

05-35023

United States Court of Appeals

For the Ninth Circuit

Bill Walker, pro se

Appellant

v.

Members of Congress, et al.

Appellees

Motion by Appellant to Deny Appearance of Counsel of Record

05-35023

1

Motion is respectfully made to this court by appellant that Karen D. Utiger, Attorney, Appellate Section U.S. Department of Justice, Tax Division, be denied appearance as counsel of record for the above name suit based on the following grounds:

(1) In the attached material received by appellant, Ms. Utiger states that “We have receive notice that the above-entitled case [Walker v. Members of Congress] has been appealed to the Court of Appeals for the Ninth Circuit.” As there was no counsel of record in the district court case for appellees, as shown in attached material, no notice of appeal was sent by the district court to anyone except appellant. Appellant certainly has not notified Ms. Utiger or anyone in the government for that matter regarding appeal. Hence, Ms. Utiger’s statement cannot be true and it is unclear by what means she was “notified”. If she was not properly notified according to established court procedure, Ms. Utiger cannot simply insert herself into the court procedures.

(2) Ms. Utiger fails to conclusively state whom she is representing or that these appellees have instructed her to publicly oppose this suit. This suit involves 435 individual members of Congress as well as the Commissioner of the IRS and the Secretary of the Treasury. Criminal actions by all of these appellees have been alleged including violations of tax law. It is a clear conflict of interest that the gov-

ernment represent defendants in a suit that may result in that same government having to prosecute these same defendants. For this reason alone, Mr. Utiger should not be allowed to represent appellees.

(3) Ms. Utiger fails to present any proof that as required by 2 U.S.C. 118 any of the appellees have individually requested her to “enter an appearance in behalf of such officer” in opposition to the appeal made by appellant. Ordinarily, such a standard is assumed. However, in this instance, the United States District Court for Western Washington at Seattle allowed appellees to avoid the clear service requirements of FRCP 4. Appellees, save appellees Everson and Snow, were all served waivers of summons which, according to court rules must be returned to appellant and filed with the district court in order to complete service. Appellees Snow and Everson were summons issued by the district court. No defendant named, nor any counsel of record, made any appearance at district court nor returned a single waiver of summons to appellant for filing. FRCP 4(d) states appellees have a “duty” to respond and return a waiver of summons. FRCP 4(d)(5) levies penalties against defendants who fail to return waivers of summons. A waiver of summons demands appellees or their counsel of record return these summons. A belief by appellees that the case is unfounded is not grounds for failure to return the waivers. Hence, even if the district court dismisses the suit, appellees are still obligated to return the waivers of summons under court rules. Ms. Utiger gives no

indication that she possesses these documents, that she has filed them with the district court as is required or intends to do the same or that she is representing the appellees based on these summons being turned over to her for legal disposition. Without evidence of these waivers of summons presented to appellant for filing in district court or a statement of request made by appellees as required under 2 U.S.C. 118, Ms. Utiger has no statutory authority at all to intervene in this suit. In sum, Ms. Utiger has presented no evidence that she, or the Department of Justice, has been asked by any appellee to make an appearance on their behalf at appeal.

(4) As no counsel of record or any legal representative made any appearance at district court, it is clear that any presentation by a counsel now must be considered as presenting “new evidence.” Appeals court rules as stated in the pro-se material sent him upon his filing are clear and distinct: the appeals court may not consider any new evidence not presented at district court. As the appellees did not make such an appearance, they forfeited their right to make such appearance at appeal as this would now be presenting new evidence not considered at district court. Hence, appellees forfeited the right of Ms. Utiger to make an appearance as counsel of record for appellees assuming that they have made the request.

(5) Under the terms of 2 U.S.C. 118 , “the United States attorney *for the district within which the action is brought*, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer” (emphasis added). As Ms.

Utiger does not conduct her legal business nor reside within the district which the action was brought or is being appealed (the Western District of Washington or the jurisdiction of the Ninth Circuit Court of Appeals) it is clear the statute precludes her from making an appearance in this suit.

For the above cited grounds, motion is made the appeals court deny the appearance of Ms. Utiger as counsel of record for appellees.

Respectfully Presented,

Dated: February 1, 2005

S/ Bill Walker, pro se
Appellant
PO Box 698
Auburn, WA 98071

CERTIFICATE OF SERVICE

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

Case No: 05-35023

I certify that a copy of the Motion by Appellant to Deny Appearance of Counsel of Record and any attachments was served by First Class Mail on the persons listed below.

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

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

05-35023



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



Tax Division

Facsimile No. (202) 514-8456
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January 24, 2005

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

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

Dear Ms. Catterson:

The above-entitled case has been appealed to your Court, and will be briefed and argued and otherwise handled directly from this office. Accordingly, it will be appreciated if you will advise this office of any information in connection with this case, and advise us directly of the date when the case is set for argument.

Enclosed is an appearance form entering my appearance on behalf of the appellees. I can be reached at (202) 514-2937.

Sincerely yours,


KAREN D. UTIGER
Attorney
Appellate Section

Enclosures

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

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. 05-35023

Bill Walker

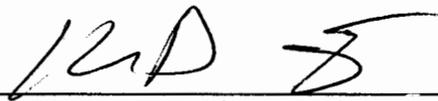
APPELLANT

vs.

Member of Congress of the United States, et al.

APPELLEES

The Clerk will enter my appearance for Member of Congress
Of the United States, et al.


KAREN D. UTIGER (As Lead Counsel)
Attorney
Tax Division/Appellate Section
Department of Justice
Post Office Box 502
Washington, D.C. 20044
Telephone: (202) 514-2937

**U.S. District Court
Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:04-cv-01977-RSM**

Walker v. Members of Congress of the United States et al
Assigned to: Hon. Ricardo Martinez
Cause: 42:1983 Civil Rights Act

Date Filed: 09/21/2004
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**Bill Walker**

represented by **Bill Walker**
PO BOX 698
AUBURN, WA 98071-0698
253-735-8860
Email: Concon@Isomedia.com
PRO SE

V.

Defendant

Members of Congress of the United States
as Individuals and in their Official Capacities

Defendant

John W Snow
Secretary of the Treasury, In his Official Capacity

Defendant

Mark W Everson
IRS Commissioner, In his Official Capacity

Date Filed	#	Docket Text
09/20/2004	● <u>1</u>	COMPLAINT against defendant(s) Mark W Everson, Members of Congress of the United States, John W Snow (NO Summons(es) issued) (Receipt # 317997, payment received on 9/20/04) , filed by Bill Walker. (Attachments: # <u>1</u> Civil Cover Sheet)(PM,) Additional attachment(s) added on 9/24/2004 (PM,). (Entered: 09/24/2004)
10/03/2004	● <u>2</u>	CERTIFICATE OF SERVICE by Plaintiff Bill Walker re <u>1</u> Complaint, (Walker, Bill) (Entered: 10/03/2004)