



U.S. Department of Justice

Tax Division

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

KDUtiger:vmf
5-82-12068
CMN 2005100272

March 24, 2005

By FedEx
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, et al.
(9th. Cir. - No. 05-35023)

Dear Ms. Catterson:

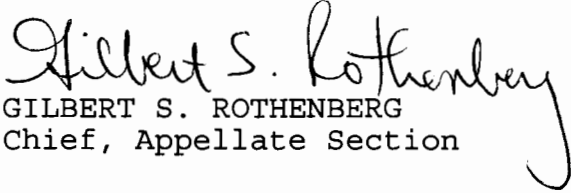
Enclosed please find the original and four copies of the appellees' response to appellant's motion for a court investigation in the above-entitled case, together with a supporting declaration. As indicated in the certificate of service, copies of the foregoing documents have been served upon the appellant, appearing pro se, together with a copy of this letter. This case is currently assigned to Karen D. Utiger who can be reached at (202)514-2937.

Please file the motion with the Court and advise us of the Court's decision thereon.

Sincerely yours,

EILEEN J. O'CONNOR
Assistant Attorney General
Tax Division

By:


GILBERT S. ROTHENBERG
Chief, 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

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BILL WALKER,)
)
 Plaintiff-Appellant)
) No. 05-35023
 v.)
)
 MEMBERS OF CONGRESS, et al.,)
)
 Defendants-Appellees)
)

APPELLEES' RESPONSE TO APPELLANT'S MOTION FOR INVESTIGATION

The appellees herein, by and through their counsel, hereby respond to appellant's motion requesting that this Court investigate the allegedly improper actions of counsel for the Government, Karen D. Utiger, and in support thereof state as follows.

STATEMENT

The appellant, Bill Walker, is appearing pro se. Appellant filed his brief on February 15, 2005. His brief was oversized, and he was notified that he should submit a motion seeking permission to file an oversized brief.

On March 4, 2005, the motion had not yet been acted upon and Karen D. Utiger, counsel for the appellees, contacted the Clerk's office in order to ascertain the due date of the appellees' answering brief. She spoke to an official whose first name was Gabriella, who told Ms. Utiger that there currently was no due date for the answering brief, and that Ms. Utiger would be

informed if, and when, the Court wanted the appellees to submit a brief.

On March 7, 2005, Ms. Utiger sent a confirming letter to the Court and served a copy of that letter on appellant. The letter, however, inadvertently (and incorrectly) stated that Ms. Utiger's conversation occurred on March 11, 2005 (which was, of course, an impossibility), and it also inadvertently (and incorrectly) indicated that there was an enclosure to the letter. In fact, the conversation (as noted earlier) occurred on March 4, 2005, and there were no enclosures to the letter.

Appellant left a message for Ms. Utiger on Saturday, March 12, 2005, requesting that he be sent a copy of the enclosure. Ms. Utiger returned his call on Monday, March 14, 2005, leaving a message indicating that there were no enclosures to the letter and apologizing for the error.

On March 18, 2005, the Court issued an order granting appellant's motion to file an oversized brief. That order also indicates that the Government's answering brief is due 30 days after the date of the order.

On March 19, 2005, appellant sent a document entitled "Motion For Court Investigation of Improper Actions of Karen D. Utiger of the Department of Justice and Related Matters" to Ms. Utiger at the Department of Justice. In that motion, appellant alleges that he spoke to Gabriella, and that she did not "know

anything" about any discussion with Ms. Utiger. Accordingly, appellant charges that Ms. Utiger has made a false statement to the Court, and has violated federal criminal statutes, ethical standards, and court rules. He asks that Ms. Utiger be investigated and disciplined. He also alleges that the appellees have missed the deadline for filing their answering brief in this case.

DISCUSSION

Appellant's motion is entirely without merit. It is regrettable that there were two typographical errors in the letter that Ms. Utiger sent to the Court to confirm her conversation with Gabriella, and Ms. Utiger apologizes for any confusion she may have caused. But Ms. Utiger did contact the Clerk's office, as stated in that letter, and was informed that there currently was no due date for the answering brief. She also was told that she would be notified if, and when, a due date was set. It is certainly not surprising that Gabriella may not have been able to recall that conversation over a week later (as appellant claims) when she was contacted by appellant, as she most likely has many such conversations each day. Indeed, that is the very reason that attorneys commonly send confirming letters to the Court, as Ms. Utiger did in this case.

Moreover, the Court now has issued an order, granting appellant's motion to file an oversized brief, and setting a due

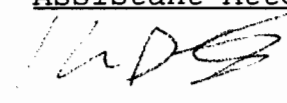
date for the Government's brief. This is consistent with what Ms. Utiger stated she was told regarding the due date of the answering brief (and, obviously, the Government's brief is not now overdue).

Thus, no investigation is warranted, and there is no basis whatsoever for disciplining Ms. Utiger.

WHEREFORE, the appellees pray that appellant's motion for a court investigation be denied.

Respectfully submitted,

EILEEN J. O'CONNOR
Assistant Attorney General


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Of Counsel:

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MARCH 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BILL WALKER,)
)
Plaintiff-Appellant)
) No. 05-35023
v.)
)
MEMBERS OF CONGRESS, et al.,)
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Defendants-Appellees)

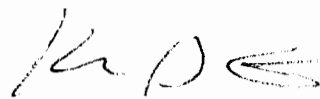
DECLARATION

I, Karen D. Utiger, of the Department of Justice,
Washington, D.C., state as follows:

1. I am an attorney employed in the Appellate Section of
the Tax Division of the Department of Justice, and in that
capacity I have been assigned the primary responsibility for
handling the above-entitled case on behalf of the appellees.

2. The facts set forth in the accompanying response 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
23rd day of March, 2005, at Washington, D.C.

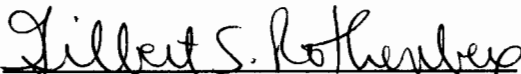


KAREN D. UTIGER
Attorney

CERTIFICATION OF SERVICE

It is hereby certified that service of the foregoing response has been made on the appellant, appearing pro se, on this 24th day of March, 2005, by mailing a copy thereof in an envelope, properly addressed to him as follows:

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


GILBERT S. ROTHENBERG
Attorney