



1346 based on such nondisclosure"); United States v. Ford, 639 F.3d 718 (6th Cir. 2011)(honest services convictions based upon failure to disclose financial interests vacated); United States v. Coniglio, 2011 791347 (3d Cir. 2011)(Under Skilling, concealed conflict instructions in honest services case erroneous); Stayton v. United States, 2011 WL 691238 (M.D.Ala. 2011) (honest services jury instruction based solely upon conflict of interest erroneous).

Furthermore, even assuming evidence of a violation of employment rules is relevant, that evidence should be excluded under Rule 403, F.R.E. because any probative value it might have would be outweighed by the danger of unfair prejudice or confusion of issues in this case which is already going to require presenting complex legal principles to the jury in the court's final instructions. Admitting this evidence would have the confusing and prejudicial tendency to suggest to the jury that the existence of the employment "rule" makes it a rule that is binding on Crosby as a matter of law in this Court, suggesting that if he violated the rule, this makes it more likely that he violated the law under which he is charged. That would be a wrong and prejudicial inference. Presumably the Government would say that the existence of the employment "rule" goes instead to Crosby's "state of mind," but it does not do that in any way that would help the jury. The existence of the

"rule" does not help the jury understand why Crosby allegedly received payments, or whether it was pursuant to a quid pro quo that he received them for the reasons charged in the indictment.

BASED UPON THE FOREGOING, this Court should grant Defendant McGregor's motion and further order that the Government may not elicit any evidence it contends indicates that or argue that Defendant Crosby violated employment rules in accepting any money from Defendant McGregor.

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#### CERTIFICATE OF SERVICE

I hereby certify that I have on this the 22d day of July, 2011, electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

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