

05-35023

United States Court of Appeals

For the Ninth Circuit

Bill Walker, pro se

Appellant

v.

Members of Congress, et al.

Appellees

Motion For Addendum by Appellant To March 19, 2005 Motion For Court Investigation Of Improper Actions of Karen D. Utiger Of The Department of Justice and Related Matters

05-35023

On March 19, 2005, Appellant filed a motion for court investigation of improper actions of Karen D. Utiger of the Department of Justice and related matters with this court. Evidence has surfaced since the filing of that motion involving actions by Karen D. Utiger which, upon investigation by the court, Appellant believes the court may also find improper. Appellant therefore now files this addendum to his original March 19, 2005 motion and moves the court investigate the matters noted in this addendum.

In his original motion for court investigation, Appellant requested the court investigate whether Ms. Utiger had provided false information to the court in regards to alleged contacts and instructions from a court clerk. Appellant noted at the time while such contact may be harmless, assertions by her to the court that she in fact represented all appellees in this suit when she in fact did not, was not harmless. Appellant noted that if Ms. Utiger at the time of her appearance on January 24, 2005 was not statutorily empowered to represent appellees and in appellees' name oppose Appellant's legal argument that appellees are obligated and required by oath of office, constitutional language and federal criminal law to obey the direct written language of the Constitution, when in fact they had not so instructed her to make such representation, this would be a serious misrepresentation to the court. Such action clearly deserved whatever punishment the court felt was appropriate, including application of appropriate federal criminal laws.

The facts of this issue are irrefutable. Despite numerous opportunities to do so since her first appearance before this court on January 24, 2005, neither Ms. Utiger, nor any other Department of Justice personal who has appeared in this suit, has ever stated or presented any evidence they have been requested by all appellees to have the Department of Justice represent them in this matter as required by federal statute and to oppose the suit now before this court. Instead her only answer has been to refer to these statutes as “patiently frivolous.”

On February 11, 2005, the court issued an order mandating Ms. Utiger make application to appear to the court in this suit. As Appellant had raised objections to Ms. Utiger and Department of Justice’s appearance based on failure to provide evidence of requests by appellees in regards to representation as required by statute, it is obvious the purpose of the court’s order was to ascertain that such evidence of requests by the appellees existed. Ms. Utiger failed to provide such evidence in response to the court order. Instead, she stated she knew of no court rule that required the department provide such evidence even though the court had issued its order. Therefore, when Ms. Utiger made her appearance request on April 18, 2005 as required by court order, that request did not answer the objection made by Appellant which caused the court order to be issued. The evidence needed of course was proof the appellees had requested representation in opposition to Appellant’s suit, that is permitting appellees to veto and disobey the direct written

language of the Constitution. Clearly Ms. Utiger improperly failed to respond to the court order and fulfill its requirements. Her request for appearance therefore must be denied as it failed to satisfy the court order.

The issue of whether or not appellees are actually opposing obeying the direct written language of the Constitution is a serious and significant issue before this court. It is an issue that requires the court know with absolute certainty what is the position of the appellees in this regard. Ms. Utiger has attempted to play parlor games as to her representing the appellees with the court. Considering the gravity of the issue involved, this cannot be permitted.

The goal of the appellees according its alleged legal representatives remains the same; to permit the appellees the ability to veto the direct, written language of the Constitution which they disagree with and hence, do not wish to obey. It is irrelevant whether the method of disobedience of the appellees is that of direct advocacy or whether as Ms. Utiger and others in Department of Justice has publicly advocated, the court endorse an action permitting the appellees to continue to veto direct constitutional language by refusing to obey it. The public position of Ms. Utiger is her alleged clients, the appellees don't want to obey the Constitution and shouldn't have to. If it is accepted that Ms. Utiger is the appellees' legal representative, then it should be remembered that it is well settled law that when Ms. Utiger speaks in court, she publicly speaks not only for herself but the appellees as well.

It is clear by Ms. Utiger's letter of January 24, 2005 (see attached) that she was asserting by implication she represents all appellees. The language requesting that all material regarding the suit be sent to her and that she was named principle counsel leads to no other conclusion. In other words on January 24, 2005, Ms. Utiger asserted to this court that she represented all appellees in the matter. It is obvious she intended the court to infer, absent any proof, that the appellees had actually requested such representation, thus satisfying federal statutes and that appellees had instructed her to oppose obeying the Constitution.

It is commonly recognized convention that unless otherwise stated in a written dated document such as a letter, any statement made in that dated document is presumed to have occurred on or within a short period of time of that date. In a letter dated April 25, 2005, (see attached) Ms. Utiger stated, "Counsel for the Senate and House have asked us to let you know that we will be representing the members of Congress in these proceedings."

Ms. Utiger maintains that counsel for the Senate and House requested representation by her, presumably, but not proved, at the request of all members of Congress. Ms. Utiger presented no evidence at the time of the transmission of this letter to the court and the appellant that this statement was in fact true. Appellant has patiently waited for over a month expecting she would submit such evidence to the court.

It is irrefutable that the House and Senate counsels are competent attorneys with years of legal experience. Giving permission for representation of all individual members of Congress in a suit in which the legal position of those members is that they assert a right to veto the direct language of the Constitution in violation of federal criminal law as well as the Constitution itself, certainly qualifies as an important legal matter. Competent attorneys always put important legal matters on paper. Indeed, standard legal practice dictates that every legal action is put in written record. Hence, it is reasonable to assume these counsels, if indeed they asserted all members did make such request, would have done so in writing, most likely a letter.

Why then has Ms. Utiger withheld this evidence from the court? The reason is obvious: the date of the permission given by such counsel, if it exists, was after January 24, 2005 when Ms. Utiger made her appearance before this court asserting representation of the appellees. The date of the permission, if it exists, was after she filed her answering brief on April 18, 2005. The date of the permission, if it exists, was after Ms. Utiger filed her motion for appearance on April 18, 2005. In short, based on the evidence presented in her own letter dated April 25, 2005, Ms. Utiger did not have permission as of the date of her required filings, April 18, 2005, to represent appellees, if she was ever given permission at all to represent them. If she had had permission on April 18, 2005, it is reasonable to assume that

since she made this assertion on April 25, 2005, she would have made such an assertion of permission on April 18, 2005 if it had existed. The court rules are clear in this matter: only someone who is a party to this suit or who has permission from the court, such as an amicus curiae, may appear before the court and plead. Ms. Utiger did not request amicus appearance. The evidence suggests Ms. Utiger did not have permission from appellees for representation and therefore was not a party to this suit when she made her actual pleadings. Hence, she cannot appear to plead.

Assuming such permission does in fact exist as of April 25, 2005, Ms. Utiger deliberately misled the court as to her authorization concerning representation at the time she was transacting court business from the period of January 24, 2005 until April 25, 2005. According to court rules, as she was not a party or did not represent a party to the suit, she had no business submitting or otherwise involving herself in this suit in any fashion as a legal representative. If, in fact, such permission has not actually been granted through the counsels, then she has filed yet another false statement before the court in the form of her April 25, 2005 letter. This time there can no excuse of a typographical error. As she has not produced irrefutable evidence, in the form of letters which must exist that such permission has been granted according to statute, the court can only assume Ms. Utiger deliberately misled the court by presentation of false evidence in regards to her represent-

ing appellees either at her initial appearance of January 24, 2005 or in her letter of April 25, 2005. Either way, Ms. Utiger has presented false evidence to the court. It follows therefore that the legal position of appellees she has advanced may not be, in fact, the legal position of those appellees. Only the proof of letters from the House and Senate counsels can refute this fact, and then only to the extent of the date showing that permission was granted and that opposition to obeying the Constitution was instructed as the legal position of Ms. Utiger.

Because these actions of Ms. Utiger noted in this addendum are significant, serious and clearly relate to the central issue of this suit, obedience to the language of the Constitution, and because the evidence suggests Ms. Utiger has deliberately misled the court as to her actually representing the appellees and therefore may have asserted a legal position before this court that may, in fact, not be one actually held by the appellees, Appellant respectfully moves the court investigate the earlier issues brought before it by Appellant in regards to the actions of Ms. Utiger in his March 19, 2005 motion as well as these issues now brought before it.

Dated: June 7, 2005

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Bill Walker, Appellant, pro-se  
PO Box 698  
Auburn, WA 98071-0698

## CERTIFICATE OF SERVICE

Case Name: Walker v. Members of Congress, et al.

Case No: 05-35023

I hereby certify that the person show below per her written request was served with a copy of Addendum by Appellant To Motion For Court Investigation Of Improper Actions of Karen D. Utiger Of The Department of Justice and Related Matters.

Dated: June 7, 2005

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Bill Walker, Appellant, pro-se  
PO Box 698  
Auburn, WA 98071-0698

Karen D. Utiger  
Attorney  
Tax Division/Appellate Section  
Department of Justice  
PO Box 502  
Washington DC 20044



U.S. Department of Justice

Tax Division

Facsimile No. (202) 514-8456  
Telephone No. (202) 514-3361

Please reply to: Appellate Section  
P.O. Box 502  
Washington, D.C. 20044

KDUtiger:vmf  
5-82-12068  
CMN 2005100272

January 24, 2005

Mr. Bill Walker  
P.O. Box 698  
Auburn, WA 98071-0698

Re: Bill Walker v. Member of Congress of the  
United States, et al.  
(9th. Cir. - No. 05-35023)

Dear Mr. Walker:

We have received notice that the above-entitled case has been appealed to the Court of Appeals for the Ninth Circuit.

Primary responsibility for representing the Government on appeal is now assigned to the Appellate Section of the Tax Division, Department of Justice. Further correspondence, including, of course, your brief, should therefore be directed to this office at the address shown above.

Sincerely yours,

  
KAREN D. UTIGER  
Attorney  
Appellate Section

Enclosures

cc: Cathy A. Catterson, Esquire  
Clerk, U. S. Court of Appeals  
for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119



U.S. Department of Justice

Facsimile No. (202) 514-8456  
Telephone No. (202) 514-3361

Please reply to: Appellate Section  
P.O. Box 502  
**Tax Division** Washington, D.C. 20044

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KDUtiger  
5-82-12068  
2005100272

April 25, 2005

Certified Mail

Mr. Bill Walker  
P.O. Box 698  
Auburn, WA 98071-0698

Re: Bill Walker v. Members of Congress, et al.  
(9th Cir. - No. 05-35023)

Dear Mr. Walker:

We have been unable to reach you or leave a message at the telephone number you have provided ((253) 735-8860) in order to respond to your inquiry concerning the Government's brief in the above-entitled case. We sent copies of the brief to you and to the Ninth Circuit Court of Appeals on April 18, 2005. The docket sheet reflects that the brief was received by the Court on April 22, 2005. We assume that you have since received the brief but, in case you have not, we are enclosing an additional copy.

Further, we have been advised that you have contacted a member of Congress in order to ascertain who has been designated to represent him in this case. Counsel for the Senate and House have asked us to let you know that we will be representing the members of Congress in these proceedings.

We have been hampered in responding to your inquiries because we cannot reach you or leave a message at the telephone number provided. It would be helpful if you could provide us with a telephone number, a fax number, or an email address at which you can be reached.

Sincerely yours,

KAREN D. UTIGER  
Attorney  
Appellate Section

Enclosures

cc: Cathy A. Catterson, Esquire  
Clerk, U.S. Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94105