

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Willie Jefferson,

Plaintiff

v.

United States Department of Justice,
Office of the Inspector General,

Defendant.

Civil Action No. 01-1418 (GK)

**INTERVENOR BONNIE LEWIS GAY'S RESPONSE TO PLAINTIFF'S MOTION TO
SUPPLEMENT RECORD AND INTERVENOR BONNIE LEWIS GAY'S MOTION FOR
RECONSIDERATION OF DENIAL OF ATTORNEYS FEES**

Ms. Gay opposes Plaintiff's Motion to Supplement the Record with a March 10, 1999 Declaration of Ms. Gay. Ms. Gay also moves that this Court reconsider its denial of attorneys fees and costs to Ms. Gay based on the Government's material misrepresentations to this Court about Ms. Gay's status and its failure to adequately represent her interests.

I. The March 10, 1999 Declaration

Plaintiff asks this Court to Supplement the Record with a March 10, 1999 Declaration of Intervenor, Bonnie Lewis Gay ("Ms. Gay"), asserting that that declaration evidences that Ms. Gay held a position of authority with the Executive Office of United States Attorneys ("EOUSA") Freedom of Information Act/Privacy Act ("FOIA/PA") Unit in March 1999. That March 10, 1999 declaration has no probative value into Ms. Gay's actual role with EOUSA at the time.

Although she signed the declaration, Ms. Gay did not prepare it. To the best of Ms. Gay's recollection, the declaration was prepared by Stephanie Boucher, a paralegal in the EOUSA FOIA/PA Unit at the direction of Jane Bondurant and/or David Smorodin. It is likely that Ms. Boucher cut and pasted the description of Ms. Gay's title and duties from an earlier declaration. Mr. Smorodin then submitted the declaration to the Court, even though he was well aware that Ms. Gay had been demoted in January 1999 – and he had every reason to blame his own failure to comply with the Court's February 1999 Order on Ms. Gay.

Ms. Gay acknowledges the errors in the description of her title and duties in the March 10, 1999 declaration, and attributes her failure to notice them to an honest mistake on her part due in large part to difficulties, both professionally and personally, that she faced during that time. *See* Gay Declaration attached as Exhibit 1 hereto. That oversight does not change the fact that Ms. Gay had been demoted in January 1999 and did not hold a position of authority in March 1999.

II. Mr. Jefferson's and the Government's Misrepresentations to This Court

Ms. Gay would also like to note the affirmative misrepresentations to this Court by both Mr. Jefferson and the Government. In his Cross Motion for Summary Judgment, Mr. Jefferson cites an October 12, 1999 Declaration of Bonnie Lewis Gay to support his claim that she held a position of authority with the EOUSA FOIA/PA Unit during March 1999 – attaching as an exhibit to his motion only pages one and seven of that declaration. Mr. Jefferson misled this Court by omitting from that exhibit the remainder of that Declaration, most notably, the beginning of paragraph 17, which begins on page six and finishes on page seven. That paragraph reads in full (omitted portion highlighted):

17. Since I was transferred to the position of Senior Counsel in January 1999, I have had no direct supervisory role over the FOIA/PA staff in EOUSA. Only

Ms. Bondurant has had supervisory authority over Stephanie Boucher and John Boseker, who worked extensively on Mr. Jefferson's request. She gave them weekly to-do lists and supervised their work. I only reviewed filings and requests on an "as requested" basis. I prepared responses to portions of the interrogatories as to information that I personally had dealt with six months or more previously. Therefore, I was unfamiliar with some of the specific details of the Court's Order.

Exhibit 2, October 12, 1999 Gay Declaration

The Government, although purportedly representing Ms. Gay's interests in this proceeding, failed to point out to the Court Mr. Jefferson's material omission in his citation of the October 12, 1999 Declaration. Moreover, in its opposition to Ms. Gay's Motion to Intervene, the Government cited that same October 12, 1999 Declaration as evidence that it innocently believed that Ms. Gay's apparent title of Senior Counsel meant that she held a position of authority. That feigned innocence, however, is implausible when the October 12, 1999 Declaration is read in its entirety, particularly paragraph 17.

Both Mr. Jefferson and the Government misled the Court by citing only a portion of the October 12, 1999 declaration. The use of doctored quotes in such a way is grounds for sanctions, including attorneys fees.

In *Precision Specialty Metals, Inc. v. United States*, Fed. Cir. No. 1233 (Jan. 12, 2003) (unpublished) (copy enclosed as exhibit 3 hereto), the U. S. Court of Appeals for the Federal Circuit, found that a Justice Department attorney had violated Rule 11 of the Federal Rules of Civil Procedures because she "signed a brief before this court which omitted directly relevant language from what was represented to be precedential authority, which effectively changed the meaning of at least one quotation, and which intentionally or negligently misled the court."

Precision Specialty Metals at 16.

Similarly, Mr. Jefferson provided the Court only a portion of Ms. Gay's October 12, 1999 Declaration as an exhibit to his Cross Motion for Summary Judgment, leaving out the portion that explained that Ms. Gay was demoted and had no supervisory authority in EOUSA after January 1999. The Government, although it had the complete Declaration and purported to represent Ms. Gay's interests, failed to call Mr. Jefferson's omission to the attention of the Court in response to his Cross-Motion for Summary Judgment. The Government then compounded its omission to the Court, by citing to that same October 12, 1999 Declaration in opposition to Ms. Gay's Motion to Intervene, feigning ignorance that Ms. Gay had been demoted in January 1999, even though it plainly said so in the omitted portion of the October 12, 1999 Declaration.

The Government's misrepresentations to this Court – and its failure to adequately represent her interests – have compelled Ms. Gay to incur substantial expenses in setting the record straight. Ms. Gay respectfully requests that this Court reconsider that portion of the November 14, 2003 Order concerning attorneys fees and to Order that the Government pay Ms. Gay's attorneys fees and costs in connection with this action.

Respectfully submitted,



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