

ORDER APPOINTING STARR

FILED AUG 05 1994

RON GARVIN
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty
Savings & Loan Association

Division No. 94-1

Order Appointing
Independent Counsel

Before: SENTELLE, *Presiding*, and BUTZNER and SNEED, *Senior Circuit Judges*.

Upon consideration of the application of the Attorney General pursuant to 28 U.S.C. § 592(c)(1)(A) for the appointment of an independent counsel with authority to exercise all the power, authority and obligations set forth in 28 U.S.C. § 594, to investigate whether any individuals or entities have committed a violation of federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings and Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.; it is

ORDERED by the Court in accordance with the authority vested in it by 28 U.S.C. § 593(b) that Kenneth W. Starr, Esquire, of the District of Columbia bar, with offices at Kirkland and Ellis, 655-15th Street, NW, Washington, DC, 20005,

be and he is hereby appointed Independent Counsel with full power, independent authority, and jurisdiction to investigate to the

maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether any individuals or entities have committed a violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.

The Independent Counsel shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity developed during the Independent Counsel's investigation referred to above and connected with or arising out of that investigation.

The Independent Counsel shall have jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, in connection with any investigation of the matters described above.

The Independent Counsel shall have jurisdiction and authority to seek indictments and to prosecute any persons or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any

federal offense.

The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994. It is

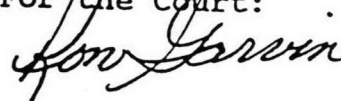
FURTHER ORDERED by the Court that the Independent Counsel, as authorized by 28 U.S.C. § 594, shall have prosecutorial jurisdiction to fully investigate and prosecute the subject matter with respect to which the Attorney General requested the appointment of independent counsel, as hereinbefore set forth, and all matters and individuals whose acts may be related to that subject matter, inclusive of authority to investigate and prosecute federal crimes (other than those classified as Class B or C misdemeanors or infractions) that may arise out of the above described matter, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses. The Court, having reviewed the motion of the Attorney General that Robert B. Fiske, Jr., be appointed as Independent Counsel, has determined that this would not be consistent with the purposes of the Act. This reflects no conclusion on the part of the Court that Fiske lacks either the actual independence or any other attribute necessary to the conclusion of the investigation. Rather, the Court reaches this conclusion because the Act contemplates an apparent as well as an actual independence on the part of the Counsel. As the Senate Report accompanying the 1982 enactments reflected, "[t]he intent of the special prosecutor provisions is not to impugn the integrity of the Attorney General or the

Department of Justice. Throughout our system of justice, safeguards exist against actual or perceived conflicts of interest without reflecting adversely on the parties who are subject to conflicts." S. Rep. No. 496, 97th Cong., 2d Sess. at 6 (1982) (emphasis added). Just so here. It is not our intent to impugn the integrity of the Attorney General's appointee, but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict. As Fiske was appointed by the incumbent administration, the Court therefore deems it in the best interest of the appearance of independence contemplated by the Act that a person not affiliated with the incumbent administration be appointed.

It further appearing to the Court in light of the Attorney General's motion heretofore made for the authorization of the disclosure of her application for this appointment pursuant to 28 U.S.C. § 592(e) and of the ongoing public proceedings and interest in this matter, that it is in the best interests of justice for the identity and prosecutorial jurisdiction of the Independent Counsel to be disclosed,

IT IS SO ORDERED.

Per Curiam
For the Court:



Ron Garvin, Clerk

United States Court of Appeals
For the District of Columbia Circuit

FILED AUG 05 1994

RON GARVIN
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty
Savings & Loan Association

Division No. 94-1

Order Appointing
Independent Counsel

Before: SENTELLE, *Presiding*, and BUTZNER and SNEED, *Senior Circuit Judges*.

Upon consideration of the application of the Attorney General pursuant to 28 U.S.C. § 592(c)(1)(A) for the appointment of an independent counsel with authority to exercise all the power, authority and obligations set forth in 28 U.S.C. § 594, to investigate whether any individuals or entities have committed a violation of federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings and Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.; it is

ORDERED by the Court in accordance with the authority vested in it by 28 U.S.C. § 593(b) that Kenneth W. Starr, Esquire, of the District of Columbia bar, with offices at Kirkland and Ellis, 655-15th Street, NW, Washington, DC, 20005

be and he is hereby appointed Independent Counsel with full power, independent authority, and jurisdiction to investigate to the

maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether any individuals or entities have committed a violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.

The Independent Counsel shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity developed during the Independent Counsel's investigation referred to above and connected with or arising out of that investigation.

The Independent Counsel shall have jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, in connection with any investigation of the matters described above.

The Independent Counsel shall have jurisdiction and authority to seek indictments and to prosecute any persons or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any

P. 03/05 202 273 9998

federal offense.

The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994. It is

FURTHER ORDERED by the Court that the Independent Counsel, as authorized by 28 U.S.C. § 594, shall have prosecutorial jurisdiction to fully investigate and prosecute the subject matter with respect to which the Attorney General requested the appointment of independent counsel, as hereinbefore set forth, and all matters and individuals whose acts may be related to that subject matter, inclusive of authority to investigate and prosecute federal crimes (other than those classified as Class B or C misdemeanors or infractions) that may arise out of the above described matter, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses. The Court, having reviewed the motion of the Attorney General that Robert B. Fiske, Jr., be appointed as Independent Counsel, has determined that this would not be consistent with the purposes of the Act. This reflects no conclusion on the part of the Court that Fiske lacks either the actual independence or any other attribute necessary to the conclusion of the investigation. Rather, the Court reaches this conclusion because the Act contemplates an apparent as well as an actual independence on the part of the Counsel. As the Senate Report accompanying the 1982 enactments reflected, "FOIA # none (URIS 16305) DocId: 70105132 Page 8" the intent of the special prosecutor provisions is not to impugn the integrity of the Attorney General or the

P.04/05 0908 202 273 0908

USCA DC CLERK

AUG-05-1994 14:46

TOTAL P.05

Department of Justice. Throughout our system of justice, safeguards exist against actual or perceived conflicts of interest without reflecting adversely on the parties who are subject to conflicts." S. Rep. No. 496, 97th Cong., 2d Sess. at 6 (1982) (emphasis added). Just so here. It is not our intent to impugn the integrity of the Attorney General's appointee, but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict. As Fiske was appointed by the incumbent administration, the Court therefore deems it in the best interest of the appearance of independence contemplated by the Act that a person not affiliated with the incumbent administration be appointed.

It further appearing to the Court in light of the Attorney General's motion heretofore made for the authorization of the disclosure of her application for this appointment pursuant to 28 U.S.C. § 592(e) and of the ongoing public proceedings and interest in this matter, that it is in the best interests of justice for the identity and prosecutorial jurisdiction of the Independent Counsel to be disclosed,

IT IS SO ORDERED.

Per Curiam
For the Court:



Ron Garvin, Clerk

United States Court of Appeals
For the District of Columbia Circuit

FILED JUL 01 1994

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

RON GARVIN
CLERK

APPLICATION TO THE COURT PURSUANT)
TO 28 U.S.C. § 592(c)(1) FOR THE)
APPOINTMENT OF AN INDEPENDENT COUNSEL)
IN RE MADISON GUARANTY SAVINGS &)
LOAN ASSOCIATION)

No. PN 94-1

RECEIVED
JUL 01 1994
CLERK OF THE UNITED
STATES COURT OF APPEALS

In accordance with the Independent Counsel Reauthorization Act of 1994 (the "Act"), I hereby apply to the Special Division of the Court for the appointment of an Independent Counsel to investigate whether any violations of federal criminal law were committed by James B. McDougal or any other individual or entity relating to Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.

Background. In October 1993, the Resolution Trust Corporation (RTC) referred a number of allegations to the Office of the United States Attorney for the Eastern District of Arkansas arising out of an inquiry into the administration of Madison Guaranty Savings & Loan Association, a defunct Arkansas savings and loan association that was owned by James B. McDougal, who had been a partner with William and Hillary Clinton in Whitewater Development Corporation.

During the same time period, the Office of the United States Attorney for the Eastern District of Arkansas was prosecuting David Hale, an Arkansas municipal court judge who had ties both to the Clintons and to McDougal, for fraud against the Small Business Administration relating to the operation of Hale's investment company, Capital Management Services, Inc. While plea

negotiations were underway, Hale made a number of allegations against former associates, including McDougal and the Clintons, concerning the misuse of funds of Capital Management Services.

In November 1993, the Fraud Section of the Criminal Division of the Department of Justice took over the prosecution of Hale and the inquiry into the RTC allegations of misapplication of funds from Madison Guaranty, several of which it determined to be sufficiently specific and credible to provide grounds for preliminary investigation.

On January 20, 1994, I appointed Robert B. Fiske, Jr., as regulatory independent counsel to take over all investigations relating to Madison Guaranty Savings & Loan Association. Mr. Fiske received the following authority:

(a) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate to the maximum extent authorized by part 600 of this chapter whether any individuals or entities have committed a violation of federal criminal or civil law relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with (1) Madison Guaranty Savings & Loan Association, (2) Whitewater Development Corporation, or (3) Capital Management Services.

(b) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal or civil law by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.

(c) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal law, in connection with any investigation of a crime (18 U.S.C. 1630) or (2) 105132 Page 11 or (b) of this section.

(d) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to seek indictments and to prosecute, or bring civil actions against, any persons or entities involved in any of the matters referred to in part (a), (b), or (c) who are reasonably believed to have committed a violation of any federal criminal or civil law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

28 C.F.R. § 603.1.

Independent Counsel Fiske has not reported to the Department of Justice concerning his investigative results or the direction of his investigation.¹ However, he has reviewed this Application and has affirmed that with respect to the matters referred to him, there exists reasonable grounds to believe that further investigation is warranted pursuant to 28 U.S.C. § 592(c)(1)(A).

Basis for Appointment of Statutory Independent Counsel.

On June 30, 1994, the Independent Counsel Act was reauthorized. I have concluded that the circumstances of this matter call for the appointment of an independent counsel pursuant to 28 U.S.C. § 592(c)(1)(A), because investigation by the Department of Justice of the allegations of violations of criminal law by McDougal and other individuals associated with President and Mrs. Clinton in connection with Madison Guaranty Savings & Loan, Whitewater Development Corporation, and Capital Management Services, Inc., would present a political conflict of

¹ A copy of a public report dated June 30, 1994, concerning the results of his investigation into the death of Vincent W. Foster, Jr. was furnished to the public release on June 30, 1994.

interest. See Independent Reauthorization Act of 1994, § 4(a) (amending 28 U.S.C. § 591(c)). Accordingly, I hereby request that the Court appoint a statutory independent counsel as soon as possible, and that the Court appoint Robert B. Fiske, Jr. so that he may continue his ongoing investigation without disruption and with the full independence provided by the Act.²


Recommended Jurisdiction. Pursuant to 28 U.S.C. § 593(b)(3), I recommend and request that the Special Division of the Court grant the statutory independent counsel the same prosecutorial jurisdiction as that granted to regulatory Independent Counsel Fiske, so that the investigation may continue without interruption. In this connection, I have appended hereto a proposed statement of the scope of prosecutorial jurisdiction for the statutory independent counsel.³

² The reauthorizing legislation allows the Court to appoint Mr. Fiske as statutory independent counsel. Independent Counsel Reauthorization Act of 1994, § 7(h). I appointed Mr. Fiske on the basis of his record of independence and his outstanding qualifications, and he has been investigating this matter as an independent prosecutor for five months. His staff, selected by him, is established and is fully engaged in the investigation. Appointment of a different independent counsel would seriously disrupt the investigation.

³ The intent of the proposed statement of independent counsel's prosecutorial jurisdiction is to give him exactly the same jurisdiction as that given to regulatory Independent Counsel Fiske, except that as regulatory Independent Counsel, Mr. Fiske was also given civil jurisdiction. To ensure that the full scope of Mr. Fiske's independent civil investigation continues uninterrupted and without limitation, it is my intention to continue Mr. Fiske's regulatory appointment for this purpose, or, to name whomever the Court may select as statutory independent counsel as an independent special attorney to handle all civil aspects of the investigation as she or he deems appropriate.

Request for Authorization for Public Disclosure. I request that the Court authorize the disclosure of this Application to the public pursuant to 28 U.S.C. § 592(e). The allegations underlying this Application, and Mr. Fiske's mandate as regulatory Independent Counsel, are known to the public. I believe that the public interest will be served by the disclosure of the Application. I have submitted a separate motion and proposed order to this effect.

Respectfully submitted,



Janet Reno
Attorney General of the United States

DATED: June 30, 1994

STATEMENT OF JURISDICTION OF INDEPENDENT COUNSEL

The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether any individuals or entities have committed a violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.

The Independent Counsel shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.

The Independent Counsel shall have jurisdiction and authority to investigate any violation of 18 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, in connection with any investigation of the matters described above.

The Independent Counsel shall have jurisdiction and authority to seek indictments and to prosecute any persons or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994.