

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-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 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." My address was on my last motion filed in June of 2007.
- 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 **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*

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>

*appointed from an admitted conflict, previously
recused on their own motion which was granted by the
district court, 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**, under the Due Process
Clause and in the ends of justice.

FACTS



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

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

12.14.2006: Appeal filed.

02.05.2007: 0900: Appeal CALENDARED: Pasadena

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.

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

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

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.

The date for oral argument is changed at the last minute to the Seventh.

02.07.2007 Oral argument: You grant his motion to quit, saying he "may" quit. *But you don't appoint a new counsel.*

On 07.11.2007 this court *orders the FPD office to locate counsel, whom then appointed William C. Melcher.* Nobody informed me of his appointment until I learned of it by accident on September 20, 2007.

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 asked who "my" attorney was, Mr. Park replied "William Metcher, of Metcher, Metcher & Metcher."⁶ I then spent 10

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

⁶ Mr. Park spelled Mr. Melcher's name wrong and provided no phone number when asked for it. Appellant looked up the attorney in the yellow-pages and contacted him on the same day and only received an answering service.

days trying to make an appointment or speak to him to no avail.⁷

I sent William Melcher a fax on 10.01.2007, see attached Exhibit A, 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.

10.06.2007 A letter arrives in the post. W.C.Melcher, of Melcher, Melcher & Melcher, sends a reply. The letter is dated October 1, 2007, the envelope is stamped October 5, 2007. See Exhibit B.

NOTE: He never answered either question regarding his appointment. And he lied about who was first to contact whom and when. A simple phone bill will establish the truth of the matter.

ISSUES IN THE LAW

A.

DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

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.*

⁷ I left a message and asked Mr. William C. Melcher to call me **anytime in the mornings**. Counsel instead called in intermittently during the week, in the **late afternoons**. After 10 days of that I sent him a fax asking him specifically when he was appointed, and by whom. I also requested a meeting in the next week.

Douglas v. California,
372 U.S. 353 (1963)

The Due Process Clause of the Constitution guarantees that an appellant will receive effective assistance of counsel on appeal. (Douglas v. California (1963) 372 U.S. 353, 355; Griffin v. Illinois (1956) 351 U.S. 12; Powell v. Alabama (1932) 287 U.S. 45, 71; see also Gilbert v. Sowders (6th Cir. 1981) 646 F.2d 1146; Ross v. Moffitt (1974) 417 U.S. 600.)

On appeal, the effective counsel required by due process mandates that appellate counsel "**acts in the role of an active advocate in behalf of his client.**" (Anders v. California (1967) 386 U.S. 738, 744.)

William Melcher is the antithesis of an active advocate in this case. He acted failed utterly to act diligently, efficiently and/or even promptly.

Sung Park failed to raise a potentially meritorious issue at oral argument, which I briefed him on, regarding jurisdiction. The prosecution even alluded to the potentially meritorious issue at oral argument, but Sung Park failed to raise it, protect it, or even get it. I was surprised when he did this after I spent days briefing with him and numerous correspondences, right up to the moments before oral argument.

Being that as it may, under the Due Process Clause, of the Fifth Amendment, I pray this court to grant my motion(s).

CONCLUSION

This court must remove William C. Melcher as counsel of record for **conflict, to say the least.**

Since it appears you must only appoint **conflict** counsel, this court must as a matter of the law above, grant my motion to appoint me to represent myself, even over *my own objections*. Or appoint me to represent myself, even over *my own objections* in the ends of justice.

Steven.W.Sutcliffe
FILED: Suri Juris: 10.06.2007

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.⁸
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 _____ 10.08.2007

⁸ It appears my trial judge is in the news being accused of fixing the Rosen trial to hide Hilary Clinton's culpability in campaign frauds and Ethics Violations.. Much like I have accused him of fixing my trial to hide Joe Schmoe's culpability, among others. <http://tinyurl.com/ywtx4v>

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

Edward Ober