

CA 04-50189
DC NO. CR 02-00350-AHM
(Central District of California)

IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,) Case: 04-50189
)
)
v. ,)
)
)
STEVEN WILLIAM SUTCLIFFE,)
)
Defendant-I.)
)
_____)

**OBJECTION TO APPOINTMENT OF CONFLICTED COUNSEL FROM
FEDERAL PUBLIC DEFENDERS OFFICE. MOTION TO RELIEVE
COUNSEL FOR CONFLICT AND INCOMPETENCE: MOTION TO
REPRESENT SELF UNDER THE DURESS: FACTS: DECLARATION.**

Steven.W.Sutcliffe
8959 Bartee Ave
Arleta, California Republic
FILED: Suri Juris

IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)
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Plaintiff-Appellee,)
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 v. ,)
)
STEVEN WILLIAM SUTCLIFFE,)
)
Defendant-I.)
)
_____)

**OBJECTION TO APPOINTMENT OF CONFLICTED COUNSEL FROM
FEDERAL PUBLIC DEFENDERS OFFICE. MOTION TO RELIEVE
COUNSEL FOR CONFLICT AND INCOMPETENCE:**

- 1) I object to William C. Melcher, Esq. as appointed counsel of record in this case based on previously stated facts of the **conflict** with the Federal Public Defenders **FPD** office, as outlined in the motion previously filed with you on on 06.28.2007.
- 2) I also object to William C. Melcher, Esq. for legal incompetence.¹ I just learned he was appointed on 07.11.2007, AFTER I called previous counsel Sung Park on 09.20.2007 seeking a "missing file." **He made no motion at all for almost three months.**
- 3) I also object the fact that I am without any counsel since January, **for almost nine months.**
- 4) And I object to any more appointments from the **FPD** office, based on previously stated facts of the

¹ Rule 4.5.1: Diligence and Competence

(a) A lawyer serving as a third-party neutral shall act **diligently, efficiently and promptly**, subject to the standard of care owed the parties as required by applicable law or contract. See <http://www.cpradr.org/pdfs/CPRGeorge-ModelRule.pdf>

conflict with the Federal Public Defenders office as outlined in the motion previously filed with you on 06.28.2007. Any further such appointment will, again be **conflicted**. *If my choice is only counsel appointed from an admitted conflict, previously recused, or no counsel at all my only rational choice is to choose no counsel.*

MOTION TO REPRESENT MYSELF UNDER THE DURESS:

I sought appointment of **conflict** free counsel, NOT appointed through the Federal Public Defenders office (**FPD**), as previously stated in my OPPOSITION TO MOTION FOR WITHDRAWAL, served on 06.19.2007 (PANEL) [04-50189].

- 1) The **FPD** have a stated "**conflict** of interest" in this case and "**motioned and recused their entire District**" from the defense the District level.²
- 2) I motion and move this court to appoint me as counsel of record to re-present myself, **even over my own objections and interests**, in the interests of justice.

FACTS



Judge Kozinski was a bachelor on, **The Dating Game**.³

² See Appellant's brief on appeal: STATEMENT OF ISSUES PRESENTED FOR REVIEW, SECTION A. WHETHER APPELLANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL.

I also appeared on **The Dating Game**.⁴

12.14.2006: Appeal filed.

02.05.2007: 0900: Appeal CALENDARED: Pasadena

01.19. 2007, counsel Sung Park, previously appointed from the PD office accepted employment with the DEPARTMENT OF HOMELAND SECURITY. Mr. Park requested that this Court relieve him as the counsel of record. Mr. Park was the second in a line of **conflicted** appeals counsel, *also appointed through the FPD*.

01.23.2007 Sung Park files a Declaration to be relieved. He states: "I discussed *my situation*⁵ with **Ms. Gail Ivens**, the Administrator of the CJA Appellate Panel for the Central District. *We attempted to search for a panel attorney who might be willing to take on the appointment in this case. However, we were not able to find anyone.* Thus, I respectfully request the Court to relieve me as counsel of record for Mr. Sutcliffe in CA No. 04-50189 **and appoint a new counsel** as the Court deems appropriate." After four months pass **Ms. Gail Ivens was still not able to find anyone.**

01.26.2007 You say Sung Park can withdraw after oral argument on 02.05.2007.

02.07.2007 You grant his motion. *But you don't appoint a new counsel.*

On 07.11.2007 this court *ordering the FPD office to locate counsel, whom then appointed William C. Melcher.* Nobody informed me.

09.20.2007, I contacted previous counsel Sung Park, by phone, seeking a file from the case. *Mr. Park said he never looked or itemized the files and did not know what he had turned over to me on the day he quit.* Mr. Park informed me that I should contact "my" attorney. When

³ http://en.wikipedia.org/wiki/Alex_Kozinski#Trivia

⁴ <http://en.wikipedia.org/wiki/Killercop.com#Trivia>.

⁵ Bought off, paid off, intimidated off, jerk off? I am left to wonder. Too bad he never discussed it with me.

asked who "my" attorney was, Mr. Park replied "William Melcher."⁶ I then spent two weeks trying to make an appointment to no avail. William Melcher was sent a fax on 10.01.2007 and he responded by calling me at home at 10:30 at night, yelling, "**Let me tell [you] the facts of life.**" He claimed to have no recollection as to the date he was appointed. **Moreover he had no excuse why he had not contacted me up to this date in writing, or by phone other than he could not locate me.** After yelling at me, I hung up on him. **As of this filing he has not contacted me.**

ISSUES IN THE LAW

Evitts v. Lucey,

469 U.S. 387 (1985)

"To prosecute the appeal, a criminal appellate must face an adversary proceeding that-like a trial-is governed by **intricate rules that to a layperson would be hopelessly forbidding.**" Id. at 396. **Thus, counsel is necessary, but "a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all."**

A first appeal as of right therefore is not adjudicated in accord with **due process of law** if the Appellant does not have the effective assistance of counsel." Id. [c]ounsel, who filed a timely notice of appeal **but failed to perfect the appeal, provided ineffective assistance of counsel.**

Under the Due Process Clause, of the Fifth Amendment, I move this court to grant my motion(s).

⁶ Actually Mr. Park spelled Mr. Melcher's name wrong and provided no phone number. Appellant looked up the attorney in the yellow pages and contacted him on the same day and only received an answering service. Appellant left a message and asked Mr. William C. Melcher to call Appellant anytime **in the mornings.** Counsel instead called in the afternoons and played phone tag for the first week refusing to call Appellant in the morning when he was available After 10 days of this Appellant sent counsel a fax requesting a meeting within 7 days.

CONCLUSION

This court should remove William C. Melcher as counsel of record for **conflict**. Since this court either will not or cannot appoint **conflict** free counsel this court must as a matter of law appoint me to represent myself, even over my own objections in the interests of justice to correct the prejudices inflicted by both the district court and the Federal Public Defenders office. This will allow me to put the government's case to the crucible of some type of meaningful adversarial testing.⁷

Steven.W.Sutcliffe

FILED: Suri Juris: 01.06.2007

⁷ Appellant has certainly been put thorough one mostly alone thanks to the FPD. The Appellant recognizes that should this court rule in Appellants favor and overturn his convictions this motion would be moot.

DECLARATION:

I declare as follows:

1. I seek appointment of unconflicted appointment of counsel before any decision is reached on the merits of my appeal to preserve my rights and to file a motion for reconsideration En Banc and/or a writ to the Supreme Court; I am not skilled in appeals procedure.
2. This court appointed William C. Melcher through the **FPD** office even though the **FPD** office has a stated conflict on the record of this case.
3. 09.20.2007, I made first contact with Mr. Melcher by accident, after contacting previous counsel Sung Park regarding a legal issue I am having. Several in fact. Related to the district court's own admitted "illegal" sentence.
4. 10.01.2007, William C. Melcher called me at home. William C. Melcher claimed not to even know the date he was appointed and denied that the **FPD** had in fact appointed him.
5. I received no notice from this court regarding the appointment of William C. Melcher, or from previous counsel Sung Park, until I happened to call Sung Park on Sept. 20, 2007 looking for a document.
6. I object in the strongest terms being forced to represent myself, first at trial and now at appeal. I object to any appointment having anything to do with the Federal Public Defenders office (**FPD**), which recused itself from my case in 2002 for their "unstated on the record" conflict, which effects are still reverberating on this case today.

Under the penalty of perjury, I declare the foregoing to be true and correct.

Steven Sutcliffe _____ 10.02.2007

PROOF OF SERVICE

I, the undersigned, declare: that I am a citizen of the United States and a resident of Los Angeles County and employed in Reseda, California; that I am over the age of eighteen years; that I am not a party to the above-entitled action; the service containing the following motion:

OBJECTION TO APPOINTMENT OF CONFLICTED COUNSEL FROM FEDERAL PUBLIC DEFENDERS OFFICE. MOTION TO RELIEVE COUNSEL FOR CONFLICT AND INCOMPETENCE: MOTION TO REPRESENT SELF UNDER THE DURESS: FACTS: DECLARATION.

Was made by mail and was made to the following parties:

Cathy Catterson, Clerk of Court
125 South Grand Avenue
Pasadena, CA 91105

On the date of _____ 2007, by placing the above document in a prepaid first class envelope addressed to the above and depositing it in a U.S. mail box.

I attest under penalty of perjury that the above is true.

Dated: _____, 2007
