

96-31134

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

NO. 96-31134

UNITED STATES OF AMERICA
PLAINTIFF

VERSUS

CRIMINAL SHERIFF, The Parish of Orleans
DEFENDANT

LARRY E. BROOME
Movant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
CIVIL ACTION NO. 90-4930, SECTION "M" 5
HONORABLE MAGISTRATE CHASEZ

ORIGINAL BRIEF OF MOVANT-APPELLANT,
LARRY E. BROOME

BROOME & ASSOCIATES

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COUNSEL FOR MOVANT-APPELLANT

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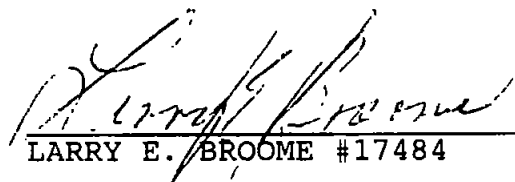
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SUMMARY OF THE ARGUMENT
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- I. The Honorable Magistrate Judge Alma L. Chasez alleged ethical violations by Larry E. Broome, which allegedly took place as a result of a hearing on September 27, 1996. This hearing was in response to a letter which was received from Ms. Barbara E. Thawley, counsel for the Department of Justice, alleging that Larry E. Broome solicited individuals who are represented by the Government after the Government has positioned these people to recover money damages.
- II. The Movant-Appellant's procedure for disciplinary actions and sanctions should have fell within the guidelines of 20.10E of the RULES OF DISCIPLINARY ENFORCEMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.
- III. On September 27, 1996 Movant-Appellant should have been given time to retain counsel of his choice before a hearing was held in this matter and before any sanctions ruled against him.
- IV. The Continuance counsel requested when he discovered that the hearing was not a status conference on the Claimants should have been granted after movant-appellant was informed this hearing was involving his ethical conduct. The transcript is silent on this request for a continuance.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel (movant-appellant) of record certifies that the following listed persons or entities have or may have an interest in the outcome of this case. These representations are made in order that the Appeals Court may evaluate possible disqualifications or recusals:

1. Chief Judge Morey L. Sear, U.S. District Court
2. Magistrate Judge Alma L. Chasez, U.S. District Court
3. Barbara E. Thawley, Esq. Department of Justice
4. John F. Weeks, Esq., Attorney for Sheriff Foti
5. Milton Osborne, Esq., Counsel who stood in for Movant-Appellant


LARRY E. BROOME #17484

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., sec. 2101 (a) and (b), supported by the list of authorities and citations and the United States Constitution, all in compliance with local rule 28.2.5.

STATEMENT REGARDING ORAL ARGUMENT

In accordance with the Fifth Circuit Local Rules, Movant-Appellant request that the Court grant oral argument in this appeal for the following reasons:

1. The facts and legal arguments are adequately presented in the briefs, memorandums but the transcript of the actual hearing and request for a continuance and the grounds therefore is not a part of the transcript (for what reasons movant-appellant does not know).
2. The Magistrate Judge in these proceedings seems to exhibit a deeply rooted prejudice against Movant-Appellant, because in her memorandum dated October 15, 1996, she goes outside the ambit of the hearing on Movant-Appellant and makes personal assumption that Movant-Appellant solicited in other cases for which no evidence exist.
3. The sanctions Ordered by the Magistrate should be stayed and/or set aside, because counsel was not given an opportunity to retain counsel after he discovered this was not a status hearing but a hearing on his ethical conduct.

For the foregoing reasons and all the jurisprudence cited and evidence presented, the judgment ordering sanctions against the Movant-Appellant should be set aside and in the alternative movant-appellant should have another hearing before another judge with the opportunity to retain counsel of his choice.

LIST OF AUTHORITIES

PAGE

APPENDIX, 20.10E RULES OF DISCIPLINARY ENFORCEMENT
OF THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

The FIFTH AMENDMENT OF THE U.S. CONSTITUTION.....

CASES

LOUISIANA STATE BAR ASSOCIATION V. RONALD RUIZ
259 So. 2d 903

EXHIBITS

MEMORANDUM FROM MAGISTRATE JUDGE ALMA L. CHASEZ DATED OCTOBER
15, 1996 M-A-1

TRANSCRIPT OF HEARING ABSENT THE REQUEST OF MOVANT-APPELLANT'S
REQUEST FOR A CONTINUANCE.

STANDARD OF REVIEW

The standard of review in this matter is whether the Honorable Magistrate Chalez abused her discretion. It is our contention that she did abuse her discretion by not recusing herself and assuming facts that were not in evidence in the hearing in this matter and imposing sanctions based on these assumptions.

STATEMENT OF ISSUES

- I. Whether the Honorable Magistrate Judge Alma L. Chalez committed reversible error when she scheduled a Status Conference for Movant-Appellant not informing him he had a right to retain private counsel, because he was to be the subject of this alleged status conference which was in fact a hearing.
- II. Whether the Honorable Magistrate Judge Alma L. Chalez exhibited signs of prejudice against Movant-Appellant since she referred to matters of a personal nature in her memorandum dated October 15, 1996, that were not a part of any record and no evidence existed nor does any evidence exist that shows Movant-Appellant solicited in any case in the United States.
- III. Whether Movant-Appellant should have been granted a continuance after he discovered the nature of the proceedings against him, rather than allow an attorney he did not retain to stand in on this serious allegation brought against him.
- IV. Whether all sanctions should be stayed, until a full hearing with all counsel's rights protected and an attorney of his choice present to adequately represent him.
- V. Whether it is reversible error to leave absent from the transcript of the hearing in this matter, Movant-Appellant's request for a continuance and the grounds the request was based on.

SUMMARY OF ARGUMENT
STATEMENT OF FACTS AND ARGUMENTS

This matter came before the Honorable Magistrate Chalez on September 27, 1996, for an alleged "Status Hearing". The hearing was scheduled in response to a letter which the Magistrate allegedly received from Ms. Barbara E. Thawley, counsel for the Department of Justice. This letter, the Magistrate acted on spontaneously alleged Larry E. Broome solicited individuals who were represented by the Government after the Government had positioned these Claimants to recover money damages. Movant-Appellant had represented many of these Claimants and was not given an opportunity to notice his clients to appear in Court, because the setting of this matter was confusing and a continuance, which would have been in the interest of justice was denied. And we see no record of this request and denial in the transcript of this matter.

Therefore, Movant-Appellant was forced to get Mr. Milton Osborne, who is a Deputy City Attorney for the City of New Orleans to stand in for him to keep Movant-Appellant from being held in contempt and possibly going to jail. This fear instilled in Movant-Appellant by the position of Magistrate Chalez denied Movant-Appellant his rights of "due process" and his rights to retain counsel of his choice to defend him for this serious allegation and violated his constitutional rights to be represented by counsel of his choice.

The Magistrate in this proceeding charged Movant-Appellant with

solicitation based on a letter she received from other counsel and the Magistrate showed signs of prejudice toward Movant-Appellant and when she received this letter she should have recused herself from this matter, not the case, but the hearing on the Movant-Appellant, Larry E. Broome in the interest of justice and to avoid a conflict of interest. The charge of solicitation has been outlined by the Louisiana State Supreme Court in Louisiana State Bar Association v. Ronald Ruiz, 259 So. 2d 903, in that the Bar Association set out 'Specification No. 2-Committee File No. 2581, which stated:

"On October 28, 1969 through your direct and unjustified solicitation you did unethically procure employment as attorney for Lester Dickerson in his claim for personal injuries received in an accident which occurred on October 26, 1969. In this connection you did without previous invitation visit Lester Dickerson in Charity Hospital in New Orleans on October 28, 1969 where you asked that he employ you and to entice him to do so, you promised to pay all his hospital bills, doctor bills and to advance him money to live on. Upon being so employed, you urged Lester Dickerson to leave Charity Hospital and enter Mercy Hospital where you would pay his expenses. You have, in fact, unethically advanced some \$1,600.00 on behalf of Lester Dickerson." The Movant-Appellant, Larry E. Broome did not come close to solicitation in the manner listed above and he should have been granted a full hearing to show he did not do the things listed above even though the specification listed above did not in fact constitute solicitation.

From the facts, it appears the Honorable Magistrate Chasez has harbored personal animosity toward the Movant-Appellant, since the inception of this litigation. As a matter of fact on the day of the alleged hearing, which Movant-Appellant was informed was a status conference, turned into a serious allegation of solicitation. At this time the Magistrate should have informed counsel and recuse herself from the hearing on the solicitation allegation. Also, in the interest of justice, the Honorable Judge should have continued this matter, no injury would have been caused by a continuance and this matter had not been brought up before nor had it been continued.

Movant-Appellant requested a full transcript of this alleged hearing and cannot find any part of it where it is stated that counsel who stood in for Movant-Appellant requested said continuance and the grounds therefor, but all counsel can sign an affidavit reflecting that fact provided that part of the transcript cannot be found.

Further, the Honorable Magistrate Chasez in her memorandum (Attached M-A 1) caste many personal aspersions and draws personal conclusions such as "...in one instance representing himself to be working with the Government." Movant-Appellant never said such a thing and there is no evidence in any record that such a statement was made. The Honorable Magistrate Chasez should have granted a continuance on September 27, 1996, when she heard the intervenors were not present, instead of personally assuming Movant-Appellant did not represent any of the people purported to be represented by

the pleadings. This assumption is an abuse of her power and a grave miscarriage of justice.

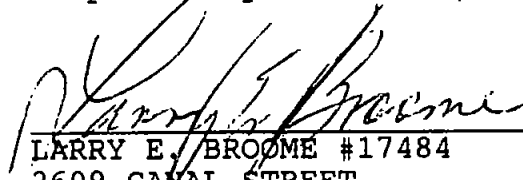
To further illustrate the Honorable Magistrate Chasez overflow of personal distaste for Movant-Appellant, she makes assumptions that are not in evidence in the last paragraph of her memorandum, when she concludes, "As I understand it this is not the first time Broome has unlawfully solicited clients. Ivan Lemelle has a pending matter wherein I understand he has likewise taken some action against Broome." This conclusion by the Honorable Judge Chasez seems innately prejudicial and it appears she pre-judged Movant-Appellant prior to this alleged hearing, because there is no merit to her assumption and this can be verified by the Honorable Judge Lemelle. The Movant-Appellant has never had an allegation of solicitation brought against him in any court in the United States including the pending matter before the Honorable Judge Lemelle.

CONCLUSION

Therefore, Movant-Appellant prays that this Honorable Court stay all monetary sanctions issued by Magistrate Chasez and Order the complete transcript of the alleged hearing in this matter that reflects the request for the continuance on the day of the alleged hearing September 27, 1996, and provided all of Movant-Appellant's allegations are substantiated the entire hearing be held by another Magistrate who is not prejudice toward Movant-Appellant and

Magistrate Chasez Order be set aside.

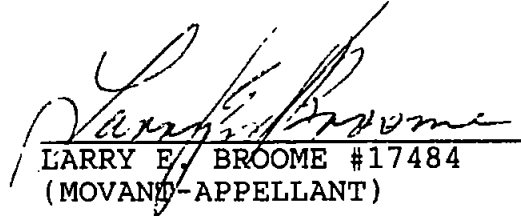
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry E. Broome", is written over a horizontal line.

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CERTIFICATE OF SERVICE

This is to certify that a copy of this pleading has been forwarded to all counsel of record by placing same in the U.S. Mail, properly addressed and postage pre-paid on this 12th day of March, 1997.


LARRY E. BROOME #17484
(MOVANT-APPELLANT)

SERVICE MADE ON:

Chief Judge Morey L. Sear

Magistrate Judge Alma L. Chasez

Barbara E. Thawley, Esq.

John F. Weeks, Esq.

Milton Osborne, Esq.

UNITED STATES DISTRICT COURT

Eastern District of Louisiana

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Alma L. Chasez
Magistrate Judge

MEMORANDUM

Exhibit M-A 1

DATE: October 15, 1996
TO: Chief Judge Morey L. Sear
FROM: Magistrate Judge Alma L. Chasez
RE: Ethical violations by Larry Broome, Attorney at Law

Attached is a transcript of hearing which took place before me on September 27, 1996. I scheduled this hearing in response to a letter which I received from Ms. Barbara E. Thawley, counsel for the Department of Justice, copy of which is also attached.

Basically, Larry Broome has solicited individuals who are represented by the Government after the Government has positioned these people to recover money damages. The Government had identified people who will receive relief pursuant to a settlement agreement with Sheriff Foti. Broome then approached certain of these people, in one instance representing himself to be "working with the Government", and tried to get them to sign contingency fee contracts with him.

Based upon the above allegation, I have also furnished a copy of this transcript to Jan Mann in the U.S. Attorney's office so that any action which the Criminal Division wishes to take may be processed.

Broome did not deny approaching these people, seeking that they sign contingency fee documents. He testified that he represents so many people he did not know if these were his clients or not. ✓

Additionally, Broome filed an intervention in this proceedings which was granted as to approximately ten people. Since I had questions as to how many of these people he truly represented, my minute entry ordered that all individuals whom he represented were to be made available for questioning on the established hearing date. Broome failed to bring any of his clients with him to testify. I can only assume that he does not represent any of the people on whose behalf he purported to file pleadings.

I have disqualified Broome as counsel in the current litigation. However, I felt that this is something you would want to be made aware of in that it might be something you felt warranted further disciplinary action by the court. As I understand it, this is not the first time Broome has unlawfully solicited clients. Ivan Lemelle has a pending matter wherein I understand he has likewise taken some action against Broome.

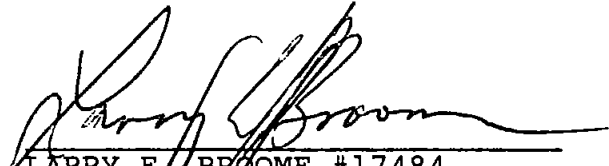
If you have any further questions about this, please let me know.



Attachment

CERTIFICATE OF SERVICE

This is to certify that a copy of this pleading has been forwarded to all counsel of record by placing same in the U.S. Mail, properly addressed and postage pre-paid on this 12th day of March, 1997.


LARRY E. BROOME #17484
(MOVANT-APPELLANT)

SERVICE MADE ON THE FOLLOWING BY U.S. MAIL:

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