UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Cr. No. 01-10384-MLW
	)	
GARY LEE SAMPSON	)	

ORDER

WOLF, D.J. January 22, 2014

For the reasons explained at the January 21, 2014 hearing, it is hereby ORDERED that:

1. By January 28, 2014:

a) The parties shall each file either a motion for recusal, pursuant to 28 U.S.C. §455(a), based on the court's association with Assistant United States Attorney Zachary R. Hafer or a notice stating that it does not intend to file such a motion.

b) The government shall inform the court whether Mr. Hafer will continue to represent the government in this case.

c) The government shall inform the court whether Assistant United States Attorney John A. Wortmann, Jr. continues to move to withdraw as counsel in this case.

2. If a motion for recusal is filed, a response shall be filed by February 4, 2014.

3. The parties shall order, on an expedited basis, a transcript of the court's analysis concerning recusal at the January 21, 2014 hearing.

4. By February 24, 2014, the parties shall confer and report, jointly if possible but separately if necessary, concerning:

a) Whether a schedule has been established for defendant Gary Sampson to make formal presentations concerning whether this should continue to be a capital case to the United States Attorney for the District of Massachusetts and to the Department of Justice. If such a schedule has been established, the parties shall describe it.

b) When the Department of Justice is expected to make a final decision concerning whether it will continue to authorize the United States Attorney to seek the death penalty in this case.

c) The minimum reasonable time for the government to file any amended notice under 18 U.S.C. §3593(a):

> (1) stating that the government believes that the circumstances of the offense are such that . . . a sentence of death is justified . . . and that the government will seek the sentence of death; and
>
> (2) setting forth the aggravating factor or factors that the government . . . proposes to prove as justifying a sentence of death.

d) The minimum reasonable time for Sampson to submit an updated notice, under Federal Rule of Criminal Procedure 12.2(b), that he "intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on . . . the issue of punishment in a capital case."

e) Whether the parties have agreed on the scope of the information that should be included in Sampson's updated notice under Federal Rule of Criminal Procedure 12.2(b). See May 9, 2003 Mem. & Order (Under Seal).

f) Whether there is now "reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense," 18 U.S.C. §4241(a), and, therefore, the court should order an evaluation and a hearing to determine Sampson's competency to stand trial pursuant to 18 U.S.C. §§4241, 4247 and Federal Rule of Criminal Procedure 12.2(c)(1).

g) The implications, if any, of Federal Rule of Criminal Procedure 12.2(c)(2), and whether a procedure involving "firewalled" Assistant United States Attorneys should be employed, if an evaluation and hearing are ordered to determine

whether Sampson is competent to stand trial. Cf. United States v. Sampson, 335 F. Supp. 2d 166, 241-48 (D. Mass. 2004).

h) Whether, pursuant to 18 U.S.C. §3593(c), a presentence report should not be prepared.

i) The foreseeable motions to be filed and decided before another trial to determine Sampson's sentence can be conducted.

j) The minimum reasonable time for each party to prepare its case for trial.

k) Any other matter(s) either or both parties request be addressed by the court.

5. Another hearing to address the foregoing issues will be held on March 7, 2014, at 9:30 a.m.

6. Thomas P. Windom's Motion to Withdraw as Counsel (Docket No. 1248) is ALLOWED.

7. Susan K. Marcus's Motion to Withdraw as Learned Counsel (Docket No. 1270) is ALLOWED.

8. Sampson's Motion to Appoint Danalynn Recer as Learned Counsel (Docket No. 1272) is ALLOWED. Ms. Recer is APPOINTED as Learned Counsel for Sampson. See 18 U.S.C. §3005.

9. Sampson's Motion to Seal (Docket No. 1268) is DENIED. The January 15, 2014 Letter from Miriam Conrad to the Court (Docket No. 1269), including the document attached to it, is UNSEALED.

10. By January 28, 2014, Assistant Federal Public Defender J. Martin Richey shall file an affidavit confirming that, in accordance with 18 U.S.C. §3599(b), he: (i) has been admitted to practice before this court for not less than five years; and (ii) has had not less than three years of experience in the actual trial of felony prosecutions in this court.

11. By February 4, 2014, defense counsel shall submit, ex parte and under seal, a revised partial budget, to cover work done and expenses incurred since the time period covered by the vouchers approved by the court under the Criminal Justice Act on September 13, 2013, and through the March 7, 2014 hearing. As previously explained, this and other budget submissions "will be subject to modification in light of facts and developments that emerge," and will be "modified by the court where good cause is shown." Dec. 27, 2013 Mem. & Order 2-3 (quoting 7A Guide to Judicial Policy ch. 6, §640.10, 640.20(f)).

UNITED STATES DISTRICT JUDGE