



U.S. Department of Justice

Facsimile No. (202) 514-8456  
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Please reply to: Appellate Section  
P.O. Box 502  
**Tax Division** Washington, D.C. 20044

KDUtiger  
5-82-12068  
2005100272

February 9, 2005

FedEx

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:

We are transmitting herewith for filing with your Court an original and four copies of an opposition to the appellant's motion to deny appearance of counsel. As indicated in the certificate of service, a copy has been served upon the appellant, appearing pro se, together with a copy of this letter.

Please file the opposition with the Court and advise us of the Court's decision thereon. 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  
Western District of Washington  
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 )

OPPOSITION TO APPELLANT'S MOTION TO DENY APPEARANCE OF COUNSEL

The appellees herein, by and through their counsel, oppose the appellant's motion to deny the appearance of counsel Karen D. Utiger, and in opposition thereto state as follows:

In his motion, appellant contends that the undersigned counsel, an attorney with the U.S. Department of Justice, should not be permitted to appear as counsel. Appellant argues, inter alia, that the undersigned "cannot simply insert herself into court procedures" (Motion 2), that there is a conflict of interest, because members of Congress may have to be sued as a result of this suit (Motion 2-3), that such members have not individually requested her to represent them (Motion 3), that the Government is presenting "new evidence" (Motion 4), and that because the undersigned does not conduct her legal business nor reside within the district in which the action was brought, or is being appealed, she is precluded from making an appearance in this suit by the terms of 2 U.S.C. § 118 (Motion 5).

All of these arguments are patently frivolous, and we will not dignify them with a response. It is well-recognized that the Tax Division of the Department of Justice represents the Federal government in civil tax cases in the district courts and the courts of appeals. U.S. Dept. Of Justice v. Tax Analysts, 492 U.S. 136 (1989); see also 28 U.S.C. § 516 ("the conduct of litigation in which the United States, an agency or officer thereof is a party . . . is reserved to officers of the Department of Justice"); 28 U.S.C. § 517 ("any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States"). Moreover, an attorney with the Department of Justice may appear in such a case "whether or not he is a resident of the district in which the proceeding is brought." 28 U.S.C. § 515(a). Appellant's contentions to the contrary are without merit, and his motion should be denied.

WHEREFORE, the United States prays that the appellant's motion to deny the appearance of counsel be denied.

Respectfully submitted,

EILEEN J. O'CONNOR  
Assistant Attorney General



BRUCE R. ELLISEN (202) 514-2929  
KAREN D. UTIGER (202) 514-2937

Attorneys  
Tax Division  
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Post Office Box 502  
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FEBRUARY 2005

Of Counsel:  
JOHN L. MCKAY, JR.  
United States Attorney

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BILL WALKER, )  
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 Plaintiff-Appellant )  
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 v. )  
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 MEMBERS OF CONGRESS, et al., )  
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 Defendants-Appellees )

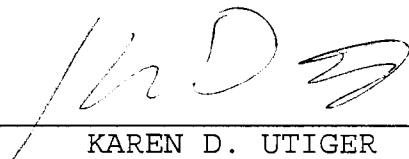
DECLARATION

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 cases on behalf of the appellees.

2. The facts set forth in the accompanying opposition 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  
9th day of February, 2005, at Washington, D.C.

  
\_\_\_\_\_  
KAREN D. UTIGER  
Attorney

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing opposition to appellant's motion to deny appearance of counsel has been made on the appellant, appearing pro se, on this 9th day of February, 2005, by sending a copy thereof in an envelope, properly addressed to him as follows:

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



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KAREN D. UTIGER  
Attorney