878-0890

State of New Jersey  
Department of Labor  
Division of Workers' Compensation  
CN381  
Trenton, New Jersey 08625-0381

WC-3602 (9-12-92)

(DO NOT FILL IN)

EMPLOYEE'S CLAIM PETITION  
SYSTEM GENERATED

CASE No. 99-008543  
D.O. FREEHOLD

P	SOCIAL SECURITY NUMBER	148-34-9700
E	NAME	RONALD D OHNMACHT
T	ADDRESS (Including County)	MONMOUTH COUNTY
I		15 MOHAWK AVE
O		RED BANK NJ 07701
N	DECEDENT NAME	

VS

R	NAME	TWP OF MIDDLETOWN
E	ADDRESS (Including County)	MONMOUTH COUNTY
S		1 KINGS HIGHWAY
P		MIDDLETOWN NJ 07748
O	<input type="checkbox"/> NEW JERSEY REGISTRATION NUMBER	
N	<input checked="" type="checkbox"/> FEDERAL EMPLOYER IDENTIFICATION NUMBER	21-6000871

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<input type="checkbox"/> NEW JERSEY REGISTRATION NUMBER		
<input type="checkbox"/> SSN	22-2127529	AARL
<input checked="" type="checkbox"/> FEDERAL EMPLOYER IDENTIFICATION NUMBER		
NAME	RUDNICK ADDONIZIO & PAPPA	
ADDRESS	25 VILLAGE COURT HAZLET NJ 07730	
TELEPHONE (Area Code)	(732) 264-4400	

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NAME (Indicate if Not Covered or Self-Insured) NJ REG. OR PER	21-6000871
ADDRESS	TWP OF MIDDLETOWN
	1 KINGS HIGHWAY MIDDLETOWN NJ 07748
CARRIER'S CLAIM FILE NUMBER	

TO THE DIVISION OF WORKERS' COMPENSATION:

Petitioner, alleging that Petitioner sustained an injury by an accident arising out of and in the course of Petitioner's employment with Respondent, compensable under R.S. 34:15-7 et seq. supplements and amendments, respectfully states:

DATE OF ACCIDENT OR DATE OF OCCUPATIONAL EXPOSURE	DATE STOPPED WORK	DATE RETURNED TO WORK	
OCCUPATIONAL EXPOSURE 1999			
DATE INJURY REPORTED TO EMPLOYER AND TO WHOM	SEX	DATE OF BIRTH	MARITAL STATUS
	MALE	11/12/45	MARRIED
WHERE ON THE JOB	OCCUPATION		
HOW INJURY OCCURRED	CONSTANT EXPOSURE		

GROSS WEEKLY WAGES	RATE OF COMPENSATION	TEMPORARY DISABILITY PAID	PERMANENT DISABILITY PAID
\$ 71,894	\$ MAX	\$ NONE	\$

DESCRIBE EXTENT AND CHARACTER OF INJURY: If there has been amputation or loss of usefulness of any member or impairment of any physical function, explain fully.  
INJURIES TO THE NECK SHOULDERS AND CERVICAL AREA

Petitioner ~~DOES~~ (DID NOT) seek compensation at any informal hearing.  
A true copy of Petitioner's treating physician's report is attached hereto  Yes  No  
Medical aid (WAS) ~~WAS NOT~~ furnished by Petitioner's employer.  
Give names and addresses of physicians and hospitals:

DATE OF FILING	03/17/99
JURAT VERIFIED	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

are you eligible for Medicaid benefits at the time of the accident?  Yes  No  
d you become eligible for Medicaid benefits after the accident?  Yes  No  
u are advised that Medicaid payments related to the accident are to be repaid in accordance  
th N.J.S.A. 30:40-1, et seq.

~~AW-402-9815~~  
A-3215-98

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SUPERIOR COURT OF NEW JERSEY  
MONMOUTH COUNTY  
LAW DIVISION - CRIMINAL PART  
COMPLAINT NO.: 1998-431331  
A.D. NO.:

x ----- x  
STATE OF NEW JERSEY,

**FILED**  
APPELLATE DIVISION

REC'D  
APPELLATE DIVISION

-vs-

GREGORY BRUNO,

FEB 16 1999

TRANSCRIPT

OF

MOTION HEARING

Defendant

x ----- x

Held at: Monmouth County Courthouse  
71 Monument Park  
Freehold, New Jersey

Heard on: September 11, 1998

B E F O R E:

THE HONORABLE JAMES A. KENNEDY, J.S.C.

TRANSCRIPT ORDERED BY:

PETER E. WARSHAW, JR., ESQ.  
(Assistant Monmouth County Prosecutor)

A P P E A R A N C E S:

PETER E. WARSHAW, JR., ESQ.  
(Assistant Monmouth County Prosecutor)  
Attorney for the State

EDWARD C. BERTUCIO, JR., ESQ.  
(Giordano, Halleran & Ciesla)  
Attorney for the Defendant

Audio Operator: Collette Lombardi

-----  
TERRY GRIBBEN'S TRANSCRIPTION SERVICE  
JUDY A. CONOVER  
111 SAND SPRING DRIVE  
EATONTOWN, NEW JERSEY 07724  
(732) 542-5282 FAX # (732) 389-3078

State v. Bruno

SHEET 1 PAGE 1	PAGE 3
<p>1 SUPERIOR COURT OF NEW JERSEY                  2 MONMOUTH COUNTY                  3 LAW DIVISION - CRIMINAL PART                  4 COMPLAINT NO.: 1998-431331                  5 A.D. NO.:</p> <p>6 x-----x                  7 STATE OF NEW JERSEY, :                  8 :                  9 : TRANSCRIPT                  10 : OF                  11 : GREGORY BRUNO, :                  12 : :                  13 : Defendant :                  14 : x-----x</p> <p>15 Held at: Monmouth County Courthouse                  16 71 Monument Park                  17 Freehold, New Jersey</p> <p>18 Heard on: September 11, 1998</p> <p>19 B E F O R E:                  20 THE HONORABLE JAMES A. KENNEDY, .S.C.                  21 TRANSCRIPT ORDERED BY:                  22 PETER E. WARSHAW, JR., ESQ.                  23 (Assistant Monmouth County Prosecutor)</p> <p>24 A P P E A R A N C E S:                  25 PETER E. WARSHAW, JR., ESQ.                  (Assistant Monmouth County Prosecutor)                  Attorney for the State</p> <p>EDWARD C. BERTUCIO, JR., ESQ.                  (Giordano, Halleran &amp; Ciesla)                  Attorney for the Defendant</p> <p>Audio Operator: Collette Lombardi</p> <p>TERRY GIBBEN'S TRANSCRIPTION SERVICE                  JUDI A. CONOVER                  111 SAND SPRING DRIVE                  EATONTOWN, NEW JERSEY 07724                  (732) 542-5282 FAX # (732) 389-3078</p>	<p>1 Colloquy 3                  2 THE COURT: Gregory S. Bruno, Complaint                  3 Number 19980043-1331 and 0044. Enter your appearances,                  4 please.                  5 MR. WARSHAW: Peter E. Warshaw, Jr. Assistant                  6 Monmouth County Prosecutor appearing on behalf of the                  7 State.                  8 MR. BERTUCIO: Edward C. Bertucio, Jr.,                  9 Giordano, Halleran and Ciesla on behalf of Mr. Bruno,                  10 who is not present, Judge.                  11 THE COURT: This is the State's motion to                  12 compel counsel to recuse himself from the                  13 representation of Gregory S. Bruno. I'll hear you, Mr.                  14 Warshaw.                  15 MR. WARSHAW: Thank you, Judge. Before I get                  16 into the substance of the motion, there are a couple of                  17 issues which I would like the Court to be aware of,                  18 which have arisen both from the papers and just other                  19 facts that I would like the Court to know.                  20 Number one, the moving papers submitted by                  21 Mr. Bertucio suggest that the State has already                  22 concluded that this is going to be a capital murder                  23 case. As we discussed in chambers a few moments ago,                  24 that is definitely not so. The case will be presented                  25 to a grand jury, after the grand jury makes its                  determination as to what the appropriate charges are.</p>
<p>1 PAGE 2</p> <p>2 I N D E X</p> <p>3 ARGUMENT (WARSHAW) 3,42                  4 ARGU. BERTUCIO 18,52                  5 DECISION (Reserved)</p>	<p>1 PAGE 4</p> <p>2 Marshaw-argument 4                  3 the Homicide Review Committee of the Monmouth County                  4 Prosecutor's Office will evaluate the circumstances of                  5 the case and make an assessment as to whether an                  6 aggravating factor exists and can be proven beyond a                  7 reasonable doubt and then will make a determination as                  8 to whether or not this should be a capital case.                  9 It is far from clear, at this point, that                  10 this will be a capital case. It is -- I don't know yet                  11 and I'm a Prosecutor. And if the insinuation in the                  12 defense papers that this is a capital case has any                  13 weight with the Court and I respectfully suggest that                  14 under the law it shouldn't, I just wanted the Court to                  15 know it's still very open as an issue.                  16 Second thing I would note for the Court is                  17 that Det. Ohnmacht, who is critically involved in this                  18 matter, is present in Court today and for the record,                  19 because his name is difficult to spell, I will spell                  20 it. It's O H N M A C H T.                  21 And finally, this was said in the papers as                  22 well, but it bears repeating again in open Court. This                  23 is a very touchy, complex, legal issue. And I just                  24 want to emphasize to the Court the level of respect                  25 that I have for the Giordano, Halleran and Ciesla firm.                  They are a very established law firm. They are a very                  good law firm. I respect Mr. Hobbie and Mr. Bertucio.</p>

Terry Gibben's Transcription Service



State v. Bruno

SHEET 2 PAGE 5 Warsaw-argument 5	PAGE 7 Warsaw-argument 7
<p>1 I have known them both awhile. Mr. Hobbie much longer 2 than Mr. Bertucio. And these gentlemen are good 3 lawyers. The firm has an excellent reputation. This 4 is just a complex, legal issue, which we've got to 5 resolve.</p> <p>6 I'm not accusing anybody of deliberately or 7 inadvertently committing -- well, inadvertently, I 8 suppose, but I'm not suggesting that anybody 9 deliberately committed any sort of an ethics violation. 10 But I am suggesting that the violation is there.</p> <p>11 This case involves Det. Ron Ohnmacht and it 12 involves a series of representations that the Giordano 13 firm have with Ron Ohnmacht as a client. Ron Ohnmacht 14 is a detective with the Middletown Police Department. 15 He's been a detective there for -- an officer for 16 roughly 30 years. He's been a detective for in excess 17 of 25 years.</p> <p>18 He is critically involved in this case. Some 19 of the case law refers to chief prosecution witnesses 20 when they're looking at this issue. In all candor, I 21 don't know what the case law means when it says chief 22 witness. I can tell you that Det. Ohnmacht is 23 critically involved in this case. He is going to be a 24 major, major witness.</p> <p>25 His certification says he took approximately</p>	<p>1 firm because of his personal friendship with Norman 2 Hobbie. There was absolutely no other reason. He knew 3 Mr. Hobbie. They were friends. Through their 4 friendship he became aware of Mr. Hobbie's reputation 5 and he went to Mr. Hobbie because of that. I shouldn't 6 say it was simply the friendship. The friendship was 7 the primary motivating factor, viewed in conjunction 8 with Mr. Hobbie's reputation. He went to Giordano 9 because of Norman Hobbie.</p> <p>10 The Giordano firm represented Mr. Ohnmacht 11 and obtained an excellent result for him. The 12 complaints, the civil rights complaints which were 13 filed against him were dismissed on summary judgment.</p> <p>14 After some of the reply certifications that I 15 received were reviewed, which raised the issue that it 16 wasn't Mr. Hobbie in fact at all who represented Det. 17 Ohnmacht, I personally contacted the Federal Court, 18 because of that issue. I spoke to a clerk in the 19 Federal Court, whose name is in one of my supplemental 20 certifications. The clerk advises me that pursuant to 21 Federal Court records that Norman Hobbie is the 22 attorney of record.</p> <p>23 I don't have this underlying file. I have 24 not asked for a copy of it. It's in archives. The 25 Federal Court file is in archives in Kansas City. So I</p>
<p>PAGE 6 Warsaw-argument 6</p> <p>1 20 statements. I counted. It's closer to 30. I don't 2 have an exact number. But it's closer to 30. He is 3 involved in just about every single statement taken 4 from cases in this case. He is involved in efforts 5 to secure identifications from witnesses. He is 6 involved in the only interview which was conducted of 7 the defendant. Det. Ohnmacht conducted that interview, 8 he and another detective and he is the affiant in 9 several search warrants.</p> <p>10 His role in this case is overwhelming. He is 11 a major player in the case.</p> <p>12 Now, the factual backdrop of this case is, 13 again, also laid out in the papers and I'm assuming for 14 purposes of this argument that the certifications and 15 the attachments will be considered as part of the 16 record in this case and I don't need to repeat or read 17 every one of these.</p> <p>18 The basic issue here is this. Ron Ohnmacht 19 was represented by the Giordano firm twice. Once back 20 in 1992 or 1993 in connection with a federal lawsuit 21 filed by John Richard Ward, I believe his name was, 22 against the Township of Middletown and Ron Ohnmacht 23 personally.</p> <p>24 The Giordano firm represented Mr. -- or Det. 25 Ohnmacht there. Det. Ohnmacht retained the Giordano</p>	<p>PAGE 8 Warsaw-argument 8</p> <p>1 don't have it. They would order it for me, if I asked 2 them to. But the Federal Court told me and I then 3 represent to this Court that Norman Hobbie is the 4 attorney of record.</p> <p>5 It's pointed out in the certifications that 6 Ms. Querques, Michele and Guy Ryan did the work on the 7 case and I respectfully suggest to the Court that that 8 is not at all unusual. That's typical with the 9 structure of a firm that size that the associates would 10 do the work and especially in a representation which is 11 characterized in the defense certifications as being 12 largely pro forma. The associates did the work. But 13 when the letter was sent to Det. Ohnmacht telling him 14 about the good result on the summary judgment, Norman 15 Hobbie receives a carbon copy from his associate, Guy 16 Ryan.</p> <p>17 So, I mean, the -- in the end, Judge, I don't 18 think who in the firm actually did the work is an 19 issue, because if there is a disqualification of one 20 member of the firm, there is a disqualification as to 21 all. That's RPC 1.10, I think. So in the end it 22 really doesn't make a big difference and it doesn't 23 make a difference that Guy Ryan is not with the firm 24 anymore and it doesn't make a difference that it was a 25 relatively easy representation.</p>

Terry Gribben's Transcription Service

State v. Bruno

SHEET 3 PAGE 9	Warsaw-argument 9	PAGE 11	Warsaw-argument 11
<p>1 The more complex representation and the 2 greater issue in this case relates to a Worker's 3 Compensation issue that developed. Det. Ohmacht was 4 injured on the job and again, because of his friendship 5 with Norman Hobbie, he went back to the Giordano firm, 6 seeking representation in a Worker's Compensation 7 against the Township of Middletown. 8 Mr. Hobbie doesn't do that sort of work, so 9 he referred to Det. Ohmacht to Scott Tashjy of the 10 Giordano firm, who apparently practices exclusively in 11 that area. I don't know. 12 And it's those -- that representation which 13 was some time in 1997 and there are a lot of letters 14 relating to the representation that I have attached to 15 the certification of Det. Ohmacht. And I would note 16 that I have not seen the Worker's Compensation file. I 17 don't want to see it. I only have what Det. Ohmacht 18 has given me, which is the five letters, which are 19 attached. It's frankly none of my business to see the 20 file about his injuries. I don't want to see it. 21 But it's interesting to look at the letters, 22 which Det. Ohmacht was sent by Mr. Tashjy and since 23 they're all considered part of the record, I won't read 24 each of them verbatim. 25 But I would note, the first letter, which is</p>	<p>1 But the letter on October 13th of 1997 asked 2 Det. Ohmacht to specifically contact Mr. Tashjy and 3 advise as to the specific physical problem which the 4 detective was experiencing. The letter also indicates 5 that when the original Worker's Compensation matter was 6 settled, Mr. Tashjy reserved the right to reopen the 7 claim, but that they have to indicate to the Court how 8 the injuries have changed. Then he asked Det. Ohmacht 9 to contact him right away. 10 January 6, 1998 there is another letter to 11 Det. Ohmacht from Mr. Tashjy, which is very short and 12 I can read verbatim. "Please contact my office to 13 schedule an appointment which would be convenient for 14 yourself regarding the reopening of your Worker's 15 Compensation claim. If it is not convenient for you to 16 meet at my office, please be advised that I would be 17 happy to meet you at headquarters. I look forward to 18 speaking with you soon. Thank you for your attention" 19 and that's the end of the letter. 20 So January 6, 1998, 12 days before the murder 21 in this case took place, there was a letter from the 22 Giordano firm to Det. Ohmacht saying please make an 23 appointment to come in and see me. And if that's not 24 good, I'll even come to headquarters to see you. 25 January 18, 1998 is the murder in this case.</p>		
<p>PAGE 10 Warsaw-argument 10 1 attached as Appendix A-1 is dated June 26, 1997 and 2 this letter indicates that the Worker's Compensation 3 matter has essentially been resolved. And it then 4 pro- discuss in the letter the procedure for 5 filing a reopener claim. If something has to come up, 6 that you have to do something with 18 months. And I 7 don't know the language of Worker's Compensation, I 8 tell the Court very candidly. But the letter clearly 9 says that you've got to be looking 18 months down the 10 road, from June 26 of 1997 so you can make 11 determinations about how to best protect your rights. 12 There is a subsequent letter dated September 13 29, 1997, again from Mr. Tashjy to Det. Ohmacht, 14 enclosing blank applications for a review or 15 modification of formal award. And it requests that the 16 applications be signed and returned. This is September 17 29th of 1997. 18 October 13th of 1997 there is another letter 19 to Det. Ohmacht from Mr. Tashjy which indicates that a 20 reopener claim has been filed. 21 Now, I've since learned through the defense 22 certifications that that's a typographical error and 23 that the assertion is that a reopener claim had not 24 been filed at that point and I don't dispute that. I 25 have absolutely no basis to dispute that.</p>	<p>PAGE 12 Warsaw-argument 12 1 That's the crime date. 2 January 26, 1998, there is another letter to 3 Det. Ohmacht from Mr. Tashjy. The letter is 4 essentially the same letter which was sent on January 5 6th. It says, "Please contact me at your earliest 6 possible convenience, so that we may schedule a 7 mutually agreed upon date and time for an appointment, 8 so that we may discuss reopening your claim. In the 9 alternative, please advise me as to your availability 10 at headquarters and I will be happy to meet you there." 11 This is eight days after the homicide that 12 this letter is sent. 13 Now, the Court knows from the defense 14 certification that they take the -- the Giordano firm 15 takes the position that as of January 26th it didn't 16 represent Mr. Ohmacht. That as of January 6th, it 17 didn't represent Det. Ohmacht. That the 18 representation ceased at the time of the settlement to 19 the original Worker's Compensation claim. 20 I respectfully suggest to the Court that 21 simply cannot be so. And I am not making aspersions, I 22 am not making allegations. But it simply defies any 23 measure of credibility to suggest that these letters of 24 January 26th and January 6th are anything but an 25 attorney's communication with his client. There is</p>		

State v. Bruno

SHEET 4 PAGE 13 Warsaw-argument 13	PAGE 15 Warsaw-argument 15
<p>1 simply no way to construe that any other way. 2 The case took a different turn in February, 3 after Greg Bruno got locked up and charged with the 4 homicide. And it's at that point that there was some 5 communication between Mr. Tashly and Det. Ohnmacht. 6 It's outlaid in various certifications and affidavits. 7 And by the way, I have no problem with this hearing 8 being testimonial, if the Court thinks it will help. 9 Det. Ohnmacht is here and is ready to do it and I'm 10 sure he would waive any privilege with respect to this 11 issue. 12 Det. Ohnmacht is told and I can't certify to 13 any of these facts, but I can go with what I'm told, he 14 has a communication with Mr. Tashly. Mr. Tashly 15 essentially says, we have Gregory Bruno as a client 16 now, so we don't have you as a client anymore. 17 Det. Ohnmacht says, no way. I object to 18 that. That's not right. First of all, you've 19 represented me a couple of times and we've got this 20 matter currently pending that I want you to see 21 through. You saw, you did the first part of this. I'm 22 satisfied with the results. I do not want to switch 23 lawyers at this point. 24 Det. Ohnmacht's request was essentially 25 dismissed summarily and notwithstanding his consistent</p>	<p>1 impropriety to allow the Giordano firm to stay in this 2 case. 3 THE COURT: For the record, NEEDHAM is 298 NJ 4 Super 100. Go ahead. 5 MR. WARSHAW: Also, Judge, you can see from 6 the papers that there is a real issue which is raised 7 as to whether there is -- 8 THE COURT: Excuse me one moment. 9 (The Court and clerk confer) 10 THE COURT: You may proceed. 11 MR. WARSHAW: Yes. There is an issue raised 12 in the papers, Judge, as to whether it makes a 13 difference that the matter involving Det. Ohnmacht may 14 or may not have been retained, remained open, A., at 15 the time of the homicide, B., at the time that Gregory 16 Bruno was arrested, at the time that the Giordano firm 17 agreed to represent Bruno and even today. These are 18 all genuine issues that I respectfully suggest to the 19 Court do not matter. 20 Ethics Opinion 4:04 couldn't be clearer. And 21 that's cited verbatim in the State's brief. It 22 couldn't be clearer that the facts are so strongly 23 analogous that that opinion is almost dispositive here. 24 You can't represent this police officer 25 twice, including a representation which, at the very</p>
<p>PAGE 14 Warsaw-argument 14</p> <p>1 efforts -- when I say -- well, certainly his consistent 2 notice that he wishes for the Giordano firm to continue 3 to represent him, they take the position that they do 4 not. And it's the State's position that given the 5 facts of this case, that this essentially amounts to 6 the Giordano firm's decision to jettison Det. Ohnmacht 7 as a client when Greg Bruno came along. 8 And that is exactly what some of these 9 opinions and some of the case -- some of the Rules of 10 Professional Conduct are designed to deal with when 11 they talk about the appearance impropriety and all of 12 the different contingencies contemplated by RPC 1.7. 13 I don't know how much the Court wants me to 14 get into -- to some of the law in this case. I have 15 indicated in my brief that the -- that Rule 1.7 applies 16 in every regard. Det. Ohnmacht was never asked to 17 consent and he in fact has refused consent. I think 18 the Court has to look very strongly at STATE versus 19 NEEDHAM, a reported Law Division opinion, which deals 20 with facts very close to this, where counsel for the 21 defense was disqualified. 22 I recognize that what I'm asking the Court to 23 do is somewhat of an unusual measure. But on the facts 24 of this case, it is simply unfair. It's unfair to Det. 25 Ohnmacht and it simply creates an appearance of</p>	<p>PAGE 16 Warsaw-argument 16</p> <p>1 least, was ongoing on the crime date and then appear 2 adversarial to him when he is a critical witness in 3 this case. 4 And I would note for the Court too that on 5 information and belief, I know this because I've been 6 told this by a number of Middletown Police Officers, I 7 have been told by a lot of them that the Giordano firm 8 represents a lot of Middletown Police Officers. I 9 don't have any detailed information as to that. I 10 don't know if the Court thinks it's relevant or not. 11 I frankly don't think you need to reach that 12 issue. But there are probably and I say probably 13 because I don't know, but probably other witnesses in 14 this case who have had other matters handled by the 15 Giordano firm. 16 I would suggest that if the Court thinks that 17 there is a value to it, that Giordano be ordered to 18 submit, under seal if necessary, to the Court a listing 19 of the officers names or submit to me with a 20 nondisclosure order. 21 And I can tell you what role, if any, those 22 people play in the case. I don't think it's necessary 23 to reach that, because I think the facts surrounding 24 the representation of Det. Ohnmacht are just so 25 overwhelming and that the case law and the Rules of</p>

State v. Bruno

SHEET 5 PAGE 17 Warsaw-argument 17	PAGE 19 Bertucio-argument 19
<p>1 Professional Conduct are so clear that there really 2 can't be any sort of an issue. 3 I would just reserve at this time the right 4 to speak again after Mr. Bertucio does. 5 THE COURT: I'm not quite prepared to decide 6 whether testimony would be necessary and I'm not really 7 quite prepared to decide whether further affidavits or 8 exploration of that last issue is necessary. But 9 they're open and when I do decide this, they'll be part 10 of the decision. And if I need testimony in the 11 future, I can always call it in. 12 Go ahead, Mr. Bertucio. 13 MR. BERTUCIO: Judge, I know you have a room 14 full of people, but I'm going to be a little while 15 here. 16 THE COURT: Make your record. 17 MR. BERTUCIO: Okay. 18 THE COURT: This is probably going up either 19 way. It's a unique situation, where the State is 20 asking counsel to disqualify a murder case. So, take 21 all the time you need. 22 MR. BERTUCIO: Judge, I -- 23 THE COURT: Nothing was ready before, except 24 Mr. Pierzon's counsel's, so all halves were there. So I 25 started you. I know what I'm doing, but unfortunately</p>	<p>1 It's their understanding that their son is on 2 trial for his life. And they made an extensive search 3 for the right attorney in this case, including 4 searching and interviewing with just about every other 5 attorney that does criminal defense in this county, 6 which are far more involved than representing police 7 officers. 8 And they settled on the Giordano firm, 9 because of Mr. Hobbie. They hired Mr. Hobbie, because 10 their son is on trial for his life and that is the 11 lawyer that they want. And they've pledged all their 12 assets and all their efforts to that in defense of 13 their son. 14 Now comes this motion, where the application 15 is made, well, Judge, a police officer, who had a 16 Worker's Compensation case on one side of the balance 17 wants to come in here and dictate to the Court and to 18 the law firm how the firm should ethically discharge 19 its duties and to step aside on a murder case, where 20 somebody is on trial for their life, for the sake of a 21 reopener on a Worker's Compensation case. That's where 22 the balance is here, Judge. 23 Now, the reason why I say that is because 24 there is three important facts that have to be gotten 25 straight in this case. If you look at the State's</p>
<p>PAGE 18 Bertucio-argument 18</p> <p>1 now those will have to wait. 2 MR. BERTUCIO: Judge, I appreciate Mr. 3 Warsaw's comments with regard to the posture of this. 4 I have to state at the outset though that I cannot 5 understand why there is a persistence in making this 6 application in view of the facts in this case. And I 7 want to talk about the facts, not what we could prove 8 or we might have other affidavits. I'm talking about 9 the facts of record in this case. 10 The standard of review, Judge, is that a 11 motion to disqualify is to be disfavored. It is a 12 drastic remedy that interferes with the attorney/client 13 relationship and the Court should be hesitant to impose 14 it and that's ALEXANDER versus PRIMARICA (phonetic), 15 which is a District of New Jersey case in 1993 that I 16 cited in my brief. 17 That standard of review, I submit, is more 18 important in a case like this, where notwithstanding 19 Mr. Warsaw's representations, at a minimum Mr. Bruno 20 is looking at a murder charge and a potential life 21 sentence and, at a maximum, on my understanding of the 22 case, there is arguably an aggravating factor which 23 would allow this to be a death penalty case. And 24 frankly, when the family came to us, it was their 25 understanding it was a death penalty case.</p>	<p>PAGE 20 Bertucio-argument 20</p> <p>1 papers, throughout their papers, they made the 2 allegation that Det. Chmsacht was a present client of 3 this firm. They must have said it 50 times in their 4 papers. 5 And then comes the certifications of the 6 lawyers from this firm, which proves without a doubt 7 that Worker's Compensation case was closed in June of 8 1997. 9 And Mr. Warsaw misinterprets letters from 10 Mr. Tashly which constitute good practice as a 11 continuing legal representation, when in fact that is 12 not the case. 13 There has not been one document submitted by 14 this law firm or as far as I know by any law firm, to 15 reopen, to institute a new action on the Worker's 16 Compensation case. There has been no paperwork filed 17 in Court. There was no retainer between Det. Chmsacht 18 and Mr. Tashly with respect to the reopener. The 19 matter was closed in June of 1997. 20 Judge, we send letters to former clients all 21 the time, because if you don't do it, it's malpractice. 22 If a client leaves your office and there is some 23 statute or some deadline of which that client must be 24 aware, you have to believe, our law firm, we send 25 letter after letter.</p>

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<p>1 I've had hundreds of clients come to me on 2 potential litigation and say, well, after listening to 3 you, I'm not sure I want to proceed and leave my 4 office. And they have not retained me to be their 5 attorney. And I have corresponded with those clients 6 on such matters as, [Bar Client], as you will recollect, 7 I told you the statute of limitations on your 8 considered cause of action is such and such a date. 9 Here is letter one, two, three and four reminding you 10 of that fact. Because down the road, if a reopener 11 doesn't get filed or if a personal injury claim doesn't 12 get filed, our firm doesn't want to be sued for having 13 not alerted that person as to their rights. 14 That is the function of the Tashjy letters. 15 Not that there was a continuing legal representation. 16 There was none. If there were a reopener filed, I 17 couldn't make this argument. If there were legal 18 papers filed to pursue that case, I couldn't make this 19 argument. There are none. 20 And that's the fact in this case. The 21 allegation by the State was that there was a 22 representation. He is a current client. That is not 23 true. 24 The other aspect -- the reason why that's so 25 important, Judge, is this is a 1.9 case, not a 1.7</p>	<p>1 can't object, Judge. The Rules of Professional Conduct 2 say, if there is a former client and now we have a new 3 client, we can't represent the former client. 4 We're trying to discharge our professional 5 obligation. And Det. Ohnmacht was told that early on, 6 when there is still plenty of time, at that point a 7 year, to seek other counsel. He was told we'll give 8 you a reference. We can give you two, three, four 9 different attorneys who can go and handle your rather 10 routine reopener case and protect your rights. But 11 you, Det. Ohnmacht, have no legal right to dictate how 12 we are to discharge our ethical responsibilities. 13 Because the Rules of Professional Conduct tell us that 14 having engaged in the Bruno representation we cannot be 15 involved with you. And he was told that. 16 The record has to be clear, the Giordano firm 17 does not represent Det. Ohnmacht. The Giordano firm 18 was not representing Det. Ohnmacht at the time that it 19 undertook the representation of Mr. Bruno. Thus, it is 20 a 1.9 case, which says, the only disability to 21 representation of a successive client, involving a 22 former client, is if it's in substantially the same 23 matter, which it isn't or there is some information 24 that was gleaned from the former representation that 25 could be used against Det. Ohnmacht somehow in the</p>
<p>PAGE 22 Bertuccio-argument 22</p> <p>1 case. Det. Ohnmacht is a former client of Mr. Tashjy, 2 who is a member of a 45 person firm. Mr. Tashjy does 3 not criminal defense work at all and never has. Mr. 4 Tashjy will have no involvement in this case. 5 Despite our proof of that, the State persists 6 in trying to say there is some ongoing relationship. 7 Now, I want to respond to Mr. Warshaw's arguments in 8 that regard, because frankly, Mr. Warshaw misperceives 9 what Mr. Tashjy was doing. 10 First, when Your Honor gets the original 11 affidavit of Det. Ohnmacht, he neglects to mention to 12 the Court that in February of 1998, shortly after the 13 Bruno retained Mr. Hobbie and the Giordano law firm, 14 Mr. Tashjy discharged his ethical obligation. Mr. 15 Tashjy had to tell Det. Ohnmacht, former client, we 16 cannot represent you, because that's what 1.9 and 1.7 17 say he has to do. 18 Likewise I and Mr. Hobbie had to ensure that 19 that was the case, because that's what the Ethics Rules 20 require us to do. And that is what was done in 21 February, not in July, as the Court was initially led 22 to believe, until you received the Tashjy 23 certification. 24 Thereafter, Det. Ohnmacht says, oh yeah, now 25 I remember that conversation and I said, I object. He</p>	<p>PAGE 24 Bertuccio-argument 24</p> <p>1 subsequent representation. 2 Judge, you have certification after 3 certification as to the Ward case and the compensation 4 case. Now, number one, Mr. Ryan as to the Ward case 5 doesn't even work in our firm anymore. Mr. Querques 6 works in the commercial law section and the family law 7 section. She doesn't do criminal defense. Neither Mr. 8 Querques nor Mr. Ryan had any contact with Det. 9 Ohnmacht. It was a pro forma representation through 10 the mail. They filed some interrogatories. There was 11 a motion for summary judgment. The case was dismissed. 12 This is totally unlike NEEDHAM. Neither Mr. 13 Ryan nor Mr. Querques had to sit with Det. Ohnmacht day 14 after day at a trial and vindicate him and learn all 15 the personal information that you learn and create the 16 kind of allegiance that you create when you go shoulder 17 to shoulder with a client through a trial, through that 18 fire. 19 That's not what Ward was. Ward was, filed a 20 couple interrogatories and a motion for summary 21 judgment, case over. Mr. Hobbie didn't participate in 22 that. That's why NEEDHAM, which is a Law Division case 23 and not binding on this Court, but notwithstanding 24 that, is distinguishable. We're talking about minor, 25 pro forma representation.</p>

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<p>1 Likewise, on the compensation case, Mr. 2 Hobbie does not do Worker's Compensation work. I do 3 not do Worker's Compensation work. Neither of us had 4 any connection at all with Det. Ohnmacht's Worker's 5 Compensation case. It was handled exclusively by Mr. 6 Tashly, who does no work criminal defense and will not 7 have any connection to this case.</p> <p>8 All of these attorneys have sworn in 9 certifications that there is no information that they 10 learned that could in any way be used to the advantage 11 of Gregory Bruno in defense of him in this case.</p> <p>12 Nor is Det. Ohnmacht, Judge, a party to State 13 versus Gregory Bruno. I would point to the Court to 14 the opinion that I submitted under Rule 1:36-3, HERDMAN 15 versus ROTH. Now, in that case, Judge, a law firm 16 defended someone, actually defended them in what they 17 called a pro forma civil case. And then sue that same 18 person, filed a lawsuit against them on behalf of 19 another client in a subsequent case. And when the 20 parties got to the depositions, apparently that was all 21 realized. There was some argument between the lawyers 22 and then there was a motion to disqualify to be filed. 23 Now, this is in a case where the law firm was 24 suing its former client. And the Appellate Division 25 said, 1:9 it's not related at all and there is no</p>	<p>1 MR. BERTUCIO: But it is Appellate authority. 2 The interesting thing, Judge, is the case law that is 3 cited by both sides, from the criminal side. You have 4 one case from the New Jersey Supreme Court and you have 5 -- which is not applicable to this case, because in 6 that case the attorney represented the FBA, was the FBA 7 attorney.</p> <p>8 I believe that's the GALLOTTI (phonetic) 9 case. And then he's involved in the representation of 10 a police officer who is a criminal defendant, where 11 other police officers in the same department are 12 accusing him of official misconduct and he is the FBA 13 attorney, represents all those police officers in their 14 contract negotiations for their bread and butter. That 15 kind of representation cuts too close to the bone.</p> <p>16 Again, that is a far cry from where we are in 17 this case. We are not FBA counsel. We have never been 18 FBA counsel. We have never represented a FBA. Klatsky 19 and Klatsky represents the Middletown FBA and has done 20 so for 15 years. I guess that was an important point, 21 Judge.</p> <p>22 We don't have that kind of -- I got to get 23 back on track. We don't have that kind of blanket 24 representation here. You're talking about two minor 25 pro forma matters, both of which are closed.</p>
<p>PAGE 26 Bertucio-argument 26</p> <p>1 information that could be used against the former 2 client in the present lawsuit against the former 3 client.</p> <p>4 Even though there was an issue as to injuries 5 and information with regard to injuries of the former 6 client. The Appellate Division said in that case, 7 that's facial, mere fanciful possibility. It's got to 8 be something and substantial. We don't see it.</p> <p>9 Now, Judge, in that case you got a firm suing 10 another firm. To me that's much closer to where Rule 11 1:9 says a lawyer has to step down than we are in this 12 case. And yet the Appellate Division did not ask that 13 law firm or any of its attorneys to remove themselves 14 from that case. That case is submitted because it's 15 instructive and its recent case law on an issue and 16 it's also Appellate case law, as opposed to NEEDHAM and 17 CATANOSO, which are Law Division cases.</p> <p>18 THE COURT: Did the cite come down on that 19 case yet or is it still on a slip opinion? 20 MR. BERTUCIO: I believe it's still on a slip 21 opinion, Judge. I can double check that for you, if 22 you wish me to.</p> <p>23 THE COURT: That's okay. That's okay. 24 MR. WARSHAW: My understanding is it's 25 unpublished, Judge. It's an unpublished opinion.</p>	<p>PAGE 28 Bertucio-argument 28</p> <p>1 Now, the other interesting thing is that Mr. 2 Warshaw, in his papers and in his argument today, 3 continues to say that Det. Ohnmacht came to the firm 4 because of some personal friendship with Mr. Hobbie. 5 He just mentioned friendship, friendship, as if they're 6 -- he was the best man at his wedding and they're 7 golfing buddies. There is not that kind of 8 relationship here.</p> <p>9 I mean, Mr. Hobbie and I are friendly with a 10 lot of people, with a lot of people in law enforcement. 11 But to say that there is some sort of friendship here, 12 as if to imply that somehow Det. Ohnmacht is not going 13 to fight as hard or Mr. Hobbie is not going to fight as 14 hard, just belies the facts. It's belied by the facts.</p> <p>15 Det. Ohnmacht was longstanding friends with 16 the Brunos and that has not dissuaded him from 17 discharging his duty. And no one has ever suggested 18 for a second that Det. Ohnmacht will not discharge his 19 duty. We fully expect that he will operate in a 20 completely ethical, competent and aggressive manner, as 21 he has to date. And we haven't alleged anything else 22 and we won't.</p> <p>23 And likewise, I don't see how anyone who 24 knows Mr. Hobbie can seriously stand up and say, well, 25 Mr. Hobbie might pull a punch because of friendship</p>

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<p>SHEET 8 PAGE 29 Bertucio-argument 29</p> <p>1 with Det. Ohnmacht. That that argument could not 2 seriously be made.</p> <p>3 And the only one that would ever have a 4 question about that, rightfully, as to the allegiance 5 of Mr. Hobbie and me, would be Mr. Bruno. If anyone 6 were to bring a motion, Judge, it would be Mr. Bruno, 7 saying, Your Honor, I have a concern that my lawyers 8 have an allegiance to the other side.</p> <p>9 Now, Mr. Hobbie and I submitted 10 certifications stating that prior to the State even 11 knowing of our representation, we discussed with the 12 family and our client the prior representation of Det. 13 Ohnmacht. We made that disclosure before this ever 14 became an issue, right at the outset of our discussions 15 with them. And the family has also stated that, the 16 father in his affidavit and Mr. Bruno in his affidavit.</p> <p>17 Full disclosure to the client, long before 18 this was raised as an issue by the State, before the 19 State even knew we were in this case.</p> <p>20 And then we undertake the representation, we 21 retain a private investigator, we've been conducting 22 our own investigation since February 5th of this case. 23 We're still waiting for it to be indicted and I'm going 24 to get to that in a moment.</p> <p>25 Keeping them fully apprised at all times of</p>	<p>PAGE 31 Bertucio-argument 31</p> <p>1 former client that wants to be a future client.</p> <p>2 THE COURT: Is it a standing issue?</p> <p>3 MR. BERTUCIO: It is. It is, with the State.</p> <p>4 Now, Judge, I had mentioned in my papers other -- at 5 least one other instance involving Mr. Bruno, where he 6 had counsel that had previously been involved with 7 representation of police officers in Middletown, in 8 which there was no such applications of this made, in a 9 far less serious case.</p> <p>10 And frankly, probably because of what you 11 just mentioned. It's the client really -- the Rules of 12 Professional Conduct were designed to ensure that the 13 clients are protected. And to tell the lawyers how to 14 deal with the complexities of dealing with multiple 15 clients and of dealing with former clients and present 16 clients.</p> <p>17 We cited case after case, a number of civil 18 cases, Judge, all of whom are -- involve areas of law 19 that are about as far away from me as I ever would hope 20 them to be, patent infringement, large tobacco 21 litigation, things of that nature. Where there was 22 side switching by attorneys and they didn't disqualify 23 lawyers. There has been no side switching in this 24 case, because it's not the same case.</p> <p>25 Where there were lawyers in firms that</p>
<p>PAGE 30 Bertucio-argument 30</p> <p>1 all facts, we have completely discharged Mr. Hobbie and 2 I and the Giordano firm, our obligation to our client, 3 Gregory Bruno, and to his family. And their reaction 4 has been not to question our allegiance, but to 5 question of the Court and to insist of us that we 6 remain in this case and to insist that we oppose this 7 motion, which is why we're here today.</p> <p>8 The client has retained us. While we have 9 issues of strategy and certain other issues that within 10 our realm, the client's wishes and the client's goals 11 are the goals of the attorney.</p> <p>12 The Bruno family has said, we want Mr. Hobbie 13 on this case. We've had all of this explained to us. 14 We have absolutely no fear of concern with regard to 15 the situation, because I think they accurately perceive 16 it. And we want Mr. Hobbie and the Giordano firm to 17 remain on this case. And you have that in sworn 18 affidavits, Judge.</p> <p>19 They're the only people that should be in 20 Court if there is an issue of allegiance and where the 21 allegiance is.</p> <p>22 Frankly, it's not for Det. Ohnmacht, with all 23 due respect to him, to come into Court, through the 24 State, and say, Judge, I want you to interfere with a 25 present lawyer/client relationship, because I'm a</p>	<p>PAGE 32 Bertucio-argument 32</p> <p>1 represented prior corporations that they're now suing.</p> <p>2 I know we have cited case law, they are now suing those 3 corporations and the firms have not been disqualified.</p> <p>4 Because the law recognizes, when you have a former 5 client, that there may be times that you're going to 6 have subsequent interaction with that client in other 7 litigation, as long as it's not substantially related 8 and as long as there is no attorney/client information 9 that can be used against that person, the law sanctions 10 it, because it realizes the practical difficulties of 11 clients in trying to obtain the most competent counsel 12 they can obtain.</p> <p>13 And those rules are designed to protect Mr. 14 Bruno. Mr. Bruno has decided that Mr. Hobbie is the 15 most competent attorney he could find in this case to 16 defend him. The rules are designed to help Mr. Bruno 17 in that regard with respect to a former client.</p> <p>18 Because if the rules were otherwise, if they said, any 19 time you have a former client that's involved in 20 subsequent litigation, in any manner, you've got to get 21 out of the case.</p> <p>22 When you think about the parochial nature of 23 the practice of law, lawyers in a county generally 24 practice in that county and depending on the size of 25 the county, the practice may be very small and</p>

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<p>1 cloistered or it could be bigger, it's a problem. It's 2 a real practical problem and the rules recognize that. 3 That's why I'm designed to say we're not going to 4 disqualify the lawyer every time a former client is 5 involved in some subsequent litigation. 6 THE COURT: I'm going to interrupt you for 7 one moment to take a personal break. I want to see 8 counsel in chambers. I want to move a few sentences, 9 because I really -- I know Mr. Warshaw wants to be 10 heard in response and I'll move a few quicker things 11 while I discuss something with you in chambers. Okay? 12 (Court spoke on other matters) 13 THE COURT: This is the continuing oral 14 argument of State versus Gregory S. Bruno, Case Number 15 98-000489. Again, for the record, if you would just, 16 consistent with this portion of the record, enter your 17 appearances. 18 MR. BERTUCIO: Edward C. Bertucio, Jr. 19 Giordano, Halleran and Ciesla on behalf of Mr. Bruno, 20 who is present and I will address that issue in a 21 moment. 22 MR. WARSHAW: Peter E. Warshaw, Jr., 23 Assistant Monmouth County Prosecutor appearing on 24 behalf of the State. 25 THE COURT: Okay. I interrupted Mr.</p>	<p>1 Ohmsacht is critically involved in this case. And I 2 had stated at one point that Det. Ohmsacht is not a 3 party to this case, nor is he a victim in this case. 4 And the reason why I bring that up is because 5 the opinion that the Prosecutor has relied heavily on, 6 which is STATE versus NEEDHAM, I would like to discuss. 7 Now, it is a Law Division case, so it's not 8 binding on the Court. But I do want to discuss the 9 facts. Interestingly in that case, Judge, the client 10 was a police officer, who in the subsequent litigation 11 was the actual victim of an assault. He was the actual 12 victim. And there was going to be an issue clearly of 13 his credibility as to what had happened when he had 14 attempted to arrest the defendant, Mr. Needham and the 15 resulting assault that occurred, allegedly, of the 16 officer. 17 That's a critical witness. The victim is 18 always a critical witness in any case. 19 In addition, in that case, the particular 20 attorney had, as I stated before, sat should to should 21 with the same officer he was now going to have to 22 confront as the victim in a subsequent case in a trial, 23 where that police officer had been accused of crimes 24 which trial had resulted in acquittal and then had sat 25 next to him during an internal affairs investigation as</p>
<p>PAGE 34 Bertucio-argument 34</p> <p>1 Bertucio's response and I'm sure Mr. Warshaw wants to 2 also reply. So we'll just pick up where we were 3 before. And the record should note that Gregory S. 4 Bruno is present and you can put whatever statement you 5 feel appropriate on the record at this time. 6 MR. BERTUCIO: Let me address that issue, 7 because through this entire motion, which I think 8 was originally filed in July and has been ongoing, Mr. 9 Bruno has been kept fully informed. I spoke to Mr. 10 Bruno this morning and I can represent to the Court 11 that he waived his appearance for the first part of the 12 argument. 13 Since we had a break and had further 14 opportunity to speak to him again, he is here now. 15 Have I accurately stated that, Greg? 16 THE DEFENDANT: Yes. 17 MR. BERTUCIO: But he has waived his 18 appearance previously. 19 THE COURT: Okay. Then let's move on -- 20 MR. BERTUCIO: He has no problem. 21 THE COURT: -- and I thank you. 22 MR. BERTUCIO: Judge, I've finished with my 23 basic arguments. I just want to touch upon a few 24 points that Mr. Warshaw had argued to the Court. 25 One is he had stated more than once that Det.</p>	<p>PAGE 36 Bertucio-argument 36</p> <p>1 well. 2 They don't really tell you what happens with 3 that, but you get a sense that that resolved happily as 4 well for the officer, since he was obviously still a 5 police officer at the time of this case. 6 That kind of relationship is unique in the 7 practice of law. When you sit next to someone through 8 a trial and through the fire of a trial and the result 9 of a trial, that is a far cry from where we are here, 10 where Mr. Hobbie and I never sat next to Det. Ohmsacht 11 and represented him in court on anything. 12 Now, I understand there has been an argument 13 made that the reason why Det. Ohmsacht came to the firm 14 was because of Mr. Hobbie's very fine reputation as an 15 attorney. Well, that's one thing. But Mr. Hobbie did 16 not go into federal court and argue the summary 17 judgment motion. Mr. Hobbie did not sit next to Det. 18 Ohmsacht at a trial that resulted in his acquittal or 19 no finding of liability against him. Mr. Hobbie did 20 not negotiate or act in court, in Worker's Compensation 21 Court on his behalf. We don't have that kind of 22 relationship here that is in the NEEDHAM case. 23 In addition, and this is going to roll me 24 into the motion that we've made, Judge. We don't have 25 the discovery in this case. So we're arguing this</p>



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<p>1 thing, theoretically, in a vacuum. My understanding is                  2 that Det. Ohnmacht met with Mr. Bruno for about 15                  3 minutes and then let him go. He was free to leave.                  4 And that was the extent of any statement that was made.                  5 Now, certainly if there had been an                  6 inculpatory statement, they would have not let Mr.                  7 Bruno go. So obviously there was nothing stated there                  8 that was in any way inculpatory or subject to some                  9 severe attack by us now.                  10 In addition, our understanding of the case is                  11 that it's a circumstantial case and it's a forensic's                  12 case. In terms of Det. Ohnmacht's responsibilities as                  13 a detective, he was collecting evidence, interviewing                  14 witnesses, the kind of things that police detectives                  15 do. But as is always the case in Monmouth County,                  16 homicide investigations are run and controlled by the                  17 county investigators and prosecutors overseeing them.                  18 Not by Middletown.                  19 The case here is factually much different                  20 than the situation in NEEDHAM. And likewise, in                  21 Opinion 404, because in that opinion you're dealing                  22 with a small police force, the attorney has in fact                  23 been the attorney representing about 20 percent of that                  24 force and really in that opinion, they equate him with                  25 a FBA attorney, because they state, "While not</p>	<p>1 this argument to be made.                  2 The other point that Mr. Warshaw made is that                  3 he felt that the attorney who did the work on the                  4 previous matters didn't matter. I think that's                  5 critical, Judge. Because if you look at the opinions                  6 and the cases, they're talking about the attorney on                  7 the previous case is the attorney on the subsequent                  8 case.                  9 If you look at every single one of these                  10 cases, the side switching cases, the attorney who is                  11 actually in court, representing the subsequent case,                  12 represented the witness in the same case. If you look                  13 at CANTAMOSO and NEEDHAM and GALLOTTI, it's the                  14 attorney who was either the FBA attorney or                  15 representing a large number of officers, is now the                  16 same attorney arguing against those officers and cross                  17 examining them. We don't have that situation here,                  18 because Mr. Tashjy, Mr. Querques and Mr. Ryan are not                  19 involved in this case.                  20 Lastly, with regard to my rebuttal portion of                  21 the argument, Mr. Warshaw has pointed to the letters                  22 and I've addressed them and why they were sent. They                  23 do not evidence a attorney/client relationship. They                  24 just evidence good practice with a former client, who                  25 has got a pending deadline.</p>
<p>PAGE 38 Bertuccio-argument 38</p> <p>1 representing the FBA, he is representing the                  2 complaining witness and with regularity, has                  3 represented other patrolmen in the municipality."                  4 And then that police officer is the                  5 complaining witness in Opinion 404, the complaining                  6 witness.                  7 Here, the complaint was signed by another                  8 detective, Det. Rubino, not by Det. Ohnmacht, according                  9 to the State's certifications and proofs.                  10 It's a much different situation and when you                  11 discuss -- when you look at NEEDHAM, what they're                  12 talking about is the appearance. The case law I've                  13 cited says, the appearance can't be facial, it can't be                  14 a mere fanciful possibility.                  15 There is no possibility that Det. Ohnmacht is                  16 not going to do his job in this case, absolutely not.                  17 And there is likewise no possibility that Mr. Hobbie                  18 and I are not going to do our jobs in this case,                  19 absolutely not. I don't think that the State seriously                  20 would argue or expect that somehow we're not going to                  21 be also zealous as we possibly can, within the bounds                  22 of the law, on behalf of Mr. Bruno.                  23 I've already argued that Mr. Bruno has made                  24 it clear that he has absolutely no concerns in that                  25 regard. And therefore, there is really no standing for</p>	<p>PAGE 40 Bertuccio-argument 40</p> <p>1 But the interesting thing is, those letters                  2 end January of '98. Our representation of Mr. Bruno                  3 did not commence until February of 1998. And it was in                  4 February of 1998 that Mr. Tashjy also had the                  5 conversation with Det. Ohnmacht, his former client, in                  6 which he said, we cannot represent you. It is                  7 unethical. You have to get another attorney to handle                  8 your reopening.                  9 Mr. Tashjy, who is experienced in that area,                  10 has submitted a supplemental certification saying there                  11 is absolutely no prejudice to Det. Ohnmacht. It's the                  12 type of situation that any attorney can handle. It                  13 doesn't not require the continuation of this law firm                  14 to assure that his rights are litigated properly and he                  15 has a successful conclusion.                  16 Finally, Judge, we have been involved in this                  17 case since the inception. We have retained, on behalf                  18 of Mr. Bruno, a private investigator, who has been                  19 actively investigating this case, to the extent that we                  20 can, absent the discovery, based upon information we                  21 have learned from interviews of witnesses and things of                  22 that nature. And that is continued, without                  23 interruption, to this point in time, a period of almost                  24 nine months. And in that time, the matter has not been                  25 indicted.</p>

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<p>1 I sent a letter, which is part of the record, 2 to Mr. Warshaw, requesting that the matter be presented 3 or that discovery be produced, for two reasons. 4 First and foremost, for the protection of 5 this young man, so that we can get started on this case 6 in a meaningful way. 7 Secondly, because we're arguing a lot of this 8 in a vacuum, without the benefit of knowing the exact 9 facts, the extent to which Det. Ohnmacht is involved, 10 things of that nature. 11 I don't think you need that to decide this 12 motion. I think you can decide this motion properly 13 and fairly and deny this motion properly and fairly, 14 without that benefit. 15 But I will say that there is a prejudice here 16 that everyday accrues and increases in not having this 17 case moved forward and having this case bogged down 18 with this motion. 19 Mr. Bruno wants his attorneys to get started. 20 They want to get started too. And so I would ask that 21 our cross motion be granted and that the matter be set 22 for a time within which a grand jury presentation 23 should be made and that if an indictment results, 24 whether that be capital or non capital homicide, that 25 discovery be provided. Because then we can discharge</p>	<p>1 Court has to make. 2 I think also that the defense 3 mischaracterizes Det. Ohnmacht's intentions. Det. 4 Ohnmacht is not trying to compel this Court or the 5 Prosecutor's Office or the Giordano firm to do 6 anything. The genesis of this whole motion is laid out 7 in one of my certifications. 8 Det. Ohnmacht came to me as the prosecutor 9 assigned to the case and expressed a true and sincere 10 discomfort with what was evolving and he asked me 11 whether it was okay for the Giordano firm to continue 12 in this case. I didn't know off the top of my head. I 13 did some research. I found the cases that I found. I 14 found the Rules of Professional Conduct, which I found 15 and to my mind, there was a genuine, articulable, legal 16 issue. 17 Once I saw that genuine, articulable, legal 18 issue, the way I understand the Ethics Rules and my 19 requirements, I have no choice but to raise that issue. 20 And that is precisely what's happened. Det. Ohnmacht 21 isn't acting as a puppeteer. He isn't trying to drive 22 the system one way or the other. He did what he thinks 23 is right. I'm doing what I think the law requires me 24 to do. 25 And in that same vein, it's probably worth</p>
PAGE 42 Warshaw-argument 42	PAGE 44 Warshaw-argument 44
<p>1 our ethical responsibilities to Mr. Bruno and to the 2 Court. 3 Should there be something real here, as 4 officers of the court, we would be here first. If Mr. 5 Bruno had a concern about our allegiances, we would 6 bring it to the Court's attention. Neither Mr. Hobbie 7 or I are interested in violating any rule. We're here 8 on behalf of the client, at the insistence of the 9 client, because the arguments we make say, there is no 10 conflict, the client has no issue and the client wants 11 Mr. Hobbie and me to remain on this case. 12 Thank you, Judge. 13 THE COURT: You seek to reply. Mr. Warshaw? 14 MR. WARSHAW: Yes, Judge, I do. And I'm 15 probably going to be a little scatter shot in terms of 16 some of my response, because I'm going off on my notes. 17 One of the points Mr. Bertucio makes is and 18 he made it several times, both in his argument and in 19 the certifications, which are -- were submitted to the 20 Court, is that the defendant's parents very much want 21 the Giordano firm to represent the defendant. 22 I respectfully suggest to the Court that that 23 is simply irrelevant to this matter. It has nothing to 24 do with it. What the defendant's parents want means 25 absolutely nothing in terms of the decision that the</p>	<p>1 also noting that Mr. Bertucio has argued that Det. 2 Ohnmacht has a relationship with the Bruno family and 3 there is no question but that that is so. But you 4 can't be in this case, applying the same standards to 5 Det. Ohnmacht that you apply to lawyers, who are 6 obligated to practice pursuant to the Rules of 7 Professional Conduct. 8 As I understand it and I obviously have no 9 firsthand knowledge of this, is Det. Ohnmacht knows Mr. 10 Bruno's father very well, reasonably well. They know 11 each other. They see each other at various social 12 functions. They see each other around town. But Det. 13 Ohnmacht is in a different boat. He is a police 14 officer in the Township of Middletown. He has a sworn 15 obligation. He takes his victims as he finds them. He 16 takes his defendants as he finds them. He takes his 17 investigations as he finds them. He has no choice but 18 to pursue an investigation. 19 And to argue that somehow there is a 20 correlation between a municipal police officer, who has 21 to make a decision to pursue a homicide investigation 22 against the target, who is somebody whose family he 23 knows and a lawyer's ethical obligations is simply -- 24 it's totally in apposite. They have nothing to do with 25 each other.</p>

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SHEET 12 PAGE 45 Warsaw-argument 45	PAGE 47 Warsaw-argument 47
<p>1 The issue was also raised and this is 2 somewhat of a troubling issue and I don't know how much 3 the Court really needs to address it. But the issue 4 of, is there a friendship between Det. Ohnmacht and Mr. 5 Hobbie or is Mr. Hobbie simply being friendly towards 6 the detective? 7 One of the briefs that was submitted by the 8 defense speaks of, I think the phraseology is, a 9 supposed friendship. I don't think it's alleged 10 friendship. I think it's supposed fri<del>nd</del>ship. 11 Something along those lines. Without going beyond the 12 certifications and affidavits, Det. Ohnmacht advises me 13 that this supposed friendship consisted of playing golf 14 a number of times, going to a lot of sporting events 15 together, going to dinners and lunches together. 16 This is with Mr. Hobbie. He said that -- 17 Det. Ohnmacht advises me that one time when he was 18 hospitalized he received a plant from Mr. Hobbie and 19 his wife in the hospital. The plant was about the size 20 of Mr. Bertucio, according to Det. Ohnmacht. 21 Now, I don't know how much that needs to be 22 addressed. But I think that in the Court's mind, to 23 minimize the relationship, in the context of the rest 24 of the case, is erroneous. And I'm not suggesting that 25 the friendship in and of itself constitute an ethical</p>	<p>1 This is, please contact me at your earliest 2 possible convenience, so that we may schedule a 3 mutually agreed upon date and time for an appointment 4 so that we may discuss reopening your claim. In the 5 alternative, please advise me as to your availability 6 at headquarters and I will be happy to meet you there. 7 That is not just an innocuous communication. 8 That is, I represented you in the past, I represent you 9 now and let's get moving on this reopener. To try to 10 construe that letter any other way simply defies logic. 11 It would make absolutely no sense. 12 But the Court has all these letters and I 13 know they're considered as part of the record. And I 14 would ask the Court to find that there is that 15 continuing relationship, which goes up until the day 16 where Det. Ohnmacht is jettisoned and Mr. Bruno is 17 signed on as a client and that relationship goes right 18 on up until then. 19 And along those same lines, much has been 20 made about the fact that it was reviewed with Mr. Bruno 21 that the Giordano firm had previously represented Det. 22 Ohnmacht. And this is where we get into an area where 23 we really start talking about the Appearance of 24 Impropriety Doctrine and how that would apply to this 25 case.</p>
<p>PAGE 46 Warsaw-argument 46</p> <p>1 bar. I'm not saying that. But I'm saying you have to 2 look at that as part of the backdrop, part of the 3 mosaic of this case. 4 For the same reason, I suggest to the Court 5 that there is -- the word standing was used. And I 6 respectfully -- just to the Court that there is no 7 standing issue in this case. There is -- I had every 8 right to bring this motion. I have every obligation to 9 bring this motion. I'm the only person, in terms of 10 the State, who can bring it. I represent the State. 11 That's the way it is in criminal litigation. 12 The other interesting issues relate, again, 13 to the letters that Mr. Tashy sent to Det. Ohnmacht. 14 And I don't want to belabor this issue. The Court has 15 the letters. The Court will read them. But I ask the 16 Court to look at the plain language of those letters. 17 These are not letters which are more or less innocuous. 18 These are not CIA letters, if you will. These are 19 definite communications between attorney and client. 20 This is not a letter, for example, to use the 21 January 26th letter as an example. The one that was 22 written eight days after the murder occurred. This is 23 not, Dear Det. Ohnmacht, you have 18 months from such 24 and such a date to file your reopener. Please do not 25 forget about that. You should consult an attorney.</p>	<p>PAGE 48 Warsaw-argument 48</p> <p>1 It's mentioned that there was a painstaking 2 review with Mr. Bruno. What the facts were, what the 3 nature of the relationship with the Giordano firm to 4 Det. Ohnmacht was. The question which leaps out at 5 this point is, where does -- here does the record show 6 that Det. Ohnmacht received any similar courtesy, 7 because he didn't. 8 Basically, he is, to accept the defense 9 certifications, he is cast away as a client once Bruno 10 comes in. I think that it's a fair reading of these 11 letters and it's a fair conclusion for this Court that 12 if Gregory Bruno hadn't come in and tried to retain 13 Giordano, had retained Giordano, then Giordano would 14 have seen the reopener claim through. There is 15 absolutely no question. And that's an absolute fair 16 reading of all this correspondence. 17 I mean, if you read the correspondence, Scott 18 Tashy is literally chasing Det. Ohnmacht. He is 19 pursuing him, to make sure that they can get this 20 action going. It's not one letter. It's not two 21 letters. It's more than -- it's three or four and 22 they're all attached. 23 And one has to wonder if Det. Ohnmacht's 24 claim might have been treated a little bit differently 25 if it was a million dollar medical malpractice case, if</p>

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1 maybe he would have stayed as the client and Bruno 2 would have been told no. It's really -- and I know he 3 didn't do this intentionally. But it's really somewhat 4 offensive to hear Mr. Bertuccio minimize what it is that 5 happened to Det. Ohmacht and what it is that's the 6 subject matter of the representation.			1 letter law in a sentence that's less than 25 words. 2 So, the whole issue of who is really somewhat 3 legally insignificant.	4 There is also the issue as to discovery. The 5 State has not provided discovery yet, will not provide 6 discovery yet and under the Court Rules and under 7 practice in Monmouth County, the State has absolutely 8 no obligation to provide discovery, until such time as 9 there has been an indictment.	
7 The first case, which was some five, six 8 years ago, involved an allegation, a federal civil 9 rights violation. Det. Ohmacht was being sued in 10 federal court. To minimize that, even when it's a pro 11 se defendant, is seriously wrong.			10 I made the representation to the Court in 11 chambers and I'll make it again now, that we are still 12 waiting for lab reports, significant lab reports, 13 relating to blood analysis and those -- they're 14 significant. Let me just say that and leave it at 15 that. It's important to know the answers that that 16 analysis can give. It's critical for a lot of decision 17 making in the case.		
12 The second case involved personal injury to 13 Det. Ohmacht, sustained while he was on the job, 14 serious injury. Det. Ohmacht told me that he had at 15 the time very, very serious health problems and very, 16 very serious concerns based on family history. And 17 there is no need to go into that any further. But his 18 injury was consistent with the injury of a relative, 19 who subsequently passed away from a similar type of 20 condition. And like I said, I haven't read the file, 21 but this is what I'm told.			18 I mean, what this case comes down to, Judge, 19 is the issue of Ron Ohmacht having been represented 20 twice by the Giordano firm. We've spent a lot of time 21 talking about whether it matters if he was a current 22 client, whether it matters whether he is a former 23 client. The fact is, he's been represented twice by 24 the Giordano firm. The State takes the position that 25 that representation was ongoing, up until the date that		
22 So to minimize it or to say that what Det. 23 Ohmacht was going through was less serious or 24 unimportant or somehow on the sliding scale, less 25 important than Gregory Bruno's matter is to again do a					
PAGE 50	Warshaw-argument	50	PAGE 52	Warshaw-argument	52
1 great disservice to Det. Ohmacht.			1 they decided to allow Mr. Bruno to retain them.		
2 The other which is raised is the question of, 3 well, who actually did the work? And I talked about 4 this already. And there is just a portion of it that 5 bears repetition. And I think one of the ways that the 6 Court should approach this issue is suppose that it 7 wasn't Mr. Hobbie and Mr. Bertuccio from the Giordano 8 firm who now want to represent Mr. Bruno. Suppose it 9 was Scott Tashjy. Just suppose for the sake of 10 argument that Scott Tashjy came in and he said, I'm 11 going to represent Gregory Bruno on his murder charge. 12 I think it's very clear that Scott Tashjy could not do 13 that. He absolutely could not do it. He could not 14 switch sides.			2 But either way, Opinion 404 squarely resolves 3 this issue. It makes it vary, very clear. And the 4 case law, which interprets Rule 404 and NEEDHAM is just 5 about the closest thing we've got, makes it abundantly 6 clear that it would be improper for the Giordano firm 7 to continue. 8 And the fact that Greg Bruno wants that is 9 good. It's good for Greg Bruno. I'm sure he does have 10 a lot of confidence in his lawyers. But this is the 11 exact reason why our ethics system is not entirely 12 client driven. It requires and objective assessment of 13 what has happened. And I respectfully suggest that the 14 Court grant the State's motion.		
15 And if Mr. Tashjy can't switch sides, then 16 the Giordano firm can't switch sides. And there is a 17 crystal clear Ethics Rule on that and that's RPC 18 1.10(e), which provides as follows.			15 THE COURT: Thank you, gentlemen. 16 MR. BERTUCCIO: Judge, I've got to briefly 17 surrebut on points that have not been addressed and I 18 will take as little time as possible.		
19 "When lawyers are associated in a firm, none 20 of them shall knowingly represent a client when any one 21 of them practicing alone would be prohibited from doing 22 so by a number of Rules of Professional Conduct, 23 including Rule 1.7 and Rule 1.9."			19 Mr. Warshaw raises a hypothetical, if Scott 20 Tashjy were in here today, he couldn't represent Mr. 21 Bruno and that's clear. I disagree with that 22 statement.		
24 So if one person in the Giordano firm can't 25 do it, then nobody else can. And that's simple black			23 If Det. Ohmacht is a former client, then 24 Scott Tashjy coming in here is just like NEEDHAM versus 25 BOTH. It's a 1.9 situation. If the subsequent		

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SHEET 14 PAGE 53 Bertucio-argument 53	PAGE 55 Colloquy 55
<p>1 representation is not related to the primary, then he 2 is not disqualified and if there is no attorney/client 3 information from the first representation that he would 4 use in the second, he is not disqualified. So, -- and 5 that's what HERMAN versus ROTH says.</p> <p>6 Mr. Warshaw says that Det. Ohmacht didn't 7 get the courtesy of the same disclosure that Mr. Bruno 8 got. That's wrong. That's wrong, because in February 9 of 1998 Mr. Tashly made it quite clear to his former 10 client why he could not represent him in a new matter 11 in the reopener.</p> <p>12 And it's interesting in Det. Ohmacht's first 13 certification, he makes it sound like, nobody told me 14 anything until July of this year. And then in the 15 second he says, oh yes, there was that conversation in 16 February. The reason there was that conversation is 17 because Scott Tashly was ethically obligated to have 18 that conversation. There had been no reopener. The 19 case was over. He was talking to a former client and 20 he said, we can't take your case. Not because you 21 don't have a million dollar case. That's not the 22 reason, Judge.</p> <p>23 Det. Ohmacht could have a ten million dollar 24 case and we couldn't take it. The reason is because we 25 had already promised Gregory Bruno in writing that we</p>	<p>1 argument, as you can see, was very interesting to me. 2 It's a very novel issue from this perspective. And the 3 State had indicated that it might have supplemental 4 material to produce for the Court.</p> <p>5 MR. WARSHAW: I may submit a supplemental 6 brief, Judge. I would like to reread the papers. As I 7 indicated to the Court, I was out of the office for 8 about a week and a half and supplemental certifications 9 and some unreported cases came in during that time.</p> <p>10 THE COURT: I'm not giving you any time 11 deadlines. I'm going away for vacation, not this week, 12 but next week. Do what you have to do. Mr. Bertucio, 13 respond as you have to. And I expect a decision 14 probably October -- what did I say, 1st or 2nd?</p> <p>15 MR. WARSHAW: Yes, Judge.</p> <p>16 MR. BERTUCIO: Yes.</p> <p>17 THE COURT: And that doesn't materially delay 18 your representation. Everyone is entitled to an answer 19 and I don't think that's a delay that would be 20 unacceptable from any point.</p> <p>21 MR. WARSHAW: No, sir.</p> <p>22 THE COURT: So that's what I anticipate.</p> <p>23 MR. WARSHAW: Thank you, Judge.</p> <p>24 THE COURT: Thank you and good day.</p> <p>25 MR. BERTUCIO: Thank you, Judge, for your</p>
<p>PAGE 54 Bertucio-argument 54</p> <p>1 were going to defend him. And once we do that, Det. 2 Ohmacht would have the greatest case in the world and 3 there is nothing we can do about it.</p> <p>4 We can't represent him, can't, because we 5 already promised this man we're going to represent him. 6 And if role- reversed, if the ten million dollar 7 case with Det. Ohmacht had come in the door first and 8 he came in and said, I'll give you 100 million to 9 defend me in the murder case, we couldn't do it and 10 would not do it, because it would be unethical.</p> <p>11 Finally, not to belabor the point, they keep 12 harping on this friendship. This isn't an issue of 13 friendship here. This is an issue of professional 14 conduct by this police officer and by the lawyers 15 involved. I have absolute confidence that everybody is 16 going to act in that way. Certainly from the 17 contentious nature of this motion, I don't think 18 anybody is pulling any punches here. We certainly 19 don't expect Det. Ohmacht to.</p> <p>20 And if a prior decision was made to have 21 other lawyers in the firm represent him in other minor 22 matters, because Mr. Hobbie has a very fine reputation 23 as an attorney, that doesn't disqualify us now, Judge.</p> <p>24 THE COURT: Thank you, counsel. And as I 25 stated, I told you I was going to reserve, because oral</p>	<p>PAGE 56 Colloquy 56</p> <p>1 time.</p> <p>2</p> <p>3 CERTIFICATION</p> <p>4 I, JUDY A. CONOVER, Certified Agency Transcriber, 5 do hereby certify the foregoing transcript of 6 proceedings on Tape No. CR-43-98, Index No. 378 to 1976 7 and Tape No. CR-44-98, Index No. 186 to 1224, is 8 prepared in full compliance with the current Transcript 9 Format for Judicial Proceedings and is a true and 10 accurate compressed transcript of the proceedings as 11 recorded in the matter of State versus Bruno, heard by 12 the Monmouth County Superior Court on September 11, 13 1998.</p> <p>14 <i>Judy A. Conover</i> 15 <u>JUDY A. CONOVER</u> 16 TERRY GRIBBEN'S TRANSCRIPTION SERVICE 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">548 NO. NUMBER 2/2/99 DATE</p>



Decision

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1 THE COURT: This is a reserved matter in the case  
2 entitled the State of New Jersey vs Gregory S. Bruno. Counsel  
3 are not present. I'm recording my findings. My law clerk will  
4 advise counsel of my decision and the availability of a  
5 transcript of my findings.

6 This is the State's motion to disqualify defense  
7 counsel from representing Gregory S. Bruno. Gregory S. Bruno has  
8 not yet been indicted but on February 1st of 1998 he was charged  
9 with murder, felony murder, armed robbery and possession of a  
10 knife for an unlawful purpose.

11 The charges stem from an alleged homicide that  
12 occurred on January 15 of 1998 in Middletown Township. On  
13 February 4th of 1998 Gregory Bruno and his family retained the  
14 law firm of Giordano, Halleran and Ciesla.

15 My knowledge, again, the defendant has not been  
16 indicted as of the dictation of this decision. The State argues  
17 that the law firm of Giordano, Halleran and Ciesla should be  
18 disqualified from representing Gregory S. Bruno due to a  
19 potential conflict of interest and/or an appearance of  
20 impropriety.

21 The State argues that the Giordano firm represented  
22 Detective Ronald Ohnmacht, Middletown Township Police Officer  
23 assigned to investigate a part of the case against defendant  
24 Bruno.

25 The Giordano firm has previously represented Detective

Decision

1 Marlayne, 83 New Jersey 460. A substantial relationship is one  
2 that "has created a climate of non-disclosure of relevant  
3 confidential information".

4           In this case, defense firm represented Ronald  
5 Ohnmacht, one of several detectives assigned to investigate the  
6 case against the defendant. As previously stated, the civil  
7 rights action was terminated years ago by summary judgment in  
8 favor of defendant and his employer.

9           From my reading of the various certifications, neither  
10 the civil rights action or the workers compensation case would  
11 have required the detective to reveal confidential information.  
12 As stated in the certifications of counsel, both representations  
13 appear to have been proforma in nature.

14           My review of the exhaustive certification gives rise  
15 to my conclusion that no member of the Giordano firm would now  
16 possess confidential information in reference to the detective  
17 that would serve to benefit defense counsel during  
18 cross-examination of that detective in the Bruno case if the  
19 State elected to call him to testify.

20           At this point, I digress because in the Needham  
21 decision where the law firm was disqualified, that law firm  
22 represented the State's investigating police officer in a  
23 criminal case wherein the police officer was charged with a  
24 crime and successfully defended. There one could easily conclude  
25 that certain confidential information passed between attorney



Decision

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1 and client which would have jeopardized the integrity of that  
2 police officer as a chief witness in the State's criminal case.

3 The appearance of impropriety in Needham, I believe,  
4 was clear and the inference of impropriety clearly mandated. In  
5 my opinion, that is not the case here and that is a substantial  
6 distinguishing factor which does not make the Needham case  
7 binding upon me.

8 I find that there is no substantial relation between  
9 the prior representations of Detective Ohnmacht and the current  
10 representation of Gregory Bruno.

11 The State makes the argument that Detective Ohnmacht  
12 is a current client of the Giordano firm and therefore the  
13 entire Giordano firm should be therefore disqualified. I'm  
14 essentially finding based upon my review of the file that the  
15 Giordano firm's representation of Detective Ohnmacht terminated  
16 on or shortly after June 24, 1997 coincidentally with the  
17 settlement of the workers compensation claim.

18 The good practice letters cited by the State and sent  
19 by the Giordano firm to Detective Ohnmacht on September 29th  
20 1997, October 13, 1997, January 6, 1998 and January 26, 1998 do  
21 not change my opinion.

22 None of those letters received a response from  
23 Detective Ohnmacht. These letters essentially outline the  
24 conditions should Ohnmacht seek to reopen his workers  
25 compensation case. There was no response to Giordano that

Decision

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1 Ohnmacht sought to reopen his compensation case. And I,  
2 therefore, find that the compensation case was not an open  
3 matter at the time the Giordano firm was retained by the Bruno  
4 family.

5 Again, although that might change the criteria, any  
6 reliance on Needham is not appropriate. The Needham case  
7 involved an attorney that had previously represented the State's  
8 key witness, Officer Warner. There is no indication here that  
9 Ohnmacht will be the State's (key witness).

10 No representations were made to that effect either in  
11 the certifications or at oral argument. He will no doubt be a  
12 witness. He has participated substantially in the investigation  
13 but I think the crux of the Needham decision was that Officer  
14 Warner was, in fact, the State's key witness.

15 Also, a distinguishing factor which I've previously  
16 cited is the intensity of the attorney/client relationship in  
17 Needham. Needham outlined a fact pattern much different than  
18 this. The attorney in the Needham case represented the key  
19 witness of the State in another criminal matter where the key  
20 witness was, in fact, accused of a crime.

21 It is much more likely there that the law firm  
22 obtained critical confidential information which would adversely  
23 affect the police officer's subsequent testimony in the criminal  
24 case. As previously stated, that's not so here.

25 To whatever extent necessary, it may be also a

1 distinguishing factor although not necessarily so that here  
2 Gregory S. Bruno is charged with what could be in the future a  
3 capital murder prosecution. That may not have any substantial  
4 significance but I do note it for the record as being a  
5 distinguishing factor from the Needham fact pattern.

6 This is a developing area of the law. I'm well aware  
7 of State vs. Needham, 298 N. J. Super 100 and as I have cited to  
8 it on many occasions. I'm well aware that reasonable minds might  
9 differ as to what may or may not give an appearance of  
10 impropriety viewed from the viewpoint of the public and from the  
11 viewpoint of a reasonable concerned private citizen.

12 I'm also aware that the reputation of the system and  
13 the bar is primary and the integrity of the system is of primary  
14 focus; but in this case for the reasons stated, I don't feel  
15 that there is a reasonable appearance of impropriety which would  
16 affect those important factors that I've just outlined.

17 Thank you and good day. The application to disqualify  
18 counsel filed by the State, although appropriately filed, is now  
19 denied for the reasons stated.

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CERTIFICATION

I, JAMES W. OVERBY, C.S.R., License Number XI00692,  
an Official Court Reporter in and for the State of New Jersey,  
do hereby certify the foregoing to be prepared in full  
compliance with the current Transcript Format for Judicial  
Proceedings and is a true and accurate non-compressed transcript  
to the best of my knowledge and ability.

James W. Overby                      12/22/98

Official Court Reporter                      Date

Monmouth County Courthouse

# START OF RETAKES

## CERTIFICATION

THE MICROPHOTOGRAPHS APPEARING BETWEEN "START OF RETAKES" AND "END OF RETAKES" ARE TRUE COPIES OF THE ORIGINAL DOCUMENTS WHICH ARE ILLEGIBLE OR WERE OMITTED DURING THE FILMING.

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JOB # 002-009

BATCH # 29259-11

Haindee Singh  
Signature of camera operator

Agency: D.A.R.M.

*Robert*

FILED

DEC 15 1998

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL) JAMES A. KENNEDY, J.S.C.  
MONMOUTH COUNTY  
CASE NO. 98-00489  
WARRANT COMPLAINTS  
1998-000043-1331, 1998-000044-1331

ORIGINAL FILED  
MONMOUTH COUNTY  
DEC 17 1998  
WILLIAM G. CRONIN

STATE OF NEW JERSEY :

Plaintiff :

v. :

GREGORY S. BRUNO, :

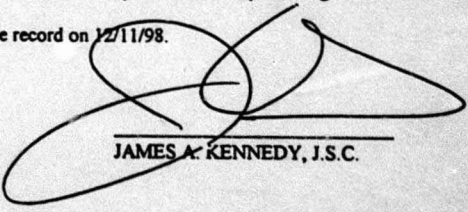
Defendant :

ORDER DENYING APPLICATION  
TO DISQUALIFY COUNSEL

This matter having been opened to the Court by John Kaye, Monmouth County Prosecutor, Assistant Prosecutor Peter E. Warshaw, Jr., upon notice to and in the presence of defendant GREGORY S. BRUNO and his attorney, Edward C. Pertucio, Jr., Esq. and

The Court having considered the moving papers, responding affidavits, and oral argument and for good cause shown;

It is on this 15th day of December, 1998, ORDERED that the law firm of Giordano, Halleran & Ciesla is not disqualified from representing defendant for the reasons spread upon the record on 12/11/98.

  
\_\_\_\_\_  
JAMES A. KENNEDY, J.S.C.

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COUNSEL  
ELIZABETH CHRISTIAN  
ROBERT I. LINEN  
JOANNE I. GRAY

OF COUNSEL  
S. THOMAS GAGLIANO  
JOHN C. GIORDANO  
(1971-1999)

CERTIFIED CIVIL  
TRIAL ATTORNEY  
A CERTIFIED CRIMINAL  
TRIAL ATTORNEY

CLIENT/MATTER NO.

11308/001

August 8, 1998

**VIA HAND-DELIVERY**

Criminal Motions Clerk

Monmouth County Superior Court

71 Monument Park

Freehold, New Jersey 07728

Re: **State of New Jersey v. Gregory S. Bruno**  
Case No.: 98-00489

Dear Sir or Madam:

Relative to the above, enclosed please find an original and one copy of defendant's Notice of Compulsion to Compel Discovery, returnable August 14, 1998, with attached Certification of Service, Attorney's Certification in support thereof, two copies of a Letter Brief (the original of which was sent under separate cover to Judge Kennedy), and three copies of a proposed form of Order.

Kindly file the within documents and return a "filed" copy to me in the return envelope provided. I would further request that you charge any filing fee to our account no. 0035600. Thank you.

Very truly yours,

*Edmond C. Bertuccio*  
Edward C. Bertuccio, Jr. Esq.

ECB/bmc

cc: Honorable James A. Kennedy, J.S.C.

Peter Warshaw

Gregory Bruno

Enclosures

Ra 13

**GIORDANO HALLERAN & CIESLA, P.C.**  
Mail to: P.O. Box 190, Middletown, N.J. 07748  
Deliver to: 125 Half Mile Road, Middletown, N.J. 07748  
(732) 741-3900

Attorneys for Defendant, Gregory S. Bruno.

STATE OF NEW JERSEY,

Plaintiff,

v.

GREGORY S. BRUNO,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION (CRIMINAL)  
MONMOUTH COUNTY

CASE NO. 98-00489

Criminal Action

AFFIDAVIT OF  
ROBERT BRUNO

I, ROBERT BRUNO, of full age and having been duly sworn according to oath hereby  
depose and say:

1. I am the father of Gregory Bruno, who is charged with murder and faces the death penalty in the above-captioned matter, State v. Bruno. As such, I am fully familiar with the facts I am about to relate.
2. As my son was being charged with murder on February 1, 1998, I undertook an extensive search and interview process to find the best counsel I could to defend him.
3. After my extensive search, I, together with my son and my family, decided to retain Norman M. Hobbie, Esq. and the law firm of Giordano, Halleran & Ciesla, P.C., to represent my son in this matter.
4. At the time I retained Mr. Hobbie, and at various times thereafter, he fully apprised me of the prior representation of Detective Ronald Ohnmacht by Giordano, Halleran & Ciesla, P.C., and of the personal friendship suggested by the State to create a conflict of interest.



5. I, along with my son and my family, fully consented to Mr. Hobbie being retained and continuing as counsel to Gregory Bruno in this matter.

6. Since Mr. Hobbie was initially retained, I and my son have been kept fully apprised of the position of the Monmouth County Prosecutor's office with respect to the continued representation of my son by Mr. Hobbie, Mr. Edward C. Bertucio, Jr., Esq., and the Giordano law firm. I disagree with the Prosecutor's Office and do not see any actual or perceived conflict of interest.

7. I have always insisted, and continued to insist, as has my son, that Mr. Hobbie and Mr. Bertucio and the Giordano law firm continue as counsel in this matter. I am completely confident, as is my son, that they will represent him zealously and aggressively.

8. It would be extremely unfair and very prejudicial to disqualify my son's counsel at this juncture in the case, as the Giordano firm has undertaken extensive investigation in this matter. Mr. Hobbie and Mr. Bertucio have spent months with my son and have developed a mutual trust and confidence, which I believe is vital to the defense of my son, who is on trial for his life.

9. Simply put, neither my son nor I want any other attorney on this case.

10. Detective Ohnmacht has been a long-standing family friend to me and my entire family for years prior to the arrest of my son in this matter.

11. That has not prevented Detective Ohnmacht from discharging what he believes to be his duty in the investigation and prosecution of the homicide alleged in State v. Bruno. I have not expected him to act other than in a professional manner.

12. I likewise expect Mr. Hobbie and Mr. Bertucio to act in the same professional and zealous manner in the defense of my son, as our family friend Detective Ohnmacht has done in the investigation and prosecution of my son.



Decision

5

1 substantially related to the current representation of Gregory  
2 Bruno. The Giordano firm represented Detective Ohnmacht in a  
3 civil rights action and in a workers compensation case as  
4 discussed previously.

5           It is defense counsel's position that the Giordano  
6 firm no longer represented Detective Ohnmacht as his workers  
7 compensation claim had been settled and the detective had not  
8 made any attempts to reopen his case. Defense counsel has argued  
9 that Detective Ohnmacht did not respond or contact the Giordano  
10 firm until February 13th of 1998 after the defendant retained  
11 Giordano (February 4, 1998) and after a substitution of attorney  
12 was filed with the Criminal Case Management Office (February 10,  
13 1998).

14           It is noted and emphasized that the defendant Gregory  
15 Bruno has been charged with murder, felony murder, armed robbery  
16 and possession of a knife for an unlawful purpose. The exact  
17 factual allegations or details of the charges need not be spread  
18 upon this record.

19           The defendant has not yet been indicted and it is  
20 uncertain, although potentially likely, that the defendant may  
21 be subjected to the death penalty if it is determined ultimately  
22 that this is to be a capital murder case.

23           Under the Sixth Amendment, the defendant is guaranteed  
24 the right to assistance of counsel for his defense. The Sixth  
25 Amendment is applicable to the State via the Fourteenth

1 amendment; however, it is also well settled that the defendant's  
2 right to counsel does not include the right to counsel that has  
3 been disqualified. State vs. Lucarello, 135 N. J. Super 347.  
4 See also State vs Morel\_i, 152 N.J. Super 71. It is also now  
5 settled that the State bears the burden of proving  
6 disqualification of defense counsel. See also State vs Catanoso,  
7 222 N. J. Super, 641, (1987).

8 If the State satisfies this burden and there is a  
9 showing that there is an appearance of impropriety, defense  
10 counsel must be disqualified. See State vs Needham 298 N. J.  
11 Super, 100. Thus the court is relegated to decide if there is an  
12 actual appearance of impropriety.

13 The applicable standards to be used was set forth by  
14 our highest court In the Matter of Petition for Review of  
15 Opinion Number 569, 103 New Jersey 325 (1986). It is the  
16 viewpoint of the public from which the court must judge whether  
17 particular conduct would constitute an appearance of  
18 impropriety. The conduct must be viewed from the viewpoint of an  
19 informed and concerned private citizen and there must be  
20 consideration as to whether the reputation of the bar would be  
21 lowered if the representation were permitted.

22 Essentially I'm paraphrasing from page 331 of the case  
23 previously cited at 103 New Jersey. It has been held that  
24 disqualification of counsel is necessary where previous and  
25 present representations are substantially similar, Reardon vs

# END OF RETAKE

## CERTIFICATION

THE MICROPHOTOGRAPHS APPEARING BETWEEN "START OF RETAKES" AND "END OF RETAKES" ARE TRUE COPIES OF THE ORIGINAL DOCUMENTS WHICH ARE ILLEGIBLE OR WERE OMITTED DURING THE FILMING.

Harinder Singh  
Signature of camera operator  
Agency: DAR M.