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Diet-drug attorneys ordered to jail

Judge acts to protect assets in fraud case

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The three lawyers charged with bilking clients out of \$46 million in Kentucky's fen-phen case went to court yesterday morning to argue for a delay in their trial.

By afternoon, they were in jail.

Finding too great a risk that they would move the missing money off-shore -- or themselves flee abroad -- U.S. District Judge William O. Bertelsman ordered attorneys Shirley Cunningham Jr., William Gallion and Melbourne Mills Jr. removed from the courtroom and confined in the Boone County Jail.

They apparently will have to remain there until their trial, which Bertelsman postponed from October until Jan. 7.

Bertelsman said in an order that "no conditions of release will reasonably assure the appearance of the defendants," whom he noted could face 20 years in prison under federal sentencing guidelines.

"They have a tremendous motive to stonewall," Bertelsman said in the order, which set no new conditions for release.

He also observed that the lawyers have provided no accounting for the money and that "there is a tremendous public interest in concluding this case in an expeditious manner."

The lawyers had been free on their own recognizance since they were indicted in June.

Sonya Pickett, a Lexington woman and former fen-phen client now suing the lawyers for damages, said she was ecstatic to hear they had been locked up.

"They belong in jail, and you can quote me on that," she said. "Yes! Praise God! Maybe justice will finally be served. This gives me goose bumps."

Attorneys for the three lawyers either did not respond to phone messages and e-mails, or wouldn't comment.

Angela Ford, who represents Pickett and more than 400 others of the lawyers' 440 ex-clients, said, "I think Judge Bertelsman felt the outrage that the entire legal profession has felt about this case. And I am thrilled to see it happen."

During yesterday's hearing, which was expected to be a routine status conference, Bertelsman heard counsel for the lawyers request that their trial be delayed, and then warned that if he did so, he would revoke their bond. And after taking a 15-minute recess and hearing from the prosecution and the defense, Bertelsman did just that: He agreed to

postpone the trial to Jan. 7, and then ordered the three men into custody. The government also had favored a continuance.

Cunningham, Gallion and Mills -- all suspended from practice last year -- were photographed and fingerprinted before being taken to the Boone jail, located in Florence, said John Schickel, U.S. marshal for the Eastern District of Kentucky.

Each faces one count of conspiracy to commit wire fraud and has pleaded not guilty.

In the lawsuit filed by their former clients, Senior Judge William Wehr of Boone Circuit Court has already ruled that the lawyers defrauded their clients in the \$200 million diet-drug settlement. He ordered them to repay \$42 million, plus another \$20 million that already had been placed in escrow.

They also could face punitive damages at the trial of that suit, which has been postponed until after the criminal charges are resolved.

Ford said Bertelsman took "the only action he can to protect the victims" and prevent the lawyers from "dissipating assets."

Her clients haven't been able to collect any money yet because Wehr has not issued a final order.

The three lawyers legitimately earned more than \$60 million in fees from the case, but Wehr has found that they paid themselves and others an additional \$64 million.

Gallion, who litigated the case, was a respected lawyer who for more than two decades represented the University of Kentucky Chandler Medical Center. Mills and Cunningham were well known in the Lexington market.

Gallion and Cunningham attracted national attention earlier this year for their part ownership of the thoroughbred racehorse Curlin, who won the Preakness Stakes.

They bought the horse last year for \$57,000, then sold 80 percent of it for a reported \$3.5 million

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