

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

SEP 07 2004

LAWRENCE K. BAERMAN, CLERK  
ALBANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JOHN KELSEY et al.,

Plaintiffs,

v.

No. 04-CV-299  
(LEK/DRH)

COUNTY OF SCHOHARIE et al.,

Defendants.

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**DAVID R. HOMER**  
**U.S. MAGISTRATE JUDGE**

**ORDER APPROVING DEFENDANT'S  
WAIVER OF POTENTIAL CONFLICT**

On July 27, 2004, an order was filed directing defendants John S. Bates and Jim Hazzard ("individual defendants") to take certain steps calculated to allow for a determination whether their counsel has fulfilled the ethical obligation to inform them of the potential adverse consequences of being jointly represented by the same counsel representing defendant County of Schoharie ("County"), and whether they understand the nature of the potential conflict and have knowingly and voluntarily waived it. In response, as directed, counsel for the individual defendants and the County has submitted the

affidavit of Bates and Hazzard, with attachment, stating that each has been apprised of the nature of the potential for conflict arising from such joint representation and that each has chosen, notwithstanding that potential conflict, to continue being jointly represented by the same counsel.

Based upon the foregoing, the Court having reviewed the affidavits of the individual defendants and attachments, it is hereby

ORDERED as follows:

1) Based upon the circumstances of which this Court is presently aware, including the information set forth in the affidavits of the individual defendants and attachments, I find that the individual defendants have each been provided with sufficient written notice by counsel of the potential for conflict inherent in being jointly represented by the same attorney representing the County, and that each has knowingly and voluntarily chosen to waive that potential for conflict and proceed with that joint representation.

2) The affidavits of Bates and Hazzard and their attachments, which were submitted pursuant to the Court's order filed July 27, 2004 and contain sensitive and attorney-client privileged matters, shall be filed by the Court under seal.

3) Copies of this order shall promptly be served by the Clerk to all counsel of record in this action.

**DATED: September 7, 2004**  
**Albany, New York**

*David P. Homer*  

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**UNITED STATES MAGISTRATE JUDGE**