

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,)
)
 v. ,)
)
STEVEN WILLIAM SUTCLIFFE,)
)
Defendant-Appellant.)
)
_____)

**OBJECTION TO MOTION OF SUNG B. PARK TO BE RELIEVED AS
COUNSEL OF RECORD; MOTION FOR THE REAPPOINTMENT;
MOTION FOR THE CLARIFICATION OF THIS COURT'S ORDER
RELIEVING ASSISTANCE OF COUNSEL FOR APPELLANT.
DECLARATION OF STEVEN SUTCLIFFE**

STEVEN SUTCLIFFE
FILED SURI JURIS

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COUNSEL; MOTION FOR THE CLARIFICATION OF THIS COURT'S
ORDER RELIEVING ASSISTANCE OF COUNSEL FOR APPELLANT.**

Counsel of record, Sung Park, informed Appellant that this court had in deed relived him, but told Appellant that the order was a "hybrid" order like he had never seen before in that this court's language stated that he "may" [be relieved]. Counsel has since abandoned his private practice and went to work for Homeland Security leaving Appellant without any assistance of counsel.

**MOTION FOR THE REAPPOINTMENT OF COUNSEL AND CLARIFICATION
OF THIS COURT'S ORDER RELIEVING ASSISTANCE OF COUNSEL FOR
APPELLANT**

Appellant objects to the courts hybrid order and seeks clarification of this order. Appellant also, if this court allows counsel to in deed quit, moves for the immediate reappointment of counsel to assist Appellant in anticipation of any denial of the merits of Appellant's

appeal. Appellant's counsel on appeal, Mr. Park, has now placed Appellant in a tenuous position based on his representation that this court has allowed him to quit by saying he "may quit." Appellant objects and seeks clarification of the words "may quit." Counsel either "can" or "cannot" quit and leave Appellant without counsel on Appeal. If counsel can in deed and fact quit, Appellant motions for new counsel. Furthermore, if granted Appellant seeks appointment of "independent" counsel, NOT appointed through the Federal Public Defenders Office (FPDO). The FPDO have a stated "conflict of interest" in this case and "motioned and recused their entire District" from the defense of Appellant case leaving Appellant to go to trial at the District level where he was "forced" to re-present himself.¹

FACTS

January 19, 2007, appointed counsel Sung Park, counsel of record for Steven William Sutcliffe, accepted employment with the Department of Homeland Security. Mr. Park requested that this Court relieve him as the counsel of record. His application was based on his declaration filed on record.

On February 2007, this court ordered appointed Counsel to submit to oral argument on issues of jurisdiction, inter alia, prior to submission of the case for decision of the issues on appeal, one issue being a denial of the assistance of counsel during the District Court's trial.

Immediately following oral argument counsel of record Park met Appellant in the parking lot and gave him several boxes, containing all his files on the case, and informing Appellant that "he quit," and wishing Appellant good luck. Appellant believes he needs competent² assistance of counsel, not "luck." Counsel appoint stipulated to jurisdiction against Appellants written appeal after defendant spent days briefing him on the issues and how to present them to this court.

¹ See Appellant's brief on appeal: STATEMENT OF ISSUES PRESENTED FOR REVIEW, SECTION A. WHETHER APPELLANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL.

² One who at least knows what year it is when he files a brief to be relieved.

Sung Parks own Declaration to be relieved states: "I discussed my situation 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."

ISSUES IN THE LAW

Ninth Circuit Rule³ 4-1(a): Counsel shall continue [to represent] the defendant on appeal until counsel is relieved **and replaced...**"

Ninth Circuit Rule 4-1(c)(1)(3)(5): A motion to withdraw as counsel on appeal...**shall be** accompanied by a statement of reasons including: 1: A substitution of counsel **which indicates that new counsel has been retained** [to represent defendant]; or 3: An affidavit or signed statement from the defendant stating that the defendant consents to appointed counsel's being relieved... 5: [A]ny motion filed pursuant to this section **not accompanied by defendant's affidavit or signed statement shall set forth the reasons for such omission.**

Ninth Circuit Rule 4-1(d)**Post Appeal Proceedings**

If the decision of this court is adverse [to the client], in part or in full, counsel whether appointed or retained, shall, within 14 days after entry or judgment...advise [the client] of the right to initiate further review by filing a petition for a writ of certiorari in the United States Supreme Court.

Any motion by appointed or retained counsel to withdraw as counsel of record shall be made within 21 days of judgment... If relieved by this Court, **counsel shall, within seven(7) days after such motion is granted, notify**

³ This rule applies to Appellant' [counsel] as he was appointed under 18 USC 3006A

the client in writing and, if unable to do so, inform this Court.

CONCLUSION

Appellant's counsel, Sung Park failed to follow this local rule, his Declaration contains no statement or affidavit from the defendant and Appellant's Declaration (see attached) states he is indigent and requires assistance of counsel. Counsel did not set forth any reasons for his omission under Rule 4-1(c)(5). Counsel "may not" quit this case, and even if he "can quit" this case the court must appoint counsel in his substitute as a matter of Due Process. If the decision of this court is adverse [to the client], in part or in full, Appellant is left without counsel to assist him in filing a writ to challenge the ruling.

DECLARATION OF STEVEN SUTCLIFFE

I, Steven Sutcliffe, declare as follows:

1. I object[ed] to court appointed counsel, Sung Park, quitting my defense.
2. Sung Park misrepresented the facts of this case in oral argument when he stipulated to the jurisdictional elements of my challenge on appeal and I renew the written arguments filed that the district court lacked original jurisdiction.
3. Prior to oral arguments I was asked by Sung Park, and spent days briefing him orally and in writing on the issues of my jurisdictional challenge, as well as how to present them to this court during oral argument if challenged. I witnessed Sung Park stipulate that legal argument away during oral argument. I object to such a re-presentation and I renew all jurisdictional challenges should this court rule adversely against them. Counsel was not authorized to waive my rights to challenge jurisdiction.
4. I anticipate this court denying my appeal, in part or in full, and seek appointment of independent counsel before any decision is reached on the merits of my appeal to preserve my rights to file a motion for reconsideration En Banc and/or a writ to the supreme court, as Appellant is still indigent under 18 USC 3006A and is not skilled in appeals procedure he requires competent effective assistance of independent counsel who is un-conflicted.
5. Sung Park met me in the parking lot after oral arguments and gave me five boxes of unorganized files containing thousands of pieces of paper and said "Good luck" and "I quit."
6. Sung Park thereafter called me and informed me this court told him he "may" quit. He also said the order was strange since in all his years as an appellant attorney he had never seen the court's use such language as "may" quit. He did not notify me in writing as required under the

Court's rules. Nor did this Court inform me it had relieved him from assisting me as counsel.

7. Sung Park, informed Appellant that this court had in deed relived him, but told Appellant that the order was a "hybrid" order of the likes he had never seen before, calling it "strange" in that this court's language stated that he "may" [be relieved].
8. Counsel has since abandoned his private practice and went to work for Homeland Security, leaving Appellant without any assistance of counsel.

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

Steven Sutcliffe_____ 6.13.2007