

05-35023

United States Court of Appeals

For the Ninth Circuit

Bill Walker, pro se

Appellant

v.

Members of Congress, et al.

Appellees

Appellant's Reply To Appellee's Response

To Appellant's Motion For Investigation And Related Matters

05-35023

In regards to appellant's motion for an investigation, the court's choice is simple. The court can either chose to believe the evidence or Ms. Utiger. The court can either chose to believe its own clerk or Ms. Utiger. The court can choose to believe its own records or Ms. Utiger.

First of all, let us get the record correct. The response written by Eileen J. O'Connor, Assistant Attorney General but with an attached declaration by Ms. Karen D. Utiger first states that the "appellees herein... respond to appellant's motion..." Appellant did not cite any appellee in his motion. Only Ms. Utiger was named in the investigation motion and therefore in this instance the appellees cannot respond to the investigation motion, as it was not directed at them. Hence for Ms. Utiger to say that "appellees herein...respond" is under the circumstances incorrect. It is the Department of Justice, which is responding, not the appellees and counsel should say so.

Second, Ms. Utiger changes her facts from those contained in her letter to those stated in her response. In her letter Ms. Utiger states, "On March 11, 2005, the undersigned counsel [Ms. Utiger] 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...*" (Emphasis added). In her response, she states, "She [Ms. Utiger] 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.” (Emphasis added). The difference is in the details. The sentence in the letter makes it clear that instructions *from* the court are being sent to Ms. Utiger telling her not to submit a brief. There is no mention in the letter of Ms. Utiger contacting the court or of her alleged concern regarding a filing date. Had these statements been made in the letter then perhaps the situation would be different than it is, but the record of evidence is clear. There is no reference to the matter of a phone of inquiry by Ms. Utiger in the letter to the clerk’s office and the clear impression left by her own sentence is that Gabriella is telling her the court does not want her to submit a brief. The fact is Gabriella gave no such instructions from the court.

In her response, Ms. Utiger states instead that all she was doing was inquiring when an answering brief might be due. If this is the fact in the matter then why were not these facts reflected in the words used in the letter? There is nothing to suggest in the content of the letter that what Ms. Utiger alleges was in fact what transpired. Inquiring when an answering brief is due is a long way from being told by a court not to submit a brief at all.

As to the date of the alleged conversation being on March 11, 2005 and the letter being sent on March 7, 2005, Ms. Utiger says this is an impossibility. On that much appellant agrees. If that impossibility is realized then the date of the letter must refer to when the alleged conversation between clerk and attorney took place.

However, this is not possible, as appellant has shown that day is Gabriella's day off. Only when this fact is revealed in appellant's declaration does Ms. Utiger suddenly say the alleged conversation took place, not on March 7, 2005 but March 4, 2005. It is common practice to assume that if a letter is dated a certain date that the events described in that letter are concurrent with the date of the letter unless otherwise stated. No such statement is contained in the letter and therefore this sudden change of dates is questionable.

How does Ms. Utiger explain all this? By expecting the court to accept it was all typographical errors. It was a typographical error that a conversation Ms. Utiger says took place on March 11, 2005 could not have occurred because the letter notifying the court of this conversation between clerk and attorney was dated March 7, 2005. It was a typographical error, which caused Ms. Utiger to say the court did not want her to submit a brief. It was a typographical error that she said involved a clerk in this statement when in fact no such statement either by the clerk or the court was ever made at the time of the incident. It was a typographical error that she failed to include key alleged facts in her letter such as she was making an inquiry and that the conversation alleged was entirely different from that stated in the letter. It was a typographical error that Ms. Utiger not only did not state correctly the facts of the conversation, if there was one, but also now cannot even say for certain if the conversation took place on March 4, 7 or 11th. A

typographical error usually is associated with improperly striking a single key on a keyboard in place of another intended key, i.e., the letter “a” for the letter “s”. It is not associated with an entire letter being written in which statements are alleged to have been made by a clerk who did not make them giving instructions from a court that never were issued. Whether or not these instructions were later made by the court is irrelevant to the issue at hand: at the time the incident was said to have taken place, no such instructions by the court had been issued. The letter appears to appellant to be an attempt by Ms. Utiger to compromise the integrity of the court by making it appear the court is providing instructions by the court to one party yet not providing them to the other party. As to any why appellant received a copy of the letter if his theory is true, if it true that typographical errors are to blame for this matter then it is not unreasonable to assume that typographical errors were also at fault in typing appellant’s address on an envelope and mailing him a copy of the letter instead of sending the letter to its intended receiver.

Ms. Utiger says that she sent a “confirming” letter to the clerk’s office. Yet nowhere in the letter does the word “confirming” appear as might be expected. For example Ms. Utiger could have written:

“This is a letter confirming my conversation on March 4, 2005 with Gabriella of the clerk’s office instructing me that as of yet the court has not set a date for the Government to file an answering brief in the above-entitled case and we will be informed when that date will be.”

As such, Ms. Utiger's explanation is questionable at best as a single sentence as demonstrated above could have been easily written clarifying the entire matter and the evidence shows it wasn't. Ms. Utiger is an attorney and as such is clearly familiar with words and their meanings. Words and their meanings are her bread and butter and as such when she employs language as she did in her letter as opposed to that language used as explanation in her response, the court must take pause and carefully consider the difference between what Ms. Utiger actually wrote and what she says she meant to say as regards to meaning and intent. The court should ask how can a trained attorney employed by the United States Government skilled in the use and meaning of the English language write something so obviously different in meaning and intent from what she asserts she meant to say in her response unless that what she wrote in the letter was what she intended to say? Is the court to infer that when Ms. Utiger submits written material to the court it is required to divine what she intends to mean rather than reading what she actually wrote?

Ms. Utiger own admissions thus far in this suit demonstrate the following to the court: (1) she considers constitutional guarantees of due process to be "patiently frivolous; (2) she has misconstrued alleged events as fact stating that the occurrence of an event on one day actually occurred on another day when in fact the events alleged may not have occurred at all; (3) she has not been forthcoming

with information required by statute i.e., how her department was notified of this suit when it failed to make appearance by district level and therefore was not officially notified by the district court and how she came to represent the appellees in this suit when federal statutes require whether it be individually or professionally that request by the individual appellees must be initiated first in order for her to appear on their behalf; (4) she has involved an innocent court clerk in an apparent falsehood regarding instructions given to her by the court; (5) she has demonstrated an inability to present factual information in an accurate manner to the court, such as what she really meant to say in her letter, thus bringing into question her credibility in any presentation she may make before this court.

Appellant also notes this: it is one matter to misstate something to the court in a letter and quite another to falsely or improperly assert representation of appellees before a court when federal statute clearly requires action on the part of the individual appellees requesting representation before appearance can be made by someone in the Department of Justice purporting to represent them to a court.

As to the assertion that there is no investigation warranted, this fact demonstrates Ms. Utiger's failure to read appellant's motion or grasp basic fundamental law not to mention proving again her inability to accurately represent facts. Appellant's motion was for the court to determine "whether such action [by Ms. Utiger] have violated federal criminal statutes...ethical standards or court

rules.” Appellant did not ask, “that Ms. Utiger be investigated and disciplined” as stated in Ms. Utiger’s response. He did ask the court, if it determines a violation did occur, take such action, as it deems appropriate in the matter. It is Ms. Utiger who is bringing up the issue of discipline by the court, not the appellant.

It is already in court record that Ms. Utiger considers matters of due process to be “patiently frivolous” and at least she is proving herself to be consistent on this. An investigation must be conducted by the court because (1) an innocent party, Gabriella, has been named by Ms. Utiger in this matter and her name as well as the court’s reputation must be cleared and (2) the rules of due process require that the court investigate even if it determines Ms. Utiger did nothing wrong. Ms. Utiger seems to forget that investigations can also clear people of allegations as well as convict them. Only people who have something to hide would want to prevent an investigation from clearing them of any wrongdoing. Ms. Utiger is entitled to the protection afforded by the rules of due process and for her to request that these rules be ignored by the court is improper and again demonstrates a lack of respect for proper court procedure as well as constitutional rights.

Finally, appellant notes that while Ms. Utiger has opposed appellant’s motion for a court investigation in the above matter, she expressed no opposition in regards to the other motions made appellant in his investigation motion. Appellant made 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.”

As Ms. Utiger has expressed no opposition to the above motion made by appellant, it must be assumed there is no objection to the motion. Appellant therefore requests the court to grant his motion regarding written proof of representation of Ms. Utiger for the appellees as specified in his motion. Further appellant moves that should Ms. Utiger fail to provide such evidentiary proof she should be denied appearance before this court, as she is not statutorily empowered to represent appellees in this suit.

Appellant requests the court grant his motion for an investigation into the actions of Ms. Utiger as such investigation is necessary before the court can determine whether Ms. Utiger has committed any violation of statute, ethics or rule and to guarantee her constitutional right of due process of law.

Dated: March 28, 2005

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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 Appellant's Reply To Appellee's Response To Appellant's Motion For Investigation And Related Matters.

Dated: March 28, 2005

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