

Decision 97-11-005 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Investigation on the Commission's own motion into the operations, practices, and conduct of Communication TeleSystems International and Edward S. Soren, President of Communication TeleSystems International to determine whether they have complied with the laws, rules, regulations and applicable tariff provisions governing the manner in which California consumers are switched from one long-distance carrier to another, and other requirements for long distance carriers.

I.96-02-043
(Filed February 23, 1996)

OPINION

Background

On July 1, 1996, Communications TeleSystems International (CTS), also known as WorldxChange, filed a motion requesting that the Commission impose sanctions, including censure and intervenor fee reduction, on The Greenlining Institute and the Latino Issues Forum (Greenlining). CTS alleged that Greenlining had sent a letter to CTS' attorneys, the law firm of Heller, Ehrman, White, and McAuliffe, in which Greenlining sought a meeting with the firm's senior partners to discuss the firm's "responsibilities to California's sixteen million minorities." This meeting was sought in the "context of your role in the attempted intimidation of witnesses in the CTS telephone slamming case, particularly in the context of [the firm's] unnecessarily delaying a final decision necessary to protect our communities." Greenlining's letter went on to suggest that the firm's "failure to appreciate the consequence of intimidation of vulnerable communities may be due to a lack of minorities in leadership positions." The letter also requested an opportunity to meet with the firm's summer interns to "share our concerns." In its motion, CTS requested that the Commission censure

Greenlining and take several steps to reduce or eliminate any intervenor fees
Greenlining may be entitled to in this matter.

On July 11, 1996, Greenlining filed its response to CTS' motion in which it stated that CTS' motion was frivolous and that they have a right protected by the First Amendment to the United States Constitution to express their views to the law firm. Greenlining also explained its view that the law firm's inability to recognize the impact of CTS' interference with Greenlining's press conference¹ on a minority group was caused by the firm's lack of minority representation at leadership levels. Greenlining conceded that "at worst" its letter was a "misguided effort by Intervenors to attempt to appeal to the conscience of one of California's most distinguished firms."

On July 18, 1996, the Commission's Safety and Enforcement Division (S&E), which has since been renamed the Consumer Safety Division, filed its opposition to CTS' motion in which it noted that the letter simply requested a meeting and was a matter between Greenlining and the law firm.

On July 24, 1996, CTS filed a reply to Greenlining's and S&E's responses in which it stated that Greenlining's letter struck at the core of the attorney-client relationship and was an improper attempt to influence that relationship.

On July 2, 1997, Greenlining requested that the pending motion be resolved immediately rather than waiting until the intervenor compensation issues were litigated.

The assigned Administrative Law Judge issued for comment a proposed decision on October 6, 1997. Comments were filed by Greenlining as well as Public Advocates, Inc., and the Utility Reform Network. CTS filed reply comments.

¹ On May 23, 1997, Greenlining held a press conference regarding this proceeding in San Diego. The press release announcing the event invited victims and former employee to come forward. Approximately 100 CTS employees and managers, including their regulatory counsel, attended. The CTS group overflowed the meeting room and interfered with the press conference. The Commission sanctioned CTS for its actions. D.96-07-035.

Discussion

This investigation (I.96-02-043) has been vigorously litigated for 18 months. All parties have been called upon to be resourceful and clever in representing their clients due to the high quality and diligent efforts of opposing counsel. This is also the Commission's first fully litigated enforcement case for unauthorized switching of telecommunications customers and all parties recognize the precedential effect of the outcome and have been striving to obtain decisions consistent with their views. In a milieu which requires the development and implementation of innovative litigation strategy under serious time pressures, actions may be undertaken which, upon reflection, are mistakes.

In our system of jurisprudence, the relationship between attorney and client is held to the highest standards:

The attorney-client relationship is a fiduciary one of the highest character in which the attorney owes the highest level of duty of fidelity to his or her clients and a fundamental duty of undivided loyalty to the interests professionally entrusted to him or her.

It is the duty of an attorney to protect his or her client in every way possible. This duty is designed not only to protect the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself or herself in a position where the attorney may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he or she should alone represent. (7 Cal. Jur. 3d (Rev) § 89.)

When Greenlining attempted to discuss Heller Ehrman's "responsibilities to California's sixteen million minorities" and to "appeal to the conscience" of this firm, during the pendency of this case,² Greenlining was attempting to create an obligation for the firm that would cause it to take actions inconsistent with its client's interests.

² Greenlining certainly has every right to contact law firms and any other businesses which it believes to be acting in a manner that is inconsistent with Greenlining's interests, when the law firm is not opposing counsel on a pending matter.

Predictably, Greenlining's attempt was futile. While some of the suggestions in Greenlining's letter are unpleasant, as a practical matter, the letter had no effect. Attempting to create an obligation for a law firm which is inconsistent with its client's interests is not a novel litigation strategy. It is, however, extremely unlikely to succeed against an established firm that enjoys a fine reputation for representing its clients, such as Heller Ehrman. In sum, this letter represented no real threat to CTS' representation in this matter. For this reason, the motion must be denied.

Although this letter represented no real threat, the letter and the ensuing motions, responses, and decision did not advance resolution of the issues in this proceeding. The time spent by Greenlining on this aspect of this proceeding, therefore, would not fall within the definition of scope of those costs eligible for reimbursement under the intervenor funding statutes, Public Utilities (PU) Code §§ 1801 - 1812.

Findings of Fact

1. Greenlining and two other entities which are not parties to this proceeding, sent a letter to CTS' counsel, the law firm of Heller, Ehrman, White and McAuliffe, dated June 17, 1996, and entitled "Heller Ehrman's Responsibility to Minority Communities."

2. The law firm reasonably perceived the letter to be an attempt to create an obligation to minority communities which would cause the firm to act in a manner which may have been inconsistent with its client's interests.

3. The law firm's representation of CTS was not affected by the letter.

4. When the law firm's perceptions were brought to the attention of Greenlining and its attorney, neither made any effort to retract the letter, apologize or in any way mitigate the effects of the letter.

5. Sending the letter and failing to mitigate its untoward did not advance the resolution of the issues in this case.

6. Greenlining has filed a request for intervenor compensation in this proceeding.

Conclusions of Law

1. Attorneys owe a duty of the highest loyalty to their clients.

2. CTS' motion should be denied.

3. PU Code §§ 1802 (a) and 1806 require that the Commission determine reasonable advocate's fees when considering a request for intervenor compensation.

4. The costs of preparing the letter and of litigating CTS' motion for censure are not "reasonable" within the meaning of PU Code § 1802 (a).

5. The matters addressed herein were not the subject of evidentiary hearings; however, pursuant to Commission Rule of Practice and Procedure 77.1, the public interest was served by following the procedure for proposed decisions and allowing comment on this decision.

ORDER

Therefore **IT IS ORDERED** that:

1. Communications TeleSystems International's motion to impose sanctions on The Greenlining Institute and the Latino Issues Forum's (Greenlining) is denied.

2. Greenlining's intervenor compensation request shall not include any fee award for the preparation of Greenlining's June 17, 1996, letter to the law firm of Heller, Ehrman, White, and McAuliffe or any subsequent actions related to the letter.

This order is effective today.

Dated November 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners