

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. 05-70718,
NRC No. NRC-030-07710-
CO, District of Alaska,
Fairbanks.

Case No. 05-70725,
LABR No. ARB 04-002,
District of Alaska, Anchorage
ALJ Case No. 03-ERA-11.

unethically prejudiced to appear *pro se* by counsel without just cause in a justiciable controversy that will shock the consciousness of this court.

I respectfully petition the court to grant my Motion to withdraw without prejudice in lieu of filing a Brief for Case No. 05-70718, and 05-70725. I notified both parties of interest telephonically on November 1, 2005 concerning my intent to verbally request a 14 day extension of time to file a brief, notified the court of my intent on November 3, 2005 after failing to hear back from the parties of interest, and proceeded to clarify my position in a Brief. Counsel for Case No. 05-70718 was kind enough to call me and respectfully acknowledge my request on Friday, November 5, 2005, but I never received confirmation of my call from Counsel for Case No. 05-70725.

Here is my position.

First, I am embarrassed to admit that my counsels' unethical behavior compromised my standing, and apparently the court went along with it. I was unaware because I never received my counsel's Motion to withdraw advice of counsel until October 3, 2005; approximately two-weeks after my counsel's submitted a letter petitioning the court for a Motion to withdraw advice of counsel, and one day after the clerk of court granted the Motion to withdraw. Is this legal? It certainly isn't ethical.

Moreover, adding insult to injury I was humiliated to receive the *pro se* documents from the court that were obviously intended for a prisoner in a penal institution. I am compelled to admit that there is some truth to this however; I am a prisoner of my own consciousness. I can sense fear, deception, collusion, coercion, fraud, political intrigue, arrogant abuse of power and authority and avarice, and the instant cases have all the elements of corruption.

The instant cases disclose the fact that our governing officials failed to protect my inalienable rights, privileges and immunities, failed to protect my protected right as a former Radiation Safety Officer engaging in protected activities, and had no other incentive or motivation than to honestly, ethically and legal fulfill the requirements of the position, and do the job to the best of his ability; the thankless job of protecting public health and safety.

Here are the facts.

Faced against adversity, I exercised due diligence, demonstrated good faith, maintained a consistent uncompromising commitment to protect public health and safety, and placed my faith, hope, trust and confidence in the U.S. Nuclear Regulatory Commission and the U.S. Department of Labor to correct the regulatory inadequacies and amend the unlawful and wrongful ways of the Licensee (State of Alaska, Department of Transportation and Public Facilities), but they failed to do. In response, I submitted a petition to the Atomic Safety and Licensing Board and requested redress of grievances. In a July 2005 decision, a precedent set—the first time in the history of Nuclear Regulatory Legislation since the Atomic Energy Act of 1954 was enacted that a Radiation Safety Officer was allowed to submit a petition before the Atomic Safety and Licensing Board, the Board granted my petition. Then, in an “unusual” maneuver the Nuclear Regulatory Commission objected, demonstrated an arrogant abuse of power and authority, and established a dangerous disrespect for the law Congress enacted to protect the rights of radiation workers who protect *your* health and safety.

In a written statement to my counsel dated August 31, 2005, I submitted a 17 page

request for clarification to discuss the wrongful statements in the Tentative Settlement Agreement, an unjust agreement that failed to disclose any fact that held any party culpable nor did it amend the wrongful ways of a complacent regulator, controversial legal authority, and a corrupt Licensee. But, coincidentally it did first relieve all parties of culpability with prejudice, and then possibly offered me some vague innuendoes, and subjective and illusory promises that all parties of interest have demonstrated to me that they are likely to ignore, and without any hope of legal remedy they will ignore. In this letter, I voiced concern to the illegal statements contained in the Settlement Agreement. I also offered my opinion concerning the root-cause of the problem within the U.S.

Nuclear Regulatory Commission, saying,

One need only review the facts and the law in the instant case, "*Robert L. Farmer vs. U.S. Nuclear Regulatory Commission*," to discover the root cause of the problem; a problem that embarrasses the standing of the honest, ethical NRC employees exercising due diligence within the NRC, and one that goes to the heart of this matter: *respect for the law*.

In the October 7, 2004 Memorandum and Order (CLI-04-26) from the Commission, the Commission undermined my character, credibility and conduct, prejudiced my standing with a disturbingly hostile attitude, denied my right to a fair hearing before the Atomic Safety and Licensing Board, demonstrated an arrogant abuse of authority, and disrespect for the law that Congress enacted to protect radiation workers, "*The so-called 'whistleblower' rule...*"

Did Congress enact this legal protection only to have the Commission abuse their authority and disrespect the law? I hope not. Did the Commission demonstrate right reason, fairness and fair play? No.

On the contrary, the Commission willfully abused their authority, undermined my character, credibility and conduct, prejudiced my standing, denied my right to a fair hearing before the Atomic Safety and Licensing Board, and discriminated against this former Radiation Safety Officer for engaging in protected activities.

I respect the Atomic Safety and Licensing Board and wish the NRC would hear my petition. I will present effective arguments that will prompt enactment of the May 1998 Policy Statement on the "Freedom of Workers in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" into law. This is long overdue. This will resolve the underlying root cause of the problem, one that goes to the heart of this matter,

A Radiation Safety Officer must have the autonomy, authority, and resources to conduct operations commensurate with the scope and extent of licensed activities to protect public health and safety, and the freedom to raise safety concerns without fear of retaliation.

The failure of the U.S. Nuclear Regulatory Commission Office of Investigations to investigate and rule on violations of U.S. Nuclear Regulatory Commission regulations that held the Chief, Nuclear Materials Inspection Branch, U.S. Nuclear Regulatory Commission, Region IV culpable, i.e., there was no U.S. Nuclear Regulatory Commission licensed Radiation Safety Officer for the Licensee from November 7, 1998 to March 1, 1999, and at that time, the Licensee possessed approximately 90 primarily Cesium-137 radioactive sources emitting dangerous levels of alpha, beta, gamma, and "neutrons of unknown energy," these sources were knowingly and consciously placed in locations that endangered public health and safety, and these sources caused numerous members of the public to be exposed to chronic doses of radiation for many years, and to suffer unknown health effects consequences resulting chronic dose exposure to radiation; the stochastic effect: the latent, long term period of time, normally (depending on dose) 5 to 15 years before the first signs of cancerous growths begin to appear in the human body. A cause of deeply troubling concern to women of child bearing age, reported in the National Academy of Sciences Biological Effects of Ionizing Radiation (BEIR VII) report dated July 2005, stating in part,

"In 1990, the NAS estimated that the risks of dying from cancer due to exposure to radiation were about five percent higher for women than for men," said Dr. Arjun Makhijani, president of the Institute for Energy and Environmental Research. "In BEIR VII, the cancer mortality risks for females are 37.5 percent higher. The risks for all solid tumors, like lung, breast, and kidney, liver, and other solid tumors added together are almost 50 percent greater for women than men, though there are a few specific cancers, including leukemia, for which the risk estimates for men are higher." (Summary estimates are in Table ES-1 on page 28 of the BEIR VII report prepublication copy, on the Web at <http://books.nap.edu/books/030909156X/html/28.html>.)

This failure, coupled with the fact that the U.S. Nuclear Regulatory Commission Office of Enforcement failed to hold the Licensee accountable for violations of, but not limited to, 10 CFR 30.7 (Discrimination against Radiation Safety Officer), encouraged the Licensee to escalate egregious acts of discrimination and retaliation against this former Radiation Safety Officer for raising safety and compliance concerns and egregious violations of the law enacted to legally protect the rights of radiation workers—Section 211, of the Energy Reorganization Act of 1974, as Amended. And what did the U.S. Nuclear Regulatory Commission do after I requested their protection? Nothing.

Encouraged by the sudden awareness that the U.S. Nuclear Regulatory Commission refused to hold the Licensee accountable for egregious violations of 10 CFR 30.7, motivated the Licensee to an arrogant “business as usual” attitude against the U.S. Nuclear Regulatory Commission, demanding the U.S. Nuclear Regulatory Commission capitulate to their schemes, and established a dangerous precedent that can end only one way.

Furthermore, in an outrageous display of wickedness, based upon belief statements, representations and actions of others, the Licensee management awarded outstanding and/or exemplary performance evaluations, higher salary, benefits, privileges, and new positions of power and authority to those persons who in fact discriminated and retaliated against me—an intolerable act of arrogance against the U.S. Nuclear Regulatory Commission, and clear and convincingly demonstrated a cover-up. Moreover, when you consider the fact that the Licensee spent \$14 million of public funds

discriminating and retaliating against this former Radiation Safety Officer, and chasing a rainbow that will never bear fruit in the light of truth to reinforce their desperate "shoot the messenger" strategy against me; a strategy that serves no other purpose than to deceive the people. This is disgraceful. And, because the Licensee has no incentive to admit fault, they will arbitrarily and capriciously continue their endless seven-year campaign attempting to "paint the picture" that I am incompetent to support their contention that they dismissed me from employment for the "good of the service."

The only "good" this act achieves is the chilling effect it sent through the Licensee's organization system, reinforcing implementation of their policies of fear to silence dissent and force radiation workers to remain silent, and implementation of their policies of aggression and oppression against radiation workers and others to deny their right to raise safety and compliance concerns without fear of discrimination and/or retaliation.

Consider the culture of the Licensee. On the one hand, the culture of the Licensee accepts management implementing policies of fear, and policies of aggression and oppression against radiation workers to stifle dissent, deny the rights of workers to raise safety and compliance concerns, and an apparent violation the U.S. Nuclear Regulatory Commission Confirmatory Order Modifying Licensee 50-14102-01 (Effective Immediately) on March 15, 2004. These allegations are outrageous and intolerable, but they have a common and excepted "business practice" of the Licensee management. But, on the other hand when you consider the culture of the Licensee management (including the State of Alaska, Department Law, and the Department of

Personnel) who willfully violate U.S. Nuclear Regulatory Commission requirements at will with no impunity nor accountability, and the fact that the State of Alaska has the infamous reputation of being rated No. 4 for public corruption in the United States (*See* website Public Corruption in the United States), it is no wonder that a culture of corruption was allowed to flourish in an atmosphere that in my opinion would be better termed the "Cult of the State."

I deem the facts in this case demonstrate the ultimate chilling effect: that if you were to protect public health and safety as I have, that if you were to raise safety and compliance concerns and recommend corrective action in good faith as I have, that if you were to engage in protected activities, warned the Licensee not to engage in legal behavior, and cease and desist wrongdoing as I have, and that if you were to exercise your Constitutional rights, privileges and immunities to question your decision-makers, recommend corrective action to encourage your decision-makers to obey the law and right their wrongful and unlawful acts against the people and they fail to do so, then you will be left as I am left, twisting slowly, slowly in the wind—abandoned and unprotected.

Second, I am meeting the legal requirements of the 14 day verbal extension of time to submit a brief to the court by facsimile receipt of this document today, 14 days after November 1, 2005, and my standing meets the requirements of the court.

Third, the reason I request a Motion to Withdraw without prejudice is because my family faces imminent danger from foreclosure of our home resulting from the wrongful discharge of my employment by the Licensee on January 31, 2005. This fact, coupled with the loss of medical benefits, my wife's need for medical care for her

chronic lung disease and 24-hour-a-day oxygen, and the harm suffered by my children has cast doubt and suspicion in their hearts and minds on my ability to preserve, protect and defend my family. This fact caused me to reconsider my Brief, and submit a petition for Motion to withdraw without prejudice to enable me to care for my family, and try to get our life back together so I can bring some happiness into our life.

Family comes first, and nothing is more important than my family. As a father, I have a natural right to preserve, protect and defend my family from harm, and I am exercising that right today. My family is despondent, my wife terrorized, and our four-children have lost faith, hope and trust in me as a father, and they no confidence that we will ever be able to relive the American way of life we once enjoyed; a live of love, hope, peace, happiness and prosperity that seems like only a dream anymore.

When I married the woman I love so many years ago, I made a vow to her, "...for better or worse, till death do us part...", and I shall honor that vow, and stand by her because I love her. When I met her, I recently returned from an unjust war, was disillusioned by the things I saw, heard and did over there, but was lucky to released from active duty just before the turning point of the conflict: the Tet Offensive in December 1968. I served two tours of combat in the Viet Nam conflict from 1966 to 1968, was released from active duty and placed in the reserves on September 3, 1968, and was honorable discharged in 1971. I fell in love with this young Catholic girl who nurtured my wounds with faith, hope, love, devotion, peace and happiness that brought meaning into my life, and she bore us four wonderful children, Barbara, age 24, Anita age 22, and William and Robin, twins, who just turned 17.

Our children are our legacy.

In summary, I have to forego this good fight until a later date to enable me to engage in commerce, reap the fruits of my labors to provide food, shelter and clothing for our family—and keep our home, to enable me to instill peace, hope, tranquility and happiness into our lives and our community once again, to enable me enough time to regain our spirit and our American way of life, and to offer hope to our children that can have a better life and fulfill their American dream; our American dream, and our Founding Fathers American dream: the right to “...Life, Liberty, and the Pursuit of Happiness.”

Therefore, I respectfully request the court intervene on my behalf, exercise right reason, fairness and fair play, and grant my petition for Motion to withdraw without prejudice. I object to any party contesting my Motion to withdraw without prejudice, and I shall challenge any person for doing so. I am a citizen of the United States of America in good standing. I am exercising my Constitutional right to “...petition the government for redress of grievances...” and I demand the United States Court of Appeals for the Ninth Circuit protect my Constitutional right.

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I remain, respectfully

A handwritten signature in black ink, appearing to read 'RLF', followed by the date '11/15/05' written in a similar cursive style.

Robert L. Farmer, P.L.S.

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RLF/rif

Petitioner Standing

1. Petitioner standing concerning my verbal request for a 14-day extension of time to submit a Brief.


I demonstrated good faith requesting a 14 day extension to submit a brief, fulfilled the commitment to telephonically request and notify the parties of interest of my intent to request the court to allow a 14 day extension of time to submit a brief, and excepting the fact that on this date I request change from a brief to a motion to withdraw without prejudice, I have met the requirements of the 14 day extension by receipt of this letter by facsimile today, November 15, 2005.

I contacted the parties of interest telephonically. I discussed the issue at length with "Tina" of the U.S. Department of Labor, telephone (202) 693-5260, and she assured me that she would leave a message for Mary Reiser, Esquire, representing the interests of the U.S. Department of Labor in Case No. 05-70725, to contact me. But, as of this date, November 15, 2005, I have not received a return telephone call from Mary Reiser. I also telephonically contacted Mr. Jared K. Heck, Esquire, representing the interests of the U.S. Nuclear Regulatory Commission in Case No. 05-70718, telephone (301) 415-1623, and I received a respectful confirmation call on November 5, 2005. Both messages for both parties conveyed my intent to file a Brief on November 15, 2005 on or about 1:30 PM Alaska Standard Time.

Certificate of Service

I certify that the following persons were properly served by facsimile, and U.S.

Mail dated today, November 15, 2005, Robert L. Farmer, P.L.S, Plaintiff.

Signed: , Date: 11/15/05.

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