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Judge says appeals court should decide if 3 fen-phen lawyers get out of jail

By Beth Musgrave

BMUSGRAVE@HERALD-LEADER.COM

A federal judge has decided not to hold a hearing Tuesday to determine whether three suspended attorneys could be released from the Boone County jail, where they have been housed for 10 days.

U.S. District Judge William Bertelsman, in an opinion released Monday morning, agreed that the 6th U.S. Circuit Court of Appeals should hear the appeal of Shirley Cunningham Jr., William Gallion and Melbourne Mills Jr.

Cunningham, Gallion and Mills were indicted on one count each of conspiracy to commit wire fraud and are accused of taking \$65 million of a 2001 diet-drug settlement that should have gone to their clients. All three have pleaded not guilty.

Bertelsman had scheduled a bond hearing for Tuesday after an Aug. 10 status hearing when he agreed to delay the trial of the three men but then decided to revoke the three suspended lawyers' bonds and place them in jail.

The trial originally was scheduled for October. Bertelsman has moved the criminal case to Jan. 7.

The three appealed Bertelsman's decision to the appeals court. In his order released Monday, Bertelsman said he had scheduled the hearing on the bond before the three had filed motions of appeal. Federal prosecutors and defense lawyers for the three men had filed motions with the court arguing that the appellate court should decide the men's fate, not Bertelsman.

A hearing on the appeal in the Sixth Circuit has not been set.