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1997 WL 242904
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United States District Court,
N.D. Illinois,
Eastern Division.

UNITED STATES of America ex rel.
Mervin GREEN, etc., Petitioners,
v.
Odie WASHINGTON, et al., Respondents.

No. 93 C 7300.
|
May 5, 1997.

MEMORANDUM OPINION AND ORDER

SHADUR, Senior District Judge.

***1** Some months ago the members of the Jenner & Block law firm who had been acting as co-counsel for the plaintiffs in this class action moved for leave to withdraw from that representation. Their motion was not predicated on the existence of any conflict of interest in the usual sense that has been recognized by the case law or by the Rules of Professional Responsibility, but rather on a view that the then-recent addition of the Justices of the Illinois Appellate Court for the First District as defendants in this action could somehow operate to the potential prejudice of other clients who are represented by the law firm in ordinary appeals before that court. [1]

This Court found that position extraordinarily troublesome in a number of respects. To choose only two:

> 1. Counsel's stated position connoted an unwarranted implication as to the members of the Appellate Court, who surely ought to be relied upon to distinguish between the conduct of a lawyer or law firm in handling a legal matter in a professional way (as is involved here) and a personal attack on the judiciary by a lawyer or law firm (which is certainly *not* involved here). [2]

2. That position is also totally at odds with the great traditions of the legal profession as so eloquently expressed by Justice Hugo Black's dissent in *In re Anastaplo,* 366 U.S. 82, 114–116, 81 S.Ct. 978, 6 L.Ed.2d 135 (1961), which Justice Black quoted in part again in his later dissent in *Law Students Research Council v. Wadmonnd,* 401 U.S. 154, 181, 91 S.Ct. 720, 27 L.Ed.2d 749 (1971):

> It is such men as these [those who "combine[ ] these more common virtues" of a high moral, ethical and patriotic course "with the uncommon virtue of courage to stand by [their] principles at any cost"] who have most greatly honored the profession of the law—men like Malsherbes, who, at the cost of his own life and the lives of his family, sprang unafraid to the defense of Louis XVI against the fanatical leaders of the Revolutionary government of France—men like Charles Evans Hughes, Sr., later Mr. Chief Justice Hughes, who stood up for the constitutional rights of socialists to be socialists and public officials despite the threats and clamorous protests of self-proclaimed superpatriots—men like Charles Evans Hughes, Jr., and John W. Davis, who, while against everything for which the Communists stood, strongly advised the Congress in 1948 that it would be unconstitutional to pass the law then proposed to outlaw the Communist Party—men like Lord Erskine, James Otis, Clarence Darrow and the multitude of others who have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lost much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it.

When Justice Black spoke of "government-fearing," he was of course speaking of the branches of government other than the judiciary—but he surely would have been at least as concerned with any lawyer conduct that would succumb to a perceived fear of *that* branch.

***2** Since the motion was filed, the now-defendant Justices have come to the issues posed by this litigation—and by their being newly named as defendants—in a wholly constructive way, by seeking to develop procedures that can appropriately address the problem of constitutional deprivations that are caused by extensive delays in the appeal of criminal convictions in the First Appellate District.[3] It is plain that whatever force may be thought to have underpinned the Jenner & Block attorneys' motion to withdraw, there is no need for counsel to express any continuing concern on that score at this point. This Court accordingly denies counsel's motion to withdraw.

All Citations

Not Reported in F.Supp., 1997 WL 242904

Footnotes

1 When this Court inquired of the lawyers who submitted the motion, they advised that they were presenting the institutional position of the law firm—something that had passed muster with the firm's top management.

2 In this Court's other life, before appointment to the federal bench, its private practice included part-time service as general counsel to the Illinois Judicial Inquiry Board, whose sole function is to consider, and then possibly to institute and prosecute, charges of judicial misconduct before the Illinois Courts Commission. This Court never dreamed of either refusing or withdrawing from that representation by reason of the type of concern that has been voiced by the movants here: a concern that would envision the possibility of judicial retaliatory conduct that could prejudice the rights of any of the other clients who were represented by what was then this Court's law firm—a small firm with far less ability to cope with such a problem (if it were in fact to arise) than Jenner & Block.

3 Without suggesting any ultimate ruling on the issues, this Court takes note of the April 11, 1997 status report and April 25, 1997 supplement in which the Executive Committee of the First District Appellate Court has reported on its “Plan To Effectuate Action for Timely Disposition of Criminal Appeals.”

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