No. 21-630

IN THE

SUPREME COURT OF THE UNITED STATES

HARRY BARNETT,
PETITIONER,
vs.
KWAME RAOUL, et al.,
RESPONDENTS.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

HARRY BARNETT, Petitioner

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PRO SE PETITIONER

QUESTION PRESENTED

Whether a District Court's striking of a timely-filed Motion to Reconsider, at two days after its filing date, violates the due process rights of a litigant, especially a Pro se individual, simply due to the fact that a notice of motion was not filed immediately after the Motion to Reconsider, and the courtroom's clerk made no time to respond to requests for a clarification of the clear error on the presiding judge's ILND homepage as to available dates for the presentment of the Motion, but the Court did have time to strike the filing of the motion, causing the litigant to lose his right to appeal the underlying issues by which the Court dismissed the suit and effectively denying access to the court?

PARTIES TO THE PROCEEDINGS

-RITA SIEGAL, an individual,
-BURTON SIEGAL, an individual,
-LARRY SIEGAL, an individual,
-CRISTOFER LORD, an individual,
-LISA MADIGAN personally, and in her former capacity as ATTORNEY GENERAL of ILLINOIS,
-KWAME RAOUL personally, and in his official capacity as ATTORNEY GENERAL of ILLINOIS,
-BRUCE RAUNER personally, and in his former capacity as GOVERNOR of THE STATE of ILLINOIS,
-JAY B. PRITZKER personally, and in his capacity as GOVERNOR of THE STATE of ILLINOIS,
-TIMOTHY C. EVANS personally, and in his capacity as CHIEF JUDGE of COOK COUNTY, ILLINOIS.

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Petitioner, HARRY BARNETT, respectfully requests that a writ of certiorari issue to review the jurisdictional opinion of the United States Court of Appeals for the Seventh Circuit, issued on February 13, 2020 limiting the Appeal to an Order entered November 27, 2019 which causes the appeal to not reach the underlying issues and effectively made the filing of any appeal moot.

OPINION BELOW

The opinion for the United States Court of Appeals for the Seventh Circuit, issued February 13, 2020 appears in the Appendix to this Petition as Exhibit "A".

JURISDICTION

1. The United States District Court for the Northern District of Illinois had original jurisdiction over this matter, under 28 U.S.C.§1332(a)(2)(c)(1), there being diversity between the citizenship of the parties, and the matter in controversy exceeding the sum or value of $75,000, exclusive of interest and costs.

2. Thereafter, Petitioner timely appealed the Court's order to the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1291. The Seventh Circuit issued its opinion and judgment on April 21, 2021.

3. Petitioner seeks review in this Court of the judgment and order of the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The **Fifth Amendment** to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The **Fourteenth Amendment** to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Rita and Burton Siegal misrepresented their business, Budd Engineering, as a professional engineering firm, via a Yellow Pages ad, by which Harry Barnett's corporation hired Budd to perform metallurgical calculations on an aluminum structure. Burton in fact did not perform the calculations but guessed as to the proper wall thicknesses and other critical attributes for the structure. The design Burton provided Barnett's corporation failed, causing delays and lost sales involving tens of thousands of dollars in losses for Barnett's corporation.

It was later discovered by Barnett, that Rita and Burton were aware of the illegality in their offering engineering services via the Yellow Pages. They wrote a letter to the Yellow Pages stating that for Budd to be in the Yellow Pages under "Engineers-Professional" was "Breaking the law", but subsequently placed ads in the Yellow Pages in order to raise falling revenues from when Budd was removed from the Yellow Pages. Thereby, Rita and Burton misrepresented their practice for nearly two decades at which point Barnett's corporation hired Budd from that Yellow Page ad.

Upon learning of Rita and Burton's intentional misrepresentation, Barnett commenced picketing Budd Engineering with multiple signs in order to inform any potential future clients of Budd that Budd was operating illegally as Budd did not employ any licensed engineer and was not qualified

to offer engineering services to the public, as per Illinois' Professional Engineering Act. Barnett also published a website which posted the myriad documents from the Illinois Department of Financial and Professional Regulation, dating back to 1960, which directed the Siegals to not hang out their shingle and offer engineering services; then, once they ignored this directive, to remove their Yellow Page ads and send IDFPR a copy of the letter directing the Yellow Pages to remove the ad for the subsequent year. The Siegals refused to do so, and IDFPR never prosecuted the Siegals, thereby emboldening their fraudulent corporation.

At one point during Barnett's protesting, Barnett was followed to a relative's home by Burton who was sometimes accompanied by Rita, where they would take pictures of Barnett as Burton sat in his Lexus automobile. Burton even drove their Lexus at Barnett while Barnett stood in the parking lane of the street forcing Barnett to retreat to the curb for his safety. Barnett then filed a police report that night and attained an emergency civil stalking order against both Rita and Burton Siegal the following day. When the plenary hearing was to be held approximately two weeks later, Rita and Burton brought along two advocates, one of whom was a Skokie Police advocate, who exited the courtroom with many papers in hand, through a door leading to the judge's chambers and engaged in ex-parte communications with Judge Baird. The advocate emerged minutes later with papers in hand and conferred with the Siegals and their attorney

Cristofer Lord. Then, moments later, The Honorable Judge Callie L. Baird entered the courtroom, questioned Barnett on the proceedings that were to take place that day. Judge Baird knew facts of the case that were not on Barnett's petition or in any transcript (which had not been ordered) of the emergency hearing, learned these facts from the police advocate during the ex-parte meeting, and then refused to have the hearing stating that Barnett's petition didn't meet the threshold to even have the hearing, never mind the fact that the judge from two weeks prior found that Barnett was due an emergency order based upon his petition and facts testified to at that hearing.

Judge Baird subsequently presided over Burton Siegal's stalking petition which was granted in spite of the copious testimony of Barnett's legal picketing, which is to be exempted from stalking behavior, but for in Judge Baird's courtroom.

Barnett had protested Budd Engineering during the summer months while he was not at his home in Florida. Barnett picketed Budd Engineering for approximately 7 years on approximately 75 occasions. At no point in time did the Siegals decide to shut down their unlicensed engineering firm, and at no point in time did the Siegals seek mental health counseling for any mental duress allegedly suffered due to the legal picketing.

The Siegals did however call the police in order to complain about the picketing and the police provided no relief due to the fact that picketing of a residence is legal when there is a business operating

from its confines. The Siegals then spoke with Skokie's corporation counsel in an attempt to squelch Barnett's free speech rights and counsel informed the Siegals that there was no relief Skokie could provide to the picketing due to its legal nature.

Seemingly, growing increasingly desperate to squelch the speech rights Barnett expressed via the picketing, and with the help of their attorney Cristofer Lord, Burton Siegal filed a petition for a stalking no contact order against Barnett in Cook County's state court under Illinois civil stalking statute 740 ILCS 21 / Stalking No Contact Order Act.

Burton named his wife Rita and their son Larry in the petition as requiring protection too, from Barnett's picketing, in spite of the fact that Larry did not live at 7605 N. Tripp, Skokie, IL and only had contact with Barnett once or twice, and that was due to Larry coming to 7605 N. Tripp and rolling the window down on his car to speak with Barnett while Barnett was picketing.

Barnett was subjected to a two-year no-contact order which prohibited him from: 1) communicating to or about the Siegals, 2) required him to take down the website that displayed documents produced by the Siegals during litigation, thereby demonstrating their knowledge of their illegal/fraudulent practices, 3) banned him from picketing Budd Engineering anywhere in the United States, 4) banned from owning a firearm, all of the these with criminal penalties should Barnett violate these court-imposed restrictions.

On February 25, 2019, Barnett filed a lawsuit in federal court naming Lisa Madigan and other Illinois public officials as defendants, regarding the stalking order that had been entered against Barnett. On March 28, 2019 Barnett filed an Amended Complaint which additionally named the Siegals and their attorney Cristofer Lord for abuse of process and civil conspiracy regarding their involvement in attaining a stalking order against Barnett for his picketing of their business that was operated from their basement, and their home even displayed a "business hours" sign in the front window. Lord was named, due to, in part, his indirect involvement in the stalking hearing as he sat in the courtroom's gallery as the Siegals were in front of the Court and Lord met with them at breaks,

Barnett's timing and filing of the federal suit relied upon the diversity jurisdiction of 28 U.S. Code §1332, and relied upon Illinois' legislature amending the civil stalking statute, on January 1, 2019 under which Barnett was adjudged, due to it containing unconstitutional language. Specifically, the unconstitutional language was "communicates to or about", which Judge Baird employed these exact words at least twice in the Court's finding Barnett had stalked Rita and Burton as he was picketing their business. The Court also found that even though the parties, during the hearing, had solely used the term "picketing" that Barnett really had "appeared" and thus his actions fulfilled the stalking statute requirements. Judge Baird altered the Siegals' and Barnett's testimony at the hearing in

order to find that Barnett's picketing fit Illinois' stalking statute definitions. How the Court expects an individual to picketing without appearing in front of a business is nonsensical. Judge Baird also found that Barnett had picketed on weekends and allegedly on Rita's birthday one year which crossed a line into stalking.

Equally as disturbing, is the statute's carve out for free speech concerns and how the Court ignored this exception. Under 740 ILCS 21/10 "Stalking does not include an exercise of the right to free speech or assembly that is otherwise lawful...". This exception in no manner served to protect Barnett from the Siegal's fabrication of mental duress and fear for their safety. The exception only serves as an affirmative defense once a stalking hearing has commenced and does not preclude a biased court from ignoring this exception as occurred with this Court.

The Court even stated in its ruling: "There doesn't seem to be much dispute that Mr. Barnett had signs each time that he was out there. The content of the signs varied, and there's been testimony of a handheld sign some occasions and an A-frame sign on other occasions, and up to four signs." How much more evidence does a court need to establish legal picketing?

Furthermore, the Siegals did not present any witness, police officer or otherwise, to testify that Barnett had ever once performed an unlawful act, nor was there testimony that Barnett made any true threats. There was however testimony regarding

Burton grabbing the handheld sign Barnett was holding as Barnett was walking away from Burton and Burton being found guilty of disorderly conduct for his actions while Barnett did not reciprocate the violence even though the sign had hit Barnett's face.

Ultimately, the Court entered a two-year stalking order against Barnett, which Barnett appealed, the circuit court's decision was affirmed and Barnett petitioned the Illinois Supreme Court, which denied the petition in spite of its recent finding that Illinois' criminal stalking statute was unconstitutional and contained the exact language as the civil statute that Barnett was subjected to which was "communicates to or about".

The Honorable Virginia Kendall, in the district court's September 24, 2019 Order which dismissed all causes of action against all Defendants, commenced the opinion with "Plaintiff Harry Barnett *took it upon himself* to begin protesting what he considered illegal business practices at Budd Engineering." The order dismissed all counts pursuant to the Rooker-Feldman Doctrine with no analysis or mention of Barnett's argument that the counts against the Siegals and Cristofer Lord were independent causes of action and the outcome of any prior court case was not bearing upon these specific causes of action proceeding. Barnett found it to be disturbing and believed the Court to be biased when it stated "took it upon himself" as if expressing one's free speech rights is nice in theory, but not acceptable in practice. Courts are to work hard to protect these constitutional rights and not to trample them.

Barnett simply longs for an unbiased tribunal; not one that engages in ex parte communications with a Skokie police advocate and refuses to hold a hearing, which is contrary to a judge's canons, in spite of the prior judge's careful weighing of the facts weeks earlier in granting the temporary stalking order against the Siegals. Not a tribunal that ignores valid arguments and throws the baby out with the bath water. Not one that believes that the Siegals could truly be "stalked" for seven years before requesting help from the courts. Rita and Burton would likely not have known anything about attaining a stalking order, but for having one entered against them first for their actual behaviors that did fulfill the stalking requirements.

Both Appellate courts, at the state and federal levels, used "non-precedential dispositions" which in Illinois is known to be used when the court wants to rule in a manner that is not supported by statute or case law and the court does not want the ruling to improperly affect subsequent cases.

Barnett was properly in federal court due to diversity jurisdiction and the change in Illinois' civil stalking statute for January 1, 2019. For the district court to not properly weigh in on the side that Barnett was to be afforded an opportunity to bring into question the two year stalking order against him due to the fact that Illinois' statute was unconstitutional, the state court employed the unconstitutional language at least twice in its ruling against Barnett, and that the prejudice is immeasurable and therefore Barnett's federal suit

was not challenging the state court's ruling, but the statute upon which the state court relied when making the ruling; which is one of multiple exceptions to the *Rooker-Feldman* Doctrine which was asserted by all defendants which has no bearing on this suit.

If the statutory language "communicates to or about" was unconstitutional on January 1, 2019, it plainly was unconstitutional on all days prior to January 1, 2019. Just as in *Relerford*, where his stalking conviction was overturned, so must Barnett's on the civil side of Illinois' sister statutes.

REASONS FOR GRANTING THE PETITION

This Court should grant this petition because the district court enforced a local rule, in order to strike the timely-filed motion to reconsider, which caused Barnett to lose his right to appeal the substance of the complaint, and was relegated to argue if whether Federal Rule of Civil Procedure 59 or 60 applied to the appellate briefs. That local rule ran afoul of the Federal Rules of Civil Procedure. The district court's decision to favor its own rule over the Federal Rules, violated Barnett's due process right under the Fifth Amendment and Fourteenth Amendments. Moreover, by affirming the district court, the Seventh Circuit empowered district courts to adopt local rules, regardless of whether those rules comport with the Federal Rules.

On September 24, 2019, the Honorable Virginia M. Kendall entered an Order dismissing all claims against all defendants based upon assertions in their motions to dismiss, that the Rooker-Feldman Doctrine applies to the claims brought by Barnett.

On October 22, 2019, Plaintiff then filed a timely Motion to Amend, as per F.R.C.P. 59, which also functions to 'toll" the time to file a notice of appeal, due to its challenging the Court's dismissal of all counts, against all defendants, on the basis that the Court erred, and that Plaintiff was requesting that the Court substantively alter its findings. Thereby, Plaintiff reasserted the arguments in Plaintiff's prior responses, to all Defendants' motions to dismiss, and stressed the fact that the Court did not properly consider Plaintiff's arguments, and in many cases, did not even address or mention these arguments in its September 24th Order.

On October 22, 2019, immediately after filing the Motion to Amend, Barnett attempted to file a "notice of motion" with regards to the Motion to Amend. Barnett visited Judge Kendall's court page on the "ILND" website to attain a date for the scheduling of the notice of motion. Upon visiting the page (attached hereto as Group Exhibit "E"), Appellant discovered that there was a discrepancy as to available dates and therefore could not confidently schedule the notice of motion, for the date Appellant was available, due to the clear error. The page said "Judge Kendall *will not be hearing Motions* on Thursday, October 24, 2019, through Monday,

November 4, 2019.", but on the right side of the page it gave the option(s) to choose "October 28- October 31" for motions to be heard, whereby the page clearly contradicted itself. Appellant immediately called Judge Kendall's clerk (a screen shot of the phone call is attached hereto in Group Exhibit "E") and left a message requesting a clarification as to what dates were available for a hearing on the notice of motion. The clerk did not return the message that day or the subsequent day and Appellant presumed that the clerk was in trial and would return the call when time allowed before close of business for the week.

On October 24, 2019, just two days after it was filed, The district court struck Appellant's Motion to Amend, due to a notice of motion not being filed with it. Appellant, upon arriving home late on October 24th, was in dismay at his motion being struck due to the fact that he had instantly and diligently contacted the clerk in order to schedule and file the notice of motion and certificate of service, received no cooperation from the clerk in clarifying the court's clear error, and furthermore, Appellant understood that a notice of hearing could be scheduled within fourteen days before a motion would be struck by the Court. Seemingly, the district court made up the two-day rule for striking a motion filed without a notice following son thereafter.

Appellant then emailed, on Friday October 25, 2019, Judge Kendall's clerk, Lynn Kandziora, (a copy of the email is attached hereto in "Group Exhibit "E"), regarding the phone message that went without a response, and again requested direction as to

working through the court's error. That email also went without a response.

Appellant, subsequently refiled an identical motion to amend, to the one previously filed and struck, and filed a notice of motion immediately choosing any available date so the motion would not be struck again. Appellant justifiably relied on the Court's acceptance of the Motion to Amend as being timely filed via its relating back to the original filing date, the Court's consideration of the motion by taking it under advisement, the Court ruling that no responses would be necessary from Defendants, and then subsequently ruling on the Motion to Amend on November 27, 2019; and that all of these actions undertaken by the Court serve to toll the time for the filing of a notice of appeal should that become necessary. See *Thompson v. INS*, 375 U.S. 384 (1964)

Again, both of the filed Motions to Amend, which are identical, addressed the issues that were addressed in Appellant's responses to Defendants' motions to dismiss, which Appellant deemed necessary due to the fact that upon reading the September 24 Order, Appellant discovered that the majority of his arguments were not broached in the Order and due to this fact, it was necessary to bring this oversight to the Court's attention; prior to pursuing an appeal in the interest of judicial economy.

Finally, Appellant has attached a screen shot of Appellant's computer files (attached hereto in Group Exhibit "E") wherein it shows that "Notice of

Motion" was saved on 10/22/2019 at 12:37 PM, and the "Certificate of Service" was saved on 10/22/2019 at 12:49 PM, as both were fully prepared to be filed on October 22, 2019, upon Judge Kendall's clerk clarifying the error on Judge Kendall's ILND page.

There was no prejudice inured on any Defendant as they were notified immediately via the Electronic Case Files (Pacer CM/ECF system) of the filing of the Motion to Amend, and the fact that Defendants had not received a notice of motion did not cause prejudice as no hearing date had been set; all of which was due to the error on the very website which was to facilitate and ease the filing of documents for both the district court and the parties.

In Defendants' Jurisdictional Brief it cites *Bowles v Russell,* but the facts are distinguishable, in part, as follows:

1) *Bowles* involved a party's reliance on the district court's improper statement/assertion as to a date 17 days later, not the correct 14 days, by which their notice of appeal was due. The instant suit involved no such statement, and Barnett's notice of appeal may properly be construed as also a motion for an extension of time to file the notice of appeal as to the underlying order on September 24, 2019, as *Pro se* filings are to be liberally construed as per *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

2) The *Bowles* case, at the district court level, was prior to the federal CM/ECF filing system, "According to Bowles's lawyer, electronic access to the docket was unavailable at the time, so to learn when the order was actually entered he would have

had to call or go to the courthouse and check. *See* Tr. of Oral Arg. 56–57." (App 2 Pg 9), and was only decided at the Supreme Court level at the advent of the filing system and makes no mention of, nor any consideration or accommodation of online filings and their related issues; including there is no clerk to immediately inform a party filing a motion, that a notice of motion is required along with the motion. This clerk, informing a filer of the notice issue, is required by ILND's Local Rule 5.4, and thereby LR 5.4 is outdated and prejudicial as it shifts a burden upon a filer and not the clerk or district court who promulgated the local rule.

3) *Bowles* in *no* manner involved inconsistencies in local rules, between local rules and federal rules, which is expressly forbidden as per FRCP 83, and the Court's enforcement of local rule 5.3 in spite of the clerk's failure to adhere to a local rule 5.4.; which is a prime issue with Barnett's jurisdictional memorandum, and herein, in reply to Defendants' argument. Barnett asserts this issue alone merits this Court's consideration of Barnett's first Motion to Amend.

FRCP 83(a)(1) dictates that "A local rule must be consistent with" federal statutes and rules, and ILND's Local Rule 5.3 caused Barnett to lose a right that the federal rules would not have, which is contrary to Rule 83(a)(2) which states: "A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.". The District Court chose to enforce a local rule regarding

case management/claim processing, thereby causing a loss of a right to a party who had complied with a federal rule, (of which is believed to be of a jurisdictional nature, but is discussed further below) and thereby a claim processing rule caused a party to lose a right as critical as one's right to appeal, which Appellant asserts is contrary to federal rules and the fair and just adjudication of a suit. This Supreme Court's five-to-four decision in *Bowles* demonstrates the highly-contested nature to a party losing a right over a technicality. The Justices in their dissenting opinion stated: "what we have said: "in recent decisions, we have clarified that time prescriptions, however emphatic, 'are not properly typed jurisdictional." ' " *Arbaugh*, 546 U. S., at 510 (quoting *Scarborough*, 541 U. S., at 414). (App 2 Pg 6).

This Supreme Court's opinion in *Bowles*, specifically the four dissenting justices stated: "But neither is jurisdictional treatment automatic when a time limit is statutory, as it is in this case. Generally speaking, limits on the reach of federal statutes, even nontemporal ones, are only jurisdictional if Congress says so: "when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character." *Arbaugh,* at 516. Thus, we have held "that time prescriptions, however emphatic, 'are not properly typed "jurisdictional,"" id., at 510 (quoting *Scarborough v. Principi*, 541 U. S. 401, 414 (2004)), absent some jurisdictional designation by Congress. Congress put

no jurisdictional tag on the time limit here." (App 2 Pg 3). Barnett asserts there are strong grounds for this Court's finding that *Bowles* is distinguishable and thereby not controlling to the instant suit, and/or is ripe for reversal as the CM/ECF system is now widely in use, was a direct cause of this Court finding that Barnett lost his right to appeal his timely-filed Motion to Amend.

Additionally, regarding this Court's review of the timing of a filing issue: It has been held that "We review de novo questions of law and the district court's interpretations of the Federal Rules of Civil Procedure." *United States v. $133,420.00 in U.S. Currency,* 672 F.3d 629, 637 (9th Cir. 2012).

As FRCP 5(a)(1) states: "Unless these rules provide otherwise, each of the following papers must be served on every party;" and further provides: 5(a)(1)(d) "a written motion", and 5(a)(1)(e) "a written notice", and FRCP 5(d)(1)(a) provides "Any paper after the complaint that is required to be served- must be filed no later than a reasonable time after service." Plainly, Local Rule 5.3 is inconsistent with the foregoing in that striking a Rule 59/60 motion to amend in under 2 days, due to a notice of motion not being filed is in no manner "reasonable". The inherent inconsistency with LR 5.3 and FRCP 5 should preclude the district court's striking of a timely-filed and time-critical Rule 59/60 motion, as Barnett was prepared minutes later to file and serve his notice of motion relating to his motion to amend.

Furthermore, ILND's local rules are inconsistent with ILND's Electronic Filing Quick

Reference Guide, for which Barnett was required to watch and understand prior to being allowed to file with the federal court's system, and, both are inconsistent with federal rules, as follows: ILND's Guide specifically dictates "The order of Filing.", by posing the question: "Can I combine a motion and a notice of motion in a single electronic filing?" it then states: "No. The Motion and notice of motion must be filed separately. In addition, the motion must be filed before the notice of motion." (App 3 Pg 6). Next, ILND's Local Rule 5.3(b) *PRESENTMENT.* Reads: "Every motion... shall be accompanied by a notice of presentment specifying the date and time of which, and judge before whom, the motion... is to be presented. The date of presentment shall not be more than 14 days following the date on which the motion... is delivered to the court pursuant to LR 78.1.". Local Rule 78 in relevant part reads: LR 78.1. Motions: Filing in Advance of Hearing. "... the original of any motion shall be filed by 4:30 p.m. of the *second* business day preceding the date of presentment.", which is up to twelve (12) days after a filing of a notice of presentment, if the party chooses a presentment date 14-days later; this is inherently inconsistent with the Guide which dictates that the motion *must* be filed first. This procedure allows a party to file a Rule 59 or 60 motion via a notice of motion and then twelve days after, file the actual Rule 59/60 motion for a total of 40 days until the motion is actually filed with the court's filing system, which is beyond the 28-day requirement for a Rule 59/60 motion, and thereby

inconsistent, but behooves a party filing a Rule 59/60 motion such as Barnett in that his second Motion was filed at just seven days after the 28-day deadline. These rules also are not designed to be unilateral, and must "cut both ways"; against the courts and the parties to reduce or eliminate prejudice to a party should a court harbor ill-will towards a party; whereas the parties must adhere to these rules, so must the district court. Additionally, the language in LR5.3 is inconsistent internally and thereby inherently confusing as "notice of motions" and "notice of presentment" are interchanged within its 4 paragraphs, without explanation as to why the district court chose to distinguish between and employ these two distinctly different words. This language is also inconsistent with the language in FRCP 5 which employs "written motion" and "written notice". Additionally, LR 5.3 is inconsistent with ILND's Filing Guide in that 5.3(b) states: "Every motion... shall be accompanied by a notice of presentment..." whereas the Guide states: "The motion and the notice of motion must be filed separately". (App 3 Pg 6). These "technical writing" errors are inherently confusing and misleading; especially to a *Pro se* party who is unfamiliar with court procedures, rules and controlling statutes and is putting forth tremendous effort to learn and comply. Barnett has read multiple "Technical writing" books in the course of his product development business, and one of the basic tenets in writing instructions and rules is *consistency* in one's choice of language throughout the instructions,

packaging, advertising, and website to eliminate the consumers' confusion and increase compliance with the instructions and thereby fewer product returns. The local rules, federal rules and ILND's guide foster much confusion due to failure to avoid inconsistent language, inconsistent timing, and their reliance upon each other.

Next, FRCP. 5. *Serving and Filing Pleadings and Other Papers.*, which in relevant part states: Rule 5(d)(1)(4) *Acceptance by the Clerk.* "The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." The District Court's action of striking Barnett's Motion to Amend is inconsistent with FRCP 5. As Barnett's Jurisdictional Memorandum argues, it was his understanding that he had 14 days to file a notice of motion. (App 1 Pg 3). Barnett asserts that this Court should not rely upon local rules that purport to allow a district court to strike a paper, when these local rules are inconsistent with federal rules in the order, timing, and language employed regarding the filing of that paper and any related papers such as a notice, especially when the Defendants were instantly served with the Motion to Amend via the CM/ECF system and not one Defendant filed a motion raising an objection to the notice not being attached. These rules, which empower the courts, also restrict the courts. Local Rule 5.3 is void of language stating that a motion will be struck ever, nor does it prescribe a time frame by or within which a motion

will be struck. When this Appellate Court reviews the rules cited throughout the memorandums and briefs of this appeal, Barnett beseeches this Court to read from a new attorney's or *Pro se* litigant's position, as one unfamiliar with the rules, not a district court or appellate court judge who has reviewed the rules countless times and mindlessly overlooks the inherent discrepancies due one's familiarity and prior consultations with colleagues for clarity. One should not be required to read a rule, or conglomeration of rules, pertaining to one specific issue, 3 to 5 times and still question the correct tack to take in their sincere attempt to adhere to these rules. Furthermore, Local Rule 5.4. Motions: *Filing Notice & Motion.* in relevant part states: "Where a motion is delivered to the clerk that does not comply with the scheduling requirements established by the judge pursuant to LR78.1... the clerk shall inform the person offering the motion of the correct procedure. If the person insists on delivering it to the clerk, the clerk shall accept it and attach to it a note indicating that the person delivering it was advised of the scheduling or delivery requirements." The district court's striking of Barnett's Motion to Amend was improper as LR 5.4 was not adhered to by the very district court that promulgated the rule; as the clerk did not inform Barnett of the correct procedure of the scheduling or delivery requirements via email or telephonically, of which, both were available to the clerks as Barnett's contact information was included in the Motion and the court clerk's filing system when Barnett registered; and neither the

Defendants nor the Record indicates there is any evidence that the district court inquired with any clerk as to their adherence to LR5.4. prior to the district court striking the motion to amend. Barnett was only able to finally receive an answer to his question posed in his calls and emails to the district court's clerk, as referenced in his jurisdictional memorandum (App 1 Pg 2-3). upon physically visiting the district court at 219 S. Dearborn, and was able to "catch" the clerk in her office and thereby received a response to his inquiry, proving Barnett was diligent in his filings as required for his noncompliance, as found by this Court, to be ruled as "nonwillful".

The preceding, which was challenging to lay out, hopefully clearly demonstrates the inconsistencies between the District Court's actions, local rules, local filing guidelines and federal rules; which is barred by FRCP 83. The clear error on the District Court's/Judge Kendall's home page initiated the harm to Barnett when he then justifiably relied upon the language of 14 days in LR 5.3 and LR 78.1 as to two days preceding, as argued in his jurisdictional memorandum and herein.

Barnett in his want to affirm that the rules are inconsistent, took one position as to the date a notice of motion or presentment was required in the district court clerk's office, and then chose a second date, and both were defensible in light of a conglomeration of *all* of the applicable rules due to

their patent inconsistencies and failure to employ "plain consistent language". The district court's imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to correct is not consistent with the expressed or implied purpose nor the spirit of the federal rules of civil procedure.

By taking that position, the district court violated Federal Rule of Civil Procedure 83, which prohibits federal judges from enacting procedures or practices that are inconsistent with federal law or the Federal Rules. Fed. R. Civ. P. 83.

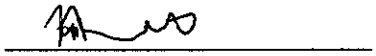
When district judges are free to manage their dockets in a manner inconsistent with Federal Rules, which is not supported by clear and concise local rules, and when Local Rules and CM/ECF tutorials are inconsistent with Federal Rules, these Local Rules cause litigants prejudice that the Federal Rules were not intended to foster. In the instant case, Barnett lost the right to any substantive appeal of the district court's dismissal, and the district court had a direct hand in making sure Barnett could not appeal its ruling, which in no manner complies with the hierarchy of the Federal Court structure.

This Court should grant this petition to inform the District Court(s) that their local rules must be clear, concise and must not be inconsistent with the Federal Rules in order that all litigants, including Pro se individuals, are given a reasonable opportunity to their day in court.

CONCLUSION

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

Respectfully submitted,



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PRO SE PETITION

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