UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

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NO. 96-31134

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UNITED STATES OF AMERICA
PLAINTIFF

VERSUS

CRIMINAL SHERIFF, The Parish of Orleans
DEFENDANT

LARRY E. BROOME
Movant-Appellant

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*Disclaimer: Cover page not included as part of original court record.*

## STATEMENT REGARDING ORAL ARGUMENT

The United States does not believe there is a need for oral argument in this case because the matter is relatively simple and the record is clear.

## STATEMENT REGARDING RELATED CASES

To our knowledge, there are no related cases.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 96-31134

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CRIMINAL SHERIFF, THE PARISH OF ORLEANS,

Defendants

LARRY E. BROOME,

Movant-Appellant

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

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BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. 636(c)(1) and the consent of the parties, judgment was entered in this case by a magistrate judge on October 31, 1996 (R. 270, 271).[1] Appellant Larry E. Broome filed a timely notice of appeal on October 25, 1996 (R. 267; see also Fed. R. App. P. 4(a)(2)). Under 28 U.S.C. 636(c)(3) and 28 U.S.C. 1291, appeal lies in this Court from the magistrate's final judgment.

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[1] "R." refers to the numbered entries on the district court's docket. "Tr." refers to the transcript of the hearing on September 27, 1996. "Exh." refers to exhibits introduced at the hearing. "Br." refers to the appellant's brief.

STATEMENT OF THE ISSUE

Whether the magistrate judge denied Appellant Larry E. Broome procedural due process in connection with the hearing of September 27, 1996, that resulted in his disqualification from representing intervenors in this case and requiring him to pay expenses incurred by the United States as a result of this hearing.

STANDARD OF REVIEW

Review of the actions taken by a court to manage and achieve an orderly disposition of its cases is governed by an "abuse of discretion" standard. Woodson v. Surgitek, Inc., 57 F.3d 1406, 1417 (5th Cir. 1995).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

The United States filed a suit against the Parish of Orleans Criminal Sheriff, et al., on December 17, 1990 (R. 1) alleging a "pattern and practice" of discrimination against women in hiring and in the conditions of employment (R. 1 at 2-3). The case was referred to Magistrate Judge Alma Chasez (R. 5), and the parties subsequently agreed, pursuant to 28 U.S.C. 636(c), that the magistrate would conduct all the proceedings (R. 12). The case was bifurcated into two stages: Stage I for issues of defendants' liability and Stage II to address issues of individual relief (R. 18). The parties resolved the question of liability in a consent judgment on September 8, 1992 (R. 139), and proceeded to the remedial phase of the case.

During this phase, the United States notified individual potential claimants and determined which would be recommended for relief (see, e.g., R. 190, 201). In December 1994, the United States filed a report with the court containing its recommendations as to appropriate relief (R. 190). On September 25, 1995, Appellant Larry Broome filed a motion to intervene on behalf of approximately 100 individuals (R. 197). The United States noted in its Second Report Concerning Individual Relief that 30 of the persons who had filed claims but as to whom relief had not been recommended were among Mr. Broome's applicants for intervention (R. 201, App. C).[2] The court did not act on the motion for intervention at that time, and Mr. Broome played no role in the ongoing resolution of most of the individual claims.

A hearing was scheduled for August 5, 1996, for the court to hear the individual relief claims of 28 claimants (R. 246, 247). Just prior to the scheduled August 5 hearing, the United States served a list of the witnesses (including the claimants at issue) it planned to present in that hearing. The United States' witness list was served upon the defendants' attorneys and on Larry Broome (R. 247). The August 5, 1996, hearing was subsequently canceled because the United States and the Sheriff reached agreement on the individual relief issues (see, e.g., R.

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[2] Two of the women on Mr. Broome's list, Denise Alexander and Denise Miles, both former deputy sheriffs, were recommended by the United States for relief (R. 252, Att. 2). The remainder of the applicants for intervention had not filed claims with the United States.

250). Eventually, after fairness hearings, the entire case was settled by consent decree (R. 265, 288).

On August 20, 1996, after the August 5 hearing had been canceled and consent decree negotiations were taking place between the United States and the Sheriff, there was a status conference attended by the Sheriff and petitioner-intervenors but not the United States (see R. 251). Counsel for the United States learned, however, that Mr. Broome had appeared at that conference, and had claimed to represent a number of claimants who were not listed on the application to intervene, and who had never before identified themselves as his clients (R. 252, Att. 2). In addition, following that conference, counsel for the United States began receiving telephone calls from persons who had been among the claimants in this case scheduled to testify at the August 5, 1996, hearing. The callers indicated that they had been approached by Mr. Broome to sign retainers. Each of the women whom Mr. Broome approached had had their names and addresses on the United States' witness list. Compare R. 247, above, with Tr. 14 (Joyce D. Jones), 37 (Yolanda Turner), 45 (Camille Jordan), 55 (Deidre Hitchens), 75 (Denise Rose), and 86 (Denise Alexander).

Counsel for the United States notified the court, by letter dated August 27, 1996, that it was concerned about these calls because they appeared to be an attempt "to solicit prospective professional employment" and because Mr. Broome appeared to have been representing to claimants that he had a relationship to the

Department of Justice that he did not have (R. 252, Att. 3). In response, the court entered an order on September 5, 1996 (R. 252). It granted the motion to intervene, but limited intervention to persons who had filed claims and followed all the appropriate procedures. In addition, the court set a hearing date for September 27, 1996, and added: "At that time, Mr. Broome and any client who states herself to be represented by Mr. Broome shall appear. At that time, the client will be questioned by the court as to the circumstances of Mr. Broome's representation" (R. 252 at 2). Further, the court indicated that allegations against Mr. Broome with respect to solicitations would be heard, and the court asked the United States to subpoena to that hearing any individuals believed to have been solicited or to whom false representations might have been made (R. 252 at 2).

Based on the testimony of the government witnesses at the hearing on September 27, 1996, the court found that Mr. Broome had violated Rule 7.2 of the Rules of Professional Conduct of the Louisiana State Bar Association.[3] The court found that Mr. Broome had solicited five women to sign a retainer agreement that has in it a standard contingency fee arrangement. The court also

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[3] That provision reads in pertinent part (see Tr. 146-147): "A lawyer shall not solicit professional employment in person * * * or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer['s] doing so is the lawyer's pecuniary gain." Rule 20.04 of the United States District Court for the Eastern District of Louisiana adopts the Rules of Professional Conduct of the Louisiana State Bar Association as a rule of the court.

noted that lawyers generally do not work for nothing (Tr. 147). In addition, the court found that Mr. Broome had violated Rule 7.1, prohibiting lawyers from making deceptive or misleading statements, because of representations that he worked with or for the Department of Justice (Tr. 147-148). The court found that one claimant, Ms. Alexander, had a retainer agreement with Mr. Broome, but it was specifically for a case other than this one (Tr. 148-149). Thus, his application for intervention that represented her as his client violated Rule 3.3(a) of the Louisiana State Bar, which prohibits knowingly making false statements to a tribunal (Tr. 149). Because he had not complied with her order to bring in the clients, the court also assumed that Mr. Broome could not have demonstrated that he represented the other would-be intervenors who appeared on the application (Tr. 150). Accordingly, the court disqualified Mr. Broome from representing any of the would-be intervenors. The (approximately) ten people who were ultimately allowed to intervene would, instead, be offered representation by the Tulane Law Clinic (Tr. 150).

The court ordered Mr. Broome to "reimburse the United States Government for any out of pocket costs it has incurred in connection with this hearing today" (Tr. 150-151). Mr. Broome filed a notice of appeal on October 25, 1996 (R. 267). On October 31, 1996, the court entered two written orders. One ordered the Tulane Clinic to represent intervenors (R. 271) and

the other ordered Mr. Broome to pay the full amount claimed by the United States for expenses (R. 270).

B. Statement of the Facts

At the September 27, 1996, hearing, Mr. Broome was represented by Milton Osborne (Tr. 1). The United States presented the testimony of the six women who had been approached by Mr. Broome. Only one of them (Denise Alexander) was listed in the original application for intervention as a potential intervenor (see R. 197). She is also the only one who had had any prior relationship with Mr. Broome (Tr. 18-19, 36, 43, 52, 61-62, 81). Ms. Alexander testified, however, that her association with Mr. Broome had nothing to do with this case, and that he did not attend her deposition in this case. Her connection with Mr. Broome was exclusively with regard to a totally different case, a class action against the Sheriff having to do with overtime claims (Tr. 88-91, 97; Exhs. 4, 5).

All the claimant-witnesses told similar stories. Typically, Mr. Broome approached them or members of their families saying that the case (without precise identification of what case) was about to be settled; that "they" want to close it out by December (Tr. 32, 40, 49, 58, 92); and that the claimants needed to come down to his office and sign retainers (Tr. 7-8, 15-17, 76, 92) so that he could assure that they got the maximum amount of money in the settlement (Tr. 19, 77). In some instances he said that he worked with the Justice Department or that he was under contract to work with the Department (Tr. 18, 30-32, 48, 58). In one

instance, however, he acknowledged that he had a "fee" amounting to one third of any recovery (Tr. 79). In almost each instance, the claimant called the Department and verified that Mr. Broome did not work for the government (Tr. 10, 21-23, 41, 50-51, 62, 78).

There was evidence that Mr. Broome assumed that many or most of the claimants in this case were also claimants in the other one against the Sheriff, known as Boyd v. Foti, having to do with overtime (Tr. 31, 44). He apparently also took the position that, because he represented (or claimed to represent) class members in that case, he either automatically represented them in this case as well or was somehow entitled to do so (see Tr. 131-132). For example, the business card he left with the women he approached usually had "Foti case" written on the back (Tr. 16, 47), and he made frequent references in his conversations to his representing up to 900 or more clients (Tr. 34, 44, 65, 76, 134). In his testimony, Mr. Broome suggested that he did not have a good list or file anywhere of the hundreds of people he represented in the Boyd v. Foti case and therefore needed to meet the claimants in this case face-to-face to determine whether he represented them (Tr. 106-107). Similarly, he testified that his clients included many whose names were not among the 100 or so on the motion to intervene, an assertion that came as a surprise to the magistrate (Tr. 118-120).

At the end of the testimony, the court asked Mr. Broome whether he had brought his putative clients to the hearing as ordered. He had not done so (Tr. 137-140). His counsel, Mr. Osborne, acknowledged that neither he nor Mr. Broome had noticed the part of the order calling for bringing in the clients (Tr. 142). Mr. Osborne added that they would like an opportunity to "bring these people in, if the court would agree to continue this one" (Tr. 143). However, the court decided not to delay the matter further (Tr. 146).

## SUMMARY OF ARGUMENT

The magistrate did not abuse her discretion when she disqualified Mr. Broome from representing intervenors in this case. Though asked to bring the people he represented to the hearing, he failed to do so. Several claimants, having been approached by Mr. Broome, testified that they were not, in fact, represented by him. The magistrate, in the exercise of her power to control the litigation before her, reasonably decided to resolve the matter by finding other representation for intervenors. It was also well within her discretion to tax Mr. Broome with the United States' costs incurred in connection with this matter.

## ARGUMENT

### APPELLANT BROOME WAS AFFORDED A FAIR AND REASONABLE OPPORTUNITY TO BE HEARD AND WAS PROPERLY PREVENTED FROM REPRESENTING INTERVENORS IN THIS CASE

Appellant Broome did not deny that he approached the persons who appeared at the hearing on September 27, 1996 (Tr. 106-107,

142). Appellant Broome simply presented a different version of what had happened. His testimony was that hundreds of claimants, in another case against the Sheriff, had retained him for all purposes, and, due to administrative confusion, he just did not know who they were. Thus his only mission (he said) was to ascertain whether the claimants in the present case were among the hundreds who had retained him (Tr. 106-107; see also Br. 5). The magistrate correctly did not credit this explanation. If nothing else, Mr. Broome's explanation was inconsistent with the unrebutted testimony that he had asked each potential claimant to come in to sign a new retainer. In addition, the "overtime" case necessarily involved present or former employees of the Sheriff's office, a class that is obviously not coextensive with the class of rejected applicants. Yet, when he approached the women in question, Mr. Broome did not even ask them whether they were current or former deputies (Tr. 112, 118).

Because it seemed very doubtful that any of the remaining intervenors had actually engaged Mr. Broome to represent them, and because much time had already passed, the magistrate decided to move the case to its conclusion by disqualifying Mr. Broome from representing any intervenors (Tr. 150). The disqualification applies only to the present case and does not affect Mr. Broome's general ability to practice law.[4] In making this ruling, the magistrate took the position that she was "not

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[4] Whether Mr. Broome should have been allowed to represent potential intervenors is now a moot question as all the claims have been settled.

acting in a disciplinary capacity" (Tr. 5). She was simply exercising her inherent power to control the litigation before her. It is axiomatic that courts "are vested with the inherent power 'to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" Woodson v. Surgitek, Inc., 57 F.3d 1406, 1417 (5th Cir. 1995), quoting Link v Wabash R.R. Co., 370 U.S. 626, 630-631 (1962).[5] In addition, the magistrate had authority under 28 U.S.C. 1927 to require Mr. Broome to pay the "excess costs" and "expenses" for requiring the court to take extra time dealing with his purported representation of claimants.[6]

Mr. Broome now asserts that he has been denied basic fairness in the course of the proceeding described above. These contentions are without merit.

(1) Despite the actual wording of the order calling the September 27, 1996, hearing, Mr. Broome claims (Br. 4, 5) that the order called for a status conference, did not warn him that he was the subject of the hearing, and gave him no opportunity to

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[5] The proceeding was not conducted as a disciplinary hearing within the meaning of Rule III of Local Rule 20.10E of the United States District Court for the Eastern District of Louisiana. Indeed, the magistrate notified the Chief Judge of what had happened (Br., Att.). The Chief Judge is in a position to invoke the procedures set forth in that rule if the matter warrants it. Broome does not rely upon Rule 20.10E in this appeal, or complain that it was not invoked below.

[6] 28 U.S.C. 1927 reads in pertinent part: "Any attorney * * * who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

engage a lawyer of his own. The premise of this argument is that Mr. Broome did not understand the true nature of the hearing until he got there, and, had he known, he would have engaged a different attorney (Br. 5). But the order gave him adequate notice of the nature of the hearing (see R. 252), and at no time did he indicate to the magistrate that Mr. Osborne was not his attorney of choice.

(2) Mr. Broome claims that his request for a continuance does not appear in the transcript (Br. 4, 7). This is incorrect. He asked for a continuance only at the very end of the hearing, when it became clear that he had not complied with the court's order to bring in his clients. The request for a continuance is reported at pages 143-144 of the transcript.

(3) Mr. Broome argues that the magistrate displayed personal prejudice against him (Br. 4, 7). The only evidence of this "prejudice," it appears, is that, in her memorandum to the Chief Judge, she alluded to another pending complaint against Mr. Broome (Br. 8).[7] She mentioned it only in passing and as part of the reason she believed the Chief Judge would want to be aware of the instant matter (see Br., Att.).

From the text of his brief (Br. 7) it appears that Mr. Broome actually attributes animosity to the magistrate because she (allegedly) tricked him into thinking that the

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[7] The United States does not know where Mr. Broome acquired a copy of the memorandum to Chief Judge Morey L. Sear, attached to his brief. The document was not mailed to counsel for the United States.

September 27 hearing was to be a mere status conference, and then refused to recuse herself (though she was not requested to do so) (Br. 6-7). This is clearly frivolous.

CONCLUSION

The magistrate judge's orders should be affirmed.

Respectfully submitted,

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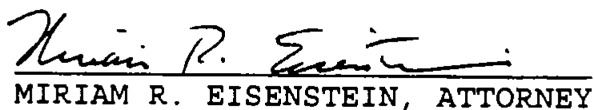

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