

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 96-2123
)	97-1288
)	(RCL)
FEDERAL BUREAU OF)	
INVESTIGATION, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiffs' Motion [658] to Vacate, in Part, Court Order Concerning J. Lowe Davis. Upon consideration of plaintiffs' motion, government defendants' opposition, and plaintiffs' reply, the court will deny plaintiffs' motion.

On February 24, 1999, this court issued a Memorandum and Order sanctioning plaintiffs' counsel for making "specific, written representations" in conjunction with an opposition to non-party Davis's motion for a protective order, allowing the court to rely upon these representations in a ruling that favored the plaintiffs, and later contravening these very representations at non-party Davis's deposition. See Alexander v. FBI, Civ. No. 96-2123, Memorandum and Order at 8 (D.D.C. Feb. 24, 1999). The court further ordered that non-party Davis submit within ten days an appropriate request for fees and costs to be awarded by the court.

See id. at 10. On March 5, 1999, non-party Davis made her submission.

Later on March 5, 1999, however, plaintiffs and non-party Davis agreed to settle the issue of legal fees and costs. Plaintiffs' Motion at 2. Thus, according to the representations made in plaintiffs' counsel's motion, both sides have reached an agreed-upon amount of fees and plaintiffs' counsel has agreed to pay these fees, if he has not done so already.

In reaching this settlement, non-party Davis agreed not to oppose plaintiffs' current motion to vacate that part of the February 24, 1999 opinion dealing with sanctions. Based on this agreement, plaintiffs have filed their motion to vacate the court's previous order sanctioning plaintiffs' counsel.

The court will deny plaintiffs' motion. First, there is simply no reason for the court to vacate its previous opinion. The only justification offered by the plaintiffs appears to be that non-party Davis does not oppose the motion. Settling an attorneys' fees dispute once an attorney has already been sanctioned, however, should not automatically lead to the vacatur of the already issued opinion and order. The matter is simply settled and the issue of the exact amount of attorneys' fees is mooted. This provides no basis, however, for the vacatur of an opinion and order, the merits of which still remain unchallenged. Second, both the Supreme Court and the Court of Appeals for the District of Columbia Circuit have stated their disapproval of post-settlement vacatur of legal

precedent upon motion of the parties. Although this entire line of case law is distinguishable at some level because it deals only with cases that are settled while on appeal (and it is the judgment sought to be vacated), the general principle remains the same. Specifically, the parties are not free to use the court to erase precedent simply because a post-decision issue has been rendered moot by settlement:

Where the parties moot the case by entering into a settlement agreement and the prevailing party joins the losing party in moving for vacatur, a different consideration is paramount. . . . "When a clash between genuine adversaries produces a precedent, . . . the judicial system ought not allow the social value of that precedent, created at cost to the public and other litigants, to be a bargaining chip in the process of settlement. The precedent, a public act of a public official, is not the parties' property."

In re United States, 927 F.2d 626, 628 (D.C. Cir. 1991) (quoting In re Memorial Hosp., 862 F.2d 1299, 1302 (7th Cir. 1988)); see also U.S. Bancorp Mortgage Co. v. Bonner Mall Ptshp., 513 U.S. 18, 28 (1994) (holding that a request for vacatur of a judgment under review because of mootness by reason of settlement should be granted only in exceptional circumstances and that "those exceptional circumstances do not include the mere fact that the settlement agreement provides for vacatur").

The court believes that these principles support a denial of a vacatur of the opinion sanctioning plaintiffs' counsel in this case. The opinion stands as legal precedent which was created at a cost to the public, the litigants, and this court. No one now

contends that the decision was incorrect, and no legitimate reason is offered for the opinion's vacatur.

For these reasons, the court HEREBY ORDERS that Plaintiffs' Motion [658] to Vacate, in Part, Court Order Concerning J. Lowe Davis is DENIED.

SO ORDERED.

Date:

Royce C. Lamberth
United States District Court