No. _____

In The

Supreme Court of the United States

JOHN H. DAVIS,

Petitioner,

vs.

THE ADMINISTRATION OF THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT,

Respondent.

On Petition For Writ Of *Certiorari*
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF *CERTIORARI*

JOHN H. DAVIS
5201 Broadway, Suite 205
Merrillville, Indiana 46410
Phone: (219) 884-2461
FAX: (219) 884-2472
attyhdavis@gmail.com

Counsel for Petitioner

QUESTIONS PRESENTED

Whether this Court should call for an exercise of this Court's supervisory power by rejecting the Seventh Circuit's reasoning in *John H. Davis v. Jeanne W. Anderson, et al.*, (Case No. 17-1732), which holds that the removal of an attorney's name from the roll of attorneys who practice in the Seventh Circuit for allegedly filing in a pro se manner, for allegedly failing to comply with court rules, or for allegedly refusing to heed straightforward directions from a district judge – is presumptively reasonable – even when there is nothing in the record of the Seventh Circuit which supports any of the asserted allegations?

Whether this Court should call for an exercise of this Court's supervisory power by rejecting the Seventh Circuit's reasoning in *John H. Davis v. Jeanne W. Anderson, et al.*, (Case No. 17-1732), which holds that the removal of an attorney's name from the roll of attorneys who practice in the Seventh Circuit for allegedly having a conflict of interest with Petitioner's client, for allegedly violating Rules of Ethics with Petitioner's client, or for allegedly filing frivolous pleadings – is presumptively reasonable – even when there is nothing in the record of the Seventh Circuit which supports any of the asserted allegations?

Whether this Court should call for an exercise of this Court's supervisory power by rejecting the Seventh Circuit's reasoning in *John H. Davis v. Jeanne W. Anderson, et al.*, (Case No. 17-1732), which holds that the removal of an attorney's name from the roll of attorneys who practice in the Seventh Circuit – is

QUESTIONS PRESENTED – Continued

presumptively reasonable – even when there was no due process afforded the attorney?

Whether this Court should call for an exercise of this Court's supervisory power by rejecting the Seventh Circuit's reasoning in *John H. Davis v. Jeanne W. Anderson, et al.*, (Case No. 17-1732), which holds that a Preliminary, a Chronology, and Exhibits are *controlled by* Rule 8 and Rule 10 of the Federal Rules of Civil Procedure and are considered to be the required parts of a Complaint – is presumptively reasonable – even when the Federal Rules of Civil Procedure do not cover a Preliminary, a Chronology, and Exhibits as part of a required Complaint?

Whether this Court should call for an exercise of this Court's supervisory power by rejecting the Seventh Circuit's reasoning in *John H. Davis v. Jeanne W. Anderson, et al.*, (Case No. 17-1732), which holds that an attorney is prevented from continuing appellate representation in a criminal matter which was pending at the time that the Seventh Circuit removed the attorney's name from the roll of attorneys who practice before it, and by doing so, has interfered with the contractual attorney – client relationship in the pending criminal case – as presumptively reasonable – even when, at the same time, an unrelated civil case was pending when the attorney's name was removed from the roll of attorneys, where the panel of judges in said civil case, permitted the attorney to continue pursuing the pending case?

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PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, JOHN H. DAVIS, respectfully prays that a writ of *certiorari* issue to review the opinion of the United States Court of Appeals for the Seventh Circuit issued on June 20, 2018, ordering the Petitioner's name be removed from the roll of attorneys for the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The published opinion of the United States Court of Appeals for the Seventh Circuit, issued June 20, 2018, appears at App. 15 of the Appendix to this Petition.

JURISDICTIONAL STATEMENT

i). The Petitioner timely appealed the last Order sought to be reviewed – dated June 20, 2018, from the United States Court of Appeals for the Seventh Circuit.

ii). Petitioner seeks review in this Court of the last Order of the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. §1254(1), which is the Statute for Review for the United States Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

1. Factual Background

In March of 2017, Petitioner filed a Notice of Appeal in the Seventh Circuit in Case No. 17-1645 as counsel of record for one (1) client. In April of 2017, Petitioner filed a Notice of Appeal in the Seventh Circuit in Case No. 17-1732 as counsel of record for three (3) clients. In April of 2017, Petitioner filed a Notice of Appeal in the Seventh Circuit in Case No. 17-1786 as counsel of record for one (1) client. In August of 2017, Petitioner filed a Notice of Appeal in the Seventh Circuit in Case No. 17-2820 as counsel of record for one (1) client. In November of 2017, Petitioner filed a Notice of Appeal in the Seventh Circuit in Case No. 17-3443 as counsel of record for one (1) client.

On or about February 7, 2018, the Indiana Northern district court judge (Case No. 2:16-cv-00120) issued an Order to Show Cause based upon the Seventh Circuit's December 4, 2017 Order to Show Cause in Case No. 17-1732.

On or about February 7, 2018, the Executive Director of the Indiana Supreme Court sent a copy of a

letter addressed to Mr. Jim Richmond – Appeals Processing Manager of the U.S. Court of Appeals, 7th Circuit – Re: Your grievance against John H. Davis (Case No. 17-1732).

On February 9, 2018, Petitioner filed a Response to Court's Order to Show Cause in the Indiana Northern district court (Case No. 2:16-cv-00120).

On February 12, 2018, the Indiana Northern district court judge (Case No. 2:16-cv-00120) issued an Order stating, in part: "As the quoted language suggests, the issue of John Davis' bar membership is being taken up by the Court of Appeals, not the district court."

On June 4, 2018, the Seventh Circuit (Case No. 17-2820) issued an Order stating, in part: "As a result of our order in an unrelated case, Davis has been removed from our bar and is no longer authorized to practice before this court".

On June 20, 2018, the Seventh Circuit (Case No. 17-3443) issued an Order stating, in part: "As a result of our order in an unrelated case, Davis has been removed from our bar and is no longer authorized to practice before this court".

On June 19, 2018, the Seventh Circuit (Case No. 17-1645 & 17-1786) issued an Order stating, in part: "Despite the order in *Davis v. Anderson*, Mr. Davis may file any petition for rehearing on behalf of Mr. Kennedy if Mr. Davis and Mr. Kennedy deem it appropriate to file such a petition."

On July 6, 2018, Petitioner received a copy of his client's letter addressed to the Office of the Clerk, United States Court of Appeals for the Seventh Circuit regarding Case No. 17-3443.

2. Procedural Background

On April 11, 2016, Petitioner filed a Complaint in the Indiana Northern District Court as counsel of record for Eric Davis, Shelia Davis and as attorney for John H. Davis (Case No. 2:16-cv-00120). On April 12, 2016, Petitioner filed a Temporary Restraining Order in the Indiana Northern District Court (Case No. 2:16-cv-00120). The Indiana Northern district court judge called a hearing on April 20, 2016, where the judge asked Petitioner to shorten the original Complaint and asked Petitioner to number the paragraphs within the Claims section to make the pleading "more comprehensible for the sake of . . . the defendants who might be required to answer it", giving Petitioner sixty (60) days to re-file the Complaint (Case No. 2:16-cv-00120). On June 16, 2016, Petitioner filed a First Amended Complaint ("FAC") in the Indiana Northern district court where the claims section – of the First Amended Complaint consisted of a total of sixteen (16) counts which addressed three (3) plaintiffs, thirteen (13) defendants who allegedly committed civil and criminal acts covering approximately fifteen (15) years, where some acts occurred monthly – was shortened to twenty-two (22) pages.

On July 18, 2016, the Indiana Northern district court judge filed an Opinion and Order (Case No. 2:16-cv-00120). On July 18, 2016, the Indiana Northern district court judge did not dismiss the First Amended Complaint (Case No. 2:16-cv-00120). From August 2016 to February 2017, nine (9) defendants, through their respective attorneys, filed motions to dismiss in the Indiana Northern district court and plaintiffs also filed timely responses to each motion (Case No. 2:16-cv-00120).

On March 9, 2017, the Indiana Northern district court judge filed an Order which dismissed the entire First Amended Complaint, under Rule 8 and 10 of the Federal Rules of Civil Procedure, with prejudice (Case No. 2:16-cv-00120).

In April 2017, Petitioner was admitted to practice in the Court of Appeals for the Seventh Circuit. On April 7, 2017, Petitioner filed a Notice of Appeal in the Seventh Circuit as counsel of record on behalf of three (3) appellants in Case No. 17-1732. From April 2017 to October 2017, attorneys in Case No. 17-1732 were filing 26.1 Disclosure Statements on behalf of appellees who were represented in the Seventh Circuit.

On June 26, 2017, Petitioner filed a 26.1 Disclosure Statement within appellants' brief clearly identifying himself as counsel of record on behalf of the same three (3) appellants (Case No. 17-1732). On July 14, 2017, appellees filed a Transcript Information Sheet where the Indiana Northern district court reporter indicated that a 'full' 15-page transcript, from the April

20, 2016 Hearing date, was available (Case No. 17-1732).

On or about August 9, 2017, the appellees' brief was filed with a total of the 'full' 15-page transcript, from the April 20, 2016 Hearing, which included the court reporter's certification. After reading a copy of appellees' appendix, appellants observed that the 'full' transcript submitted was not complete, in that, there were portions missing from the transcript. On August 24, 2017, appellants, through Petitioner, filed a reply brief with an appendix containing two (2) Affidavits reflecting facts regarding missing portions from the submitted transcript in appellees' appendix.

On October 1, 2017, Petitioner filed a Motion to File Supplemental Appellants' Reply Brief and Time to Order Missing Transcript as there were, indeed, missing transcripts found relating to the April 20, 2016 Hearing. On October 4, 2017, the Seventh Circuit filed an Order which stated: "IT IS ORDERED that appellants' motion to file a supplemental reply brief is DENIED without prejudice to renewal after counsel has reviewed the second transcript." On October 4, 2017, the Seventh Circuit filed a Notice of Oral Argument – setting the Oral Argument date to November 14, 2017.

On October 12, 2017, the Petitioner received a filing of Document#110 from the Indiana Northern district court (Case No. 2:16-cv-00120) as an email from the Seventh Circuit where the docket text stated: "Original record on appeal filed electronically. Content of record: 2 vol. pleadings . . . " On or about October 19,

2017, Petitioner received the "missing" portions of the transcript from the April 20, 2016 Hearing which consisted of twenty-nine (29) additional pages, and observed that these portions, again, did not contain pertinent parts of the Hearing and dialogue between the Petitioner and the Court. On or about October 22, 2017, Petitioner filed a Motion to File Supplemental Appellants' Reply Brief and Motion to Submit a New Document Received from Defendant Alabama Department of Human Resources. On October 24, 2017, the Seventh Circuit filed an Order which stated: "IT IS ORDERED that the motion is DENIED." The Seventh Circuit Order did not give a reason.

On November 14, 2017, Oral Argument was made by Petitioner as counsel of record for the three (3) appellants in the case before a panel of three (3) judges. On December 4, 2017, the Seventh Circuit issued a Ruling and Order to Show Cause. On December 18, 2017, Petitioner filed a Petition for Rehearing *En Banc* in the Seventh Circuit. On December 20, 2017, Petitioner filed a Response to Court's Order to Show Cause with Affidavit as an exhibit in the Seventh Circuit.

On January 23, 2018, the Seventh Circuit filed an Order which stated, in part: "It is therefore ordered that the petition for rehearing and for rehearing *en banc* is DENIED." On May 29, 2018, the Seventh Circuit filed an Order stating: "We therefore conclude that Davis should be removed from the bar of this court . . . " On June 5, 2018, the Petitioner filed a Motion to Reconsider Disciplinary Order Instanter/Motion to Stay Execution of Order in the Seventh Circuit. On June 20,

2018, the Seventh Circuit filed an Order stating: "Upon consideration of the MOTION TO RECONSIDER, filed on June 5, 2018, by the pro se appellant, IT IS ORDERED that the motion to reconsider is DENIED." On September 18, 2018, Petitioner filed this Petition for Writ of Certiorari with the United States Supreme Court.

28 U.S.C. §1254(1) is the basis sought for review of an Order from United States Court of Appeals for the Seventh Circuit.

REASONS FOR GRANTING THE WRIT

As to Question #1, the Court should not accept the holding of the Seventh Circuit as set forth in Question #1 in that there are no facts or evidence supporting the Seventh Circuit's position.

As to Question #2, the Court should not accept the holding of the Seventh Circuit as set forth in Question #2 in that there are no facts or evidence supporting the Seventh Circuit's position.

As to Question #3, due process was denied, under the Fifth Amendment of the United States Constitution in reference to Question #3 in that the Seventh Circuit ignored facts submitted to the Seventh Circuit which refuted allegations of filing in a pro se manner and the Seventh Circuit ignored Petitioner's Motion to Reconsider filed June 5, 2018 which set forth that the Court asked Petitioner to respond to the Ruling from

December 4, 2017 which spoke only of an allegation that Petitioner filed in a pro se manner.

The Seventh Circuit's ruling on May 29, 2018 merely sought to justify the Order of December 4, 2017. Petitioner could not have responded to unspecified and vague statements in the Seventh Circuit's ruling on May 29, 2018. Thus, Petitioner's property – license to practice before the Seventh Circuit – was taken without due process.

Therefore, this Court should not accept the holding of the Seventh Circuit as set forth in Question #3.

As to Question #4, this Court should not accept the holding of the Seventh Circuit in Question #4 in that the holding is incorrect regarding the Federal Rules of Civil Procedure.

Furthermore, in *Kadamovas v. Stevens*, 706 F.3d 843, 844 (7th Cir. 2013), Judge Posner from the Seventh Circuit supports the fact that the present holding in this case is not correct. See Judge Posner's Opinion, in pertinent part below:

> But a complaint may be long not because the draftsman is incompetent or is seeking to obfuscate ("serving up a muddle" to the judge, as such complaints are sometimes described), but because it contains a large number of distinct charges. . . .
>
> One doesn't need 99 pages to make these allegations, but the complaint isn't in fact 99 pages long, as the district judge thought. It's 28 pages long, the last 71 pages being an

appendix, which the judge could have stricken without bothering to read. This 28-page complaint is not excessively long given the number of separate claims that the plaintiff is advancing. The word "short" in Rule 8(a)(2) is a relative term. Brevity must be calibrated to the number of claims and also to their character, since some require more explanation than others to establish their plausibility – and the Supreme Court requires that a complaint establish the plausibility of its claims. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); see also *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir.2011); *Atkins v. City of Chicago*, 631 F.3d 823, 831-32 (7th Cir.2011).

That is not to say that the judge is free to question the complaint's factual allegations; provided they're not legal assertions disguised as facts, he is not. *Ashcroft v. Iqbal, supra*, 556 U.S. at 678, 129 S.Ct. 1937; *Bell Atlantic Corp. v. Twombly, supra*, 550 U.S. at 555-56, 127 S.Ct. 1955; *McCauley v. City of Chicago, supra*, 671

Since a plaintiff must now show plausibility, complaints are likely to be longer – and legitimately so – than before *Twombly* and *Iqbal*. And anyway long before those decisions judges and lawyers had abandoned any effort to keep complaints in federal cases short and plain. Typically complaints are long and complicated. One-hundred page complaints that

survive a motion to dismiss are not rarities. The Forms Appendix to the civil rules, with its beautifully brief model complaints, is a fossil remnant of the era of reform that produced the civil rules in 1938. Three quarters of a century later a 28-page complaint pleading seven distinct wrongs is not excessively long. District judges could do more to require that complaints be cut down to size, but it is not apparent what more would be necessary in this case.

Unintelligibility is distinct from length, and often unrelated to it. A one-sentence complaint could be unintelligible. Far from being unintelligible, the complaint in this case, which the plaintiff says he wrote with the assistance of another prisoner (the plaintiff is Lithuanian and claims to be illiterate in English), is not only entirely intelligible; it is clear.

The other claims are pleaded similarly. In short the complaint does not violate any principle of federal pleading. The judgment dismissing it for "unintelligibility" must be reversed. . . .

Since the case is being remanded, we remind the district judge that if the assertion of different charges against different prison officials in the same complaint is confusing, he can require the plaintiff "to file separate complaints, each confined to one group of injuries and defendants." *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 683 (7th Cir.2012). (Granted, *Wheeler* was a more extreme case

> than this one, as the prisoner's complaint named 36 defendants.) The joinder of defendants is limited by Fed.R.Civ.P. 20(a)(2).
>
> These are matters for consideration on remand.
>
> REVERSED AND REMANDED.[1]

As to Question #5, the Court should reject the Seventh Circuit's holding as set forth in Question #5.

Finally, this petition for a writ of certiorari should be granted because the United States Court of Appeals for the Seventh Circuit has entered numerous decisions which have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

[1] Website Last Read on 9/18/18: https://www.leagle.com/decision/infco20130207165

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN H. DAVIS
5201 Broadway, Suite 205
Merrillville, Indiana 46410
Phone: (219) 884-2461
FAX: (219) 884-2472
attyhdavis@gmail.com

Counsel for Petitioner

December 26, 2018