

BACE LAW REPORT

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Dangers of “DIY” Lawyering: *United States v. Marks*

Whether you are starting a business, obtaining a business partner, entering into an agreement with your home improvement contractor, pursuing civil litigation, and or facing criminal charges - the advice and analysis offered by a competent and licensed attorney is invaluable. Individuals generally fail to seek the advice of counsel when they are accused in a “minor crime,” loan money to a friend, or are responding to a lawsuit filed against them by a credit card company. Unfortunately, a comparatively small legal fee paid at the onset of the project or issue, can save one substantial time and resources.

This office frequently receives inquiries that begin, “I just have a quick question,” via email, phone, or even at social events. The individual asking is seeking legal *information* and legal *advice*. They are seeking a statement of the relevant law or

rule, and a determination about how that law is applicable to their unique set of facts. They are seeking that information immediately, and at zero costs. Fortunately, this office does not issue that information without a comprehensive review of the individual’s facts and circumstances; anything less would not only reduce the value of the advice, but would border on incompetency. An analysis and summary of the law relevant to an issue, and the application of that law to a unique set of facts is impossible to ascertain in a matter of minutes.

Legal issues, disputes, or criminal charges are regularly high stakes events. The parties stand to lose, or gain, substantial amounts of money or freedom. The potential for a bad result is prevalent, and illustrated to an extreme in United States v. Marks, 530 F.3d 799 (9th Cir. 2008).

Richard Marks was indicted along with nine other defendants; the charges were serious and included conspiracy, aiding and assisting in the preparation and filing of false tax returns, mail fraud, wire fraud, international money laundering, and conspiracy to commit money laundering.

Shortly after the proceedings were initiated, Marks informed the Court that he “*would rather go pro se than have the Court appoint an attorney.*” Proceeding *pro se*, from the Latin meaning “for one’s self,” refers to an individual who wishes to proceed without the assistance of an attorney. The Court attempted to appoint two different public defenders to protect Marks’ interests, and Marks promptly refused to meet or cooperate with those individuals. At a subsequent hearing, the Court made it clear to Marks, as this office attempts to make clear to its potential clients, that proceeding *pro se* placed him at a significant disadvantage. Marks replied, “*Oh, I think no matter what I can represent myself better than anybody you’ve provided me. It’s entirely voluntary.*”

Marks proceeded, *pro se*, to make a number of mistakes, infractions, strategic errors, and misapplications of the law and procedure.

With the aid of a competent attorney, pretrial motions are often filed in criminal cases, in order for defense counsel to argue that a dismissal is appropriate. Marks filed pretrial motions, which were denied without a hearing. No hearing was necessary because the Court simply recognized the frivolousness of Marks’ jurisdictional arguments and concluded that a hearing was unnecessary.

An opening statement at trial is often a critical initial presentation, a first impression; Marks’ opening statement was halted by the Judge due to his “*incessant discussion of (often frivolous) legal issues that were not for the jury to decide and by his combative interactions with the court.*” During his opening statement, the Court sustained numerous objections from the prosecution, due to Marks’ lack of understanding of the appropriate rules of procedure.

Marks repeatedly attempted to introduce evidence which was clearly inadmissible, resulting in a disjointed and confusing presentation of his defense.

After the tenth objection during his opening statement, the Court ordered Marks to sit down. One can imagine the impression this circus made on the jury, a jury with whom his fate and freedom rested.

On cross-examination, the questioning of one of the prosecution’s witnesses, Marks’ questions were repeatedly deemed irrelevant. Marks disregarded the Judge’s rulings and continued to pose irrelevant and improper questions.

Apparently, during the cross-examination, Marks responded with an “outburst,” so disruptive, that the Court removed the jury from the room, and instructed Marks on the topic of courtroom decorum.

Finally, when asked to submit his proposed set of written instructions that the Court would provide to the jury, Marks included in those documents information that was so superfluous, his input was disregarded.

The Result

The United States District Court for the Western District of Washington sentenced Marks to fifteen years imprisonment followed by three years of supervised release, and imposed a \$ 25,000 fine and a \$ 4,400 penalty assessment. The United States Court of Appeals for the Ninth Circuit affirmed Marks' conviction and sentence.

Albeit an extreme example of a *pro se* defendant attempting to navigate a complex and high stakes criminal trial, the lesson applies no matter how trivial one's legal issue initially appears.

Without competent legal advice, contracts that one drafts may not operate as intended. The expense of an attorney's drafting, review, and advice can pale in comparison to the expense realized when the obligations are not explicitly contained in the language of the contract. Ambiguity can lead to a dispute, and disputes cost time and resources.

As mentioned in previous newsletters,

printing one's Last Will and Testament, Health Care Proxy, or Power of Attorney for \$39.99 from a website is inadvisable. Ensuring one's assets pass to their heirs in a manner consistent with one's wishes is a high stakes and vitally important legal issue.

Defending a civil lawsuit positions the *pro se* litigant at a significant disadvantage. The attorney bringing the claim will likely have an intimate knowledge of the rules of civil procedure, and the arguments that tend to operate successfully in a particular court. The very nature of that attorney's job is to take advantage of those rules to advance her client's interests.

As illustrated by the Marks case, the dangers of *pro se* representation are most prevalent in the context of a criminally accused. The stakes in these matters are generally higher than in any other dispute, due to the fact that there is the potential for one to lose her most precious asset: her freedom. If you are an accused in a criminal matter, speak to an attorney as soon as possible.

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