

18-8262

No. : \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

CHRISTIAN DIOR WOMACK,  
Petitioner,

v.  
UNITED STATES OF AMERICA,  
Respondent.

ORIGINAL

Supreme Court, U.S.  
FILED

JAN 27 2019

OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

This Court has made it clear that it will not interfere with Circuit or District Court's regulation of its own Bar unless the conduct of the Circuit or District Court was irregular or was flagrantly improper.

In Christian Dior Womack's case, the court-appointed attorney, without the Court's authorization, requested and accepted a fee from his indigent client - Christian Dior Womack's family members - in violation of Title 18 U.S.C. § 3006A (f) and the Eastern District of Pennsylvania's CJA Plan, Section V (D). Subsequently, Christian Dior Womack filed a petition to have the court-appointed attorney's misconduct referred to the District Court's chief Judge for issuance of an order to show cause pursuant to the Eastern District of Pennsylvania's Local Rules of Civil Procedure 83.6 for violating Pennsylvania Rules of Professional Conduct 1.5 and 8.4 (d), as well as Title 18 U.S.C. § 3006A(f) and § V (D) of the Court's Revised Plan For Furnishing Representation pursuant to the Criminal Justice Act, codified at 18 U.S.C. § 3006A ( CJA Plan ), the District Court denied the petition and the Third Circuit affirmed.

The question(s) presented is whether the District Court abused its discretion when it declined to refer the court-appointed attorney's misconduct to the Chief Judge for an order to show cause upon finding that the court-appointed attorney, without the court's authorization,

accepted a fee from his indigent client's family members for representing Christian Dior Womack, in violation of 18 U.S.C. § 3006A (f) and the Eastern District of Pennsylvania's Criminal Justice Act Plan, Section V (D) and the Pennsylvania Rules of Professional Conduct 1.5 and 8.4 (d).

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## T A B L E   O F   A U T H O R I T I E S

### Cases

Cooter & Gell v. Hartmarx Corp.,  
446 U.S. 384 ( 1990 )

In Re: Ruffalo,  
390 U.S. 594 ( 1968 )

In Re: Snyder,  
472 U.S. 634 ( 1985 )

Ex Parte Burr,  
9 Wheat. 529 ( 1824 )

### Statutes

18 U.S.C. § 3006A (f)

28 U.S.C. § 1254 (1)

### Secondary

Eastern District of Pennsylvania CJA Plan, Section V (D)

Eastern District of Pennsylvania Local Rules of Civil Procedure 83.6

Pennsylvania Rules of Professional Conduct 1.5 (a)

Pennsylvania Rules of professional Conduct 8.4 (d)

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Christian Dior Womack, respectfully  
PETITIONS for a writ of Certiorari to review the judgment of  
the United States Court of Appeals for the Third Circuit

OPINION BELOW

The opinion of the United States Court of Appeals for the  
Third Circuit is reported at United States v. Womack, No.: 17-  
3053 ( 3rd Cir. 2017 ).

JURISDICTION

The judgment of the United States Court of Appeals for the  
Third Circuit was entered on September 11, 2018. The Third Circuit  
denied a timely pro se petition for rehearing/ en banc on October  
30, 2018 and issued its formal mandate on November 7, 2018. This  
Court has jurisdiction under 28 U.S.C. §1254 (1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides,  
in relevant part:

No person shall be deprived of ... property, without  
due process of law ....

-U.S. Const. Amend. V

## STATEMENT OF THE CASE

### A. The Appointment of Counsel

On July 23, 2014, Christian Dior Womack relinquished his pro se representation and back-up counsel, Kenneth Edelin, Esq., was appointed to represent Petitioner as counsel of record under the Criminal Justice Act or otherwise 18 U.S.C. § 3006A. *Id.*, at

### B. The Payments

On July 24, 2014, Kenneth Edelin requested and accepted a payment of 5,000 dollars from his indigent client Christian Dior Womack's family member, without the Court's authorization. Shortly after that payment, on July 29, 2014, Kenneth Edelin received another payment of 5,000 dollars, without the Court's authorization, and executed a retainer agreement for representing Christian Dior Womack while operating as a CJA attorney without the Court's permission.

### C. Petition to the Court Through Its Committee On Grievances To Compel A Member of the Bar of This Court To Show Cause

Christian Dior Womack petitioned the Eastern District of Pennsylvania, requesting the District Court to refer Kenneth Edelin's misconduct to the Chief Judge for an order to show cause pursuant to Eastern District of Pennsylvania Local Rule of Civil Procedure 83.6, for violating 18 U.S.C. § 3006A (f) and the Eastern District of Pennsylvania's CJA Plan, Section V (D). Christian Dior Womack's petition was denied on July 12, 2017 and the United States Court of Appeals affirmed the District Court's opinion on September 11, 2018 and denied en banc review

on October 30, 2018.

#### REASONS FOR GRANTING THE WRIT

The decision below warrants review because it conflicts with an Act of Congress or otherwise 18 U.S.C. § 3006A (f) and the Eastern District of Pennsylvania CJA Plan, Section V (D).

Furthermore,, the below decison will authorize court-appointed attorneys, operating under the Criminal Justice Act, to charge and collect payments from their indigent clients without the Court's authorization.

##### I. The Decison Below Conflicts With 18 U.S.C. § 3006A(f) And The Eastern District of Pennsylvania's CJA Plan, Section V (D)

In Christian Dior Womack's case, Kenneth Edelin was appointed to represent Womack, at the Public's expense, on July 23, 2014, after Womack represented to the Court that he was relinquishing his pro se representation. It is undisputed that over the next few days, Kenneth Edelin, without any Court authorization, received payments from Womack's family members, on account of the representation, totalling 10,000 dollars in Cashier's Checks.

18 U.S.C. § 3006A(f) provides in relevant part:

" Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant. "

Similarly, the current version of the CJA Plan for the Eastern District of Pennsylvania states, in relevant part, that:

" no appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant, unless such payment is approved by order of the Court. "

-Eastern District of Pennsylvania CJA Plan, Section V (D)

Clearly, Kenneth Edelin was entrusted with the high duty of representing Christian Dior Womack as an indigent defendant, and therefore, under the CJA Plan, Mr. Edelin was not permitted to pervert that trust for his private gain. For Kenneth Edelin to take advantage of Christian Dior Womack's vulnerable position to solicit private retention and acquiesce in secret private payments from his indigent client, was antithetical to both the letter of the Plan and the fiduciary duties it imposes.

Furthermore, while the Act and the Plan both contemplate that there may be unusual circumstances in which private retention of a CJA-appointed lawyer is permissible, the Act and the Plan expressly provides that this can only be done after prior Court inquiry and approval.

In the instant matter, Kenneth Edelin made no attempt to apprise the Court of the private retention until after he received all the payments.

Christian Dior Womack brought this matter to the Court's attention by way of petition pursuant to the Eastern District of Pennsylvania Local Rules of Civil Procedure 83.6. The District Court found

that, " based on the unique circumstances of the case, and given Mr. Edelin's near simultaneous communications with the Court on this issue, it concluded that any referral to the Chief Judge was unwarranted. See (Appendix A,@p.5,¶12). The United States Court of Appeals for the Third Circuit affirmed the District Court on the grounds that the District Court did not abuse its discretion.

This Court has explained in *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384 ( 1990 ) that, " the abuse-of-discretion standard does not preclude an appellate court's correction of a district court's legal or factual error: a district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. "

In Christian Dior Womack's case, the District Court based its conclusion on the fact that Kenneth Edelin's near-simultaneous communication with the Court after accepting the payments in violation of 18 U.S.C. § 3006A(f) was the reason why it did not refer this matter to the Chief Judge for an order to Show Cause.

Here, it is evident that the District Court abused its discretion when it based its conclusion on a fact that is contrary to an Act of Congress : [ 18 U.S.C. § 3006A (f) ] and its own local rule [ Eastern District of Pennsylvania CJA Plan V (D) ]. This Court held in *In Re: Ruffalo*, 390 US 594 ( 1968 ), that, " A district court's discretion in promulgating local rules is not, however, without limits. "

Therefore, " reading in light of the traditional duties imposed

on an attorney, it is clear that conduct unbecoming a member of the Bar is conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts or conduct inimical to the administration of justice. " In Re Snyder, 472 U.S. 634 ( 1985 ).

Consequently, once Kenneth Edelin charged and collected fees for a retainer agreement, without the Court's authorization, in violation of 18 U.S.C. § 3006A (f) and the Eastern District of Pennsylvania's CJA Plan, Section V (D), he violated the Pennsylvania Rule of Professional Conduct 1.5 (a) which provides that a lawyer shall not enter into an agreement to charge or collect an illegal or clearly excessive fee and Pennsylvania Rule of Professional Conduct 8.4 (d) which provides that it is professional misconduct to engage in behavior that is prejudicial to the administration of justice.

Accordingly, the District Court abused its discretion when it did not refer Kenneth Edelin's professional misconduct to the Chief Judge for an order to show cause. And the Court of Appeals for the Third Circuit abused its discretion by affirming the District Court's erroneous logic.

#### C O N C L U S I O N

The Honorable Chief Justice Marshall, writing for the Court in *Ex Parte Burr*, 9 Wheat 529 ( 1824 ), explained that, the Supreme Court will not interfere with Circuit or District Court's regulations of its own bar unless the conduct of the Circuit or District Court was irregular or was

flagrantly improper.

Seemingly, it is fair to say that the District Court's conduct was irregular and flagrantly improper, considering the fact that, it let Kenneth Edelin's violation of an Act of Congress [ 18 U.S.C. § 3006A (f). ] and his professional responsibilities pass unspoken, which is, in fact, given support. And the Third Circuit of Appeals supported the District Court's irregular and flagrantly improper conduct by affirming the District Court's implausible view.

In the end, the District Court failed to fulfill its most solemn duty to protect the administration of justice and the Judiciary's fair and just business-dealing image, when it did not refer Kenneth Edelin's conduct to the Chief Judge for an order to show cause for violating Title 18 U.S.C. § 3006A (f), the Eastern District of Pennsylvania's CJA Plan, Section V (D) and Pennsylvania Rules of Professional Conduct 1.5 (a) and 8.4 (d).

For the foregoing reasons, the Petition for Writ of Certiorari should be accepted.

25 February 2019  
(Date)

Respectfully Submitted,

/s/ 

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