

## Lawyer Thought Moser Engaged in Tax Fraud

By Mark Friedman - 6/7/2004

Nearly five years before Little Rock lawyer Bobby Keith Moser was charged with defrauding the IRS, Jack Wagoner III said he felt Moser was engaging in tax fraud on a "grand scale."

"I think that there is documentation that has come to light through discovery in this case that creates a strong suspicion in my mind and would for the Internal Revenue Service or criminal authorities investigating this matter," Wagoner, a Little Rock lawyer, said in a May 1999 deposition during Moser's divorce.

But a protective order filed during the discovery and the order that ended Moser's 21-year marriage to his first wife, Nina Jo, on Dec. 19, 1999, wouldn't allow Wagoner to utter a word about his suspicions.

"I would love to talk about that case, but

there's got to be a court order," Wagoner said. "I have been real surprised that I haven't been served with a subpoena by the U.S. Attorney or called before the grand jury or something. But my lips are sealed until there's a court order that says I'm ordered to talk about it."

Moser is currently facing a four-count indictment in federal court in Arkansas in connection with stealing more than \$500,000 from his clients' trust account.

He pleaded guilty in May to a seven-count federal indictment that included money laundering. Sentencing will be at a later date.

Moser had agreed to a 10-year sentence in exchange for pleading guilty in February, but he fled to Madagascar. He was caught about a month later and returned to Little Rock.

During his 22-year legal career, Moser's specialty was tax planning. Moser's aggressive tax plans to save clients' money entered the gray areas of the law.

As Moser is in hot water with federal officials, some of his clients might be too.

Little Rock lawyer Neil Deininger, who assists people with tax problems, said since Moser's charges have come to light a steady stream of Moser's former clients have come through his door.

"Yes, [Moser] was aggressive [in tax planning], it didn't work out and his clients have tax problems," said Deininger.

He wouldn't say if some of the Moser's former clients were being charged by the government.

Moser's attorney, federal public defender Kimberly Witherspoon, declined to arrange an interview with Moser, citing the pending charges.

### Early Days

Born in Batesville on Oct. 30, 1956, Moser graduated from the University of Central Arkansas at Conway in 1978. He then received his law degree from the University of Arkansas at Fayetteville in 1980 and was admitted to the Arkansas bar a year later.

But financial problems started to surface for Moser in 1987.

Moser and his wife fell behind on payments for furniture from Brandon Furniture Co. Brandon Furniture sued the Mosers in Pulaski County Circuit Court in March 1987. Brandon eventually received a default judgment against the Mosers for \$7,127.

A year later, Moser's firm Moser & Plake P.A., was sued by International Thomson (U.S.) for not paying a nearly \$2,000 bill. Moser was listed as the registered agent for the firm.

Moser's firm failed to file an answer, which resulted in a summary judgment for \$2,263 slapped against the firm.

Sometime after the two lawsuits, Moser started a new firm with Barry J. Jewell, who had worked with Moser in a previous

firm.

Then things started looking up for Moser.

In 1994, he had a report on tax planning published in a booklet called "Asset Protection Planning in Arkansas," which apparently was used to accompany a class at the University of Arkansas at Little Rock Law School.

In his article, Moser devotes 11 pages to using foreign situs trusts in asset protection planning.

"The statutes and regulations concerning income from foreign sources are complex," Moser wrote. "Also, the Internal Revenue Service remains suspicious of foreign entities."

One of Moser's specialties was establishing companies in the U.S. Virgin Islands so his clients could dodge taxes.

By November of 1996, Moser and his wife were doing much better financially than they were in 1987. The couple had net worth of nearly \$1.3 million and Moser listed \$22,000 in cash on hand, according to the financial statement filed in the divorce.

## **Divorce**

On March 14, 1998, during the Moser family's yearly ski trip to Jackson Hole, Wyoming, Moser announced "he was leaving the marriage and wanted a divorce," Nina Jo Moser said in her divorce filings.

She said her husband of 21 years left her and their two minor daughters in Wyoming and she had to arrange travel plans to get home. Keith Moser filed the divorce papers himself on March 19, 1998.

In the filing he said his wife treated him with "such general indignities, habitually and systematically pursued so to make [his] condition in life intolerable." Also in the filing, he listed the birthdays of his two girls — one of the dates was wrong.

Nina Jo Moser hired Jack Wagoner to represent her in the divorce.

One item that raised Wagoner's eyebrows was when Moser said he made \$80,400 from his law practice in 1997 but had a source of "other income" totaling \$97,509 that wasn't listed on his tax returns or the records of his law practice.

When trying to track down the other income, Wagoner said Moser blocked him.

In a July 28, 1999, letter to Judge Robin Mays, Wagoner pleaded his case for help in getting through the financial web Keith Moser used to shuffle money.

"As you might have guessed by now, I am chasing a moving target," Wagoner wrote. "Once we find out about a corporation, it's (sic) assets, and its payment of personal expenses for Mr. Moser, all activity in the corporation ceases.

"In short, the pattern goes like this: (1) I figure out what is taking place with respect to some of Mr. Moser's financial affairs; (2) Mr. Moser invokes daily tactics to keep me from getting the information I need to prove things; (3) I finally get the information, but by that time the information is stale and I have to chase new leads; and (4) Mr. Moser imposes the same delay tactics with respect to my pursuit of information on these new leads," Wagoner said in the letter.

The relationship between Keith Moser and Wagoner didn't improve in the months following the letter.

On Oct. 8, 1999, Wagoner filed a motion for contempt against Moser for lying to the judge.

The basis for Wagoner's complaint was tied to answers Moser gave in a hearing about his company, FS Capital Corp., which he created to pay his children's private school tuition.

At the hearing, which was held on Oct. 1, 1998, Judge Mays asked about the status of FS Capital.

Moser answered, "There is probably \$83 in there. I've got the bank statements, if you would like to see those."

A few days after the hearing, though, \$50,000 was withdrawn from a SunAmerica Money Market account held in the name of FS Capital Corp., Wagoner said in his motion for contempt.

Wagoner also pointed out that Moser hasn't filed a tax returns for FS Capital since its inception in 1993.

In a deposition, Moser said he didn't file the returns because he hadn't "gotten around to it."

Wagoner also said "Mr. Moser has committed perjury on numerous occasions, including filing false answers in sworn discovery responses and preparing false affidavits and has blatantly violated the rules pertaining to segregation of client funds."

Wagoner said Moser funneled money in and out of the firm's client trust account, a clear violation of professional conduct.

"Mr. Moser wants to violate the law by commingling personal funds with his client trust account, and then use the attorney-client privilege and his trust account as a 'shield' to cover up transactions that benefit him personally," Wagoner wrote in another motion filed in the case.

Moser said in a deposition that the money went from a client trust account to FS Capital "in connection with loans," but declined to say what it was because of an attorney-client privilege.

"Regardless of how you look at it, there is no reason for the client trust account to transfer funds to Mr. Moser's personal corporation unless it is his money," Wagoner said.

And just before Moser filed for divorce, he transferred \$180,000 from another one of his personal corporations, CHB Capital, to the client trust account. The money then went to Worldwide Capital Corp., a firm that factors accounts receivable.

Moser said the transfer was done on behalf of his clients but wouldn't say who owned the company.

Wagoner said between 1994 and 1999, there were \$3.23 million worth of transfers from the client trust account to several corporations in which Moser had a personal connection.

While Moser said the transfers were business transactions made on behalf of clients, Wagoner didn't believe him.

"Mr. Moser has compromised the integrity of his client trust account by commingling personal and client funds," he said.

Jewell said in an interview last week that the transfers were related to client's money, as Moser had said.

Jewell said Moser had a reason for shifting the money around, but he didn't recall what it was.

"I don't remember what he was doing," Jewell said. "[Moser] always had some kind of idea."

Moser's handling of the clients' trust accounts surfaced again in March when he was charged with stealing client money.

An IRS agent's affidavit filed in the indictment suggests that Moser may have helped himself to almost \$1.7 million of his clients' money.

IRS Special Agent Dan Elliott profiled some of the clients who said they lost money in his report.

Elliott's affidavit also described some of the clients whose trust funds are missing: a retired couple who left \$900,000 from the sale of their family farm on deposit with Moser; a client who borrowed \$600,000 to buy a farm and left the money with Moser while the sale was delayed by a lawsuit; and an elderly widow who trusted Moser with more than \$100,000.

Moser has pleaded not guilty in connection with those charges. His trial is set for November.