

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 Court Investigation Of Improper Actions of Karen D. Utiger
Of The Department of Justice and Related Matters

05-35023

DECLARATION

I, Bill Walker, appearing as appellant, pro-se of Auburn, Washington state as follows:

1. On Friday, March 10, 2005, I received an envelope via First Class United States mail to Post Office Box 695, Auburn, Washington, 98071, my mailing address of court record dated March 7, 2005 [Monday] containing a single sheet letter. The envelope indicated it came from the U.S. Department of Justice, Tax Division, Appellate Section, P.O. Box 502, Washington D.C. 20044. A true copy of the face of the envelope showing the postmark, meter number and date of postmark, March 7, 2005 [Monday] is attached to this motion. The letter contained within the envelope was addressed to Cathy A. Catterson, Esquire, Clerk, U.S. Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA, 94105 and was sent and signed by Karen D. Utiger, Attorney, employed by the Appellate Section of the Tax Division of the Department of Justice, who has appeared before this court requesting appearance in the above titled suit before this court. A true copy of the letter dated March 7, 2005 [Monday] is attached to this motion.

2. Until I had received the attached letter which is written on official Department of Justice stationary including the official seal of the Department of Justice as well as its official title, I had no knowledge whatsoever of its contents nor of any alleged contact regarding the matter discussed in the letter, an alleged re-

quest by the court made through one of its clerks, who is only identified as “Gabriella” to Ms. Utiger that she (Ms. Utiger) withhold the submission of a brief to the court in the above entitled case. As the letter is written on official Department of Justice stationary, is signed by Ms. Utiger who identifies herself as “Attorney, Appellate Section” and is obviously addressing an official matter now before the Department of Justice, I understood this was to be taken an official letter and statement for the court and not a private communication between Cathy A. Catterson, Clerk of the Ninth Circuit Court of Appeals and Ms. Utiger.

3. Upon reading the letter late Friday night, March 11, 2005 and again on Saturday, March 12, 2005, I noticed that the letter contained the word “Enclosures” at the bottom indicating to me that besides the single sheet letter in the envelope it was intended that other material be enclosed with the letter.

4. On Saturday, March 12, 2005 I called Ms. Utiger at her office number of (202) 514-2937 with the intent of leaving her a phone message, as I knew her office would be closed. I notified her that I had not received the enclosures referred to in the letter sent by her to me and requested that such enclosures be sent to me for examination and records.

5. On Monday, March 14, 2005, I received a phone message on my phone recorder at (253) 735-8860 from Ms. Utiger informing me that there were no enclosures with the letter and apologizing for the error in the letter. In my mind, this

message confirmed that Ms. Utiger was, in fact, the author of the letter and had indeed sent it to me along with copies to John L. McKay, U.S. Attorney as well as Cathy A. Catterson, Clerk, U.S. Court of Appeals for the Ninth Circuit.

6. After receiving Ms. Utiger's message I then attempted to contact Gabriella, the clerk named in the letter of the Clerk's Office for the U.S. Court of Appeals for the Ninth Circuit. My first attempt was on Monday, March 14, 2005. I was informed by the clerk I spoke to that Gabriella did not work on Mondays, that it was her "flex time" and that I should contact her at her private line of (415) 556-9951 on Tuesday, March 15, 2005 when she would be returning to work.

7. On Tuesday, March 15, 2005 I spoke to Gabriella regarding the contents of the letter. I wished to know (a) why the court had not contacted me either by telephone or by letter as to its request (as indicated by Ms. Utiger's letter) that Ms. Utiger not file a brief in the above title suit and (b) what was the reasoning behind this request by the court.

8. It was immediately clear to me that Gabriella did not (a) know anything about such a "request" by the court that Ms. Utiger withhold her brief from submission to the court in this suit and (b) never contacted Ms. Utiger with any such instructions in any manner whatsoever. On her own, Gabriella checked the official court record and informed me that the court had made no such request either for-

mally or informally to Ms. Utiger that she withhold her brief from submission and that the court had issued no order whatsoever in this regard.

9. The facts set forth in this declaration and accompanying motion are true to the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct. Executed on this 19th day of March 2005 at Auburn, Washington.

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

MOTION FOR COURT INVESTIGATION

Because the letter dated March 7, 2005 sent to appellant to the court contains a false statement made to the court and involves an obviously innocent member of the clerk's office in an attempt to compromise the proceedings before this court, motion is made by appellant that the court conduct an immediate investigation into the conduct and actions of Ms. Karen D. Utiger, Attorney, United States Department of Justice as to whether such actions have violated federal criminal statutes, specifically 18 U.S.C. 1623(a), 18 U.S.C. 1018 or any other applicable federal statute(s), ethical standards or court rules. If such violations are confirmed, appellant moves the court take such action, as it deems appropriate in the matter to discipline Ms. Karen D. Utiger.

Further, appellant makes motion that the court order Ms. Karen D. Utiger to submit her brief to the court immediately accompanied by a request for appearance as noted by the court in its February 11, 2005 order. Appellant requests the court take judicial notice of the actions of Ms. Utiger in making its decision as to whether to grant Ms. Utiger's request for appearance. Appellant further makes motion that the brief of Ms. Utiger contain written documentary proof substantiating the fact Ms. Utiger is in fact representing appellees in the above entitled suit. Such documentary proof shall be one of the following: (a) submission of the Waivers of Summons sent to appellees by appellant during the district court proceedings, (b)

written proof of request of representation by appellees under 2 U.S.C. 118 or (c) certification by Alberto Gonzales, Attorney General of the United States pursuant to 28 U.S.C. 2679(d)(1) that the actions of the appellees alleged in this suit are a duty of office of appellees.

Ms. Utiger is an attorney hired by the United States Government. As such she is an officer of the court and therefore obligated to abide by and uphold the rules of ethics as well as federal statutes regarding her official conduct before this court. It is clear violation of both ethics and statute for Ms. Utiger to knowingly make a false statement before this court regarding any official action by her in regards to any court matter or suit which may be before the court. Because Ms. Utiger is an officer of the court, she need not be under oath to face discipline if she does make false representation to the court. Ms. Utiger, as an officer of the court, is considered continually under oath.

The facts are plain. The letter signed by Ms. Utiger was dated Monday March 7, 2005 and alleges a conversation or communication on March 11, 2005 between Gabriella of the clerk's office and Ms. Utiger instructing Ms. Utiger not to submit a brief in this suit. This is a lie. Gabriella could not have called Ms. Utiger on Monday, March 7, 2005 because Gabriella does not work on Monday. Further, the court record shows that the court has made no request whatsoever that Ms. Uti-

ger withhold the submission of her brief to the court or that the court would inform Ms. Utiger at a later unspecified date whether a brief was to submitted to the court.

Beyond this is the obvious conflict of dates. Ms. Utiger states “[o]n March 11, 2005 [Friday] the undersigned counsel was told by Gabriella of the Clerk’s office that the Court did not want the Government to file a brief in the above-entitled case...” Friday, March 11, 2005 is four days after the letter was written, signed by Ms. Utiger and sent via United States mail to the appellant and presumably to Cathy A. Catterson, Clerk of the Court for the Ninth Circuit Court of Appeals. It is impossible that such a conversation referred to in the letter to have happened four days after it was said to have already occurred and it is equally impossible that such a conversation took place on Monday, March 7, 2005 because Gabriella did not work that day. Hence, the conversation and therefore the alleged request never took place.

Beyond this, such a request requires a court order to suspend FRAP Rule 31(a)(1) which requires “appellee must serve and file a brief with in 30 days after the appellant’ brief served.” Appellant was required by the court to file and serve his brief by February 16, 2005, which he did. Thirty days from that date is March 17, 2005 and Ms. Utiger has missed this deadline.

Appellant can only speculate that this letter by Ms. Utiger is an attempt to avoid submitting a brief so as to circumvent any repercussions, which might ensue

if such a brief opposing appellant were submitted to the court. Perhaps it is part of a grander strategy of yet to be revealed legal tactics. In any event, it has failed because the lie has been caught and is now presented before this court for its disposition. Appellant urges in the strongest terms that the court not ignore this matter. No court can properly function if its rules are flaunted or if one of its officers is permitted to involve one of its clerks in some form of subversion of the law. It certainly cannot function if the court is lied to.

It is clear Ms. Utiger used Gabriella in a lie to the court to provide an excuse and cover for her not submitting a brief to this court. Why Ms. Utiger could not simply say in a letter she is not submitting a brief and be done with it is beyond appellant's scope. Instead, Ms. Utiger lies to the court contriving a story of court request blaming the court or Gabriella for Ms. Utiger's failure to submit a brief. Ms. Utiger has deliberately involved an innocent court clerk in her lie so as to compromise the court and the court cannot permit this.

Appellant hereby makes motion for investigation by the court and submittal of brief.

Dated: March 19, 2005

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 Motion For Court Investigation Of Improper Actions of Karen D. Utiger Of The Department of Justice and Related Matters.

Dated: March 19, 2005

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

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

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

KDUtiger
5-82-12068
2005100272

March 7, 2005

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

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

Dear Ms. Catterson:

On March 11, 2005, the undersigned counsel was told by Gabriella of the Clerk's office that the Court did not want the Government to file a brief in the above-entitled case, and that we would be informed if the Court later decided that it did want the Government to submit a brief. Accordingly, unless we hear differently from your office, we will not file a brief.

Thank you for your attention to this matter. This case is currently assigned to the undersigned attorney, who may 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

John L. McKay, Jr., Esquire
United States Attorney
601 Union Street, Suite 5100
Seattle, WA 98101

U.S. Department of Justice
Tax Division
Appellate Section
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FIRST CLASS MAIL

Mr. Bill Walker
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