

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 2 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JAY HYMAS, DBA Dosmen Farms,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF THE INTERIOR;  
et al.,

Defendants-Appellees.

No. 22-35405

D.C. No. 4:16-cv-05091-SMJ  
Eastern District of Washington,  
Richland

ORDER

Before: SCHROEDER, O'SCANLAIN, and FORREST, Circuit Judges.

We treat appellant's petition for panel rehearing and rehearing en banc (Docket Entry No. 5) as a combined motion for reconsideration and motion for reconsideration en banc. The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

MN/MOATT

*Appx. A*

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JAY HYMAS, DBA Dosmen Farms,

No. 22-35405

Plaintiff-Appellant,

D.C. No. 4:16-cv-05091-SMJ  
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ORDER

Defendants-Appellees.

Before: SCHROEDER, O'SCANLAIN, and FORREST, Circuit Judges.

A review of the record indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). Accordingly, appellees' motion for summary affirmance of the district court's March 28, 2022 order (Docket Entry No. 3) is granted.

All other pending motions are denied as moot.

**AFFIRMED.**

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1 agreements and other contracts on certain National Wildlife Refuges. See ECF No.  
2 168 at 2. This Court entered judgment in favor of Defendants on March 31, 2021  
3 and closed the case. ECF No. 169; *see also* ECF No. 178. Once the Court entered  
4 judgment, Mr. Devin Theriot-Orr withdrew as counsel for Plaintiff. ECF No. 170.

5 On June 25, 2021, Defendant, proceeding *pro se*, filed an untimely Notice of  
6 Appeal, ECF No. 172, and a motion for an extension of the time to file an appeal  
7 “as he was under the mistaken belief that his legal counsel prior to withdrawing had  
8 filed the notice of appeal within the normally prescribed time period,” ECF No. 171.  
9 Seeking to clarify the matter, defense counsel reached out to Mr. Theriot-Orr to see  
10 “if [Mr. Theriot-Orr] ever agreed to file a notice of appeal on behalf of Mr. Hymas.”  
11 ECF No. 179-1 at 3. According to defense counsel,

12 [t]he sole reason for this communication was to ascertain whether there  
13 may have been circumstances beneficial to Mr. Hymas that ought to  
14 be considered by the Department of Justice before taking a position on  
15 his *pro se* motion, because if any such circumstances existed,  
16 presumably Mr. Hymas would consent to that disclosure by his former  
17 attorney.

18 ECF No. 181 at 2–3. Later the same day, Mr. Theriot-Orr declined to provide any  
19 information, writing: “As I’m sure you know, the Rules of Professional Conduct do  
20 not permit me to disclose my communications to my former client without his  
consent.” ECF No. 179-1.

21 On July 9, 2021, however, Mr. Theriot-Orr sent defense counsel a letter he  
22 had sent Plaintiff on June 30, 2021. In the letter, Mr. Theriot-Orr stated he had

1 “advised [Mr. Hymas] by both letter and email [dated March 31, 2021] that [he]  
2 would not be filing the notice of appeal.” ECF No. 177-1 at 1. The June 30 letter  
3 also stated that the extension motion by Mr. Hymas “implied that [Mr. Theriot-  
4 Orr] had advised [Mr. Hymas] otherwise and therefore placed [Mr. Theriot-Orr’s]  
5 integrity and professionalism at issue with the court.” *Id.* Mr. Theriot-Orr then  
6 warned that, “unless [Mr. Hymas] can confirm that [he] will file with the court a  
7 notice stating confirming that [Mr. Theriot-Orr] did advise [Mr. Hymas] of the  
8 appeal deadline and that [Mr. Theriot-Orr] would not be filing any appeal for [Mr.  
9 Hymas],” then Mr. Theriot-Orr would, pursuant to Washington State Rule of  
10 Professional Conduct 1.6(b)(5), provide defense counsel the letter, as well as a copy  
11 of Mr. Theriot-Orr’s March 31, 2021 closing letter and e-mail, for defense counsel  
12 to file with the Court. *Id.* Mr. Theriot-Orr asked Mr. Hymas to confirm by noon on  
13 July 9, 2021, that he would file the aforementioned notice with the Court; otherwise,  
14 Mr. Theriot-Orr stated that he would “proceed as outlined above.” *Id.* at 2.

15 After July 9 deadline passed, Mr. Theriot-Orr emailed the correspondence  
16 and attachments to defense counsel, who then filed it with the trial court. ECF No.  
17 177. Defense counsel later filed this letter, and the Court cited the letter in denying  
18 Plaintiff’s motion for an extension. ECF Nos. 177, 179.

19 The Court is not aware of, and Plaintiff does not cite to, any rule that prevents  
20 opposing counsel from contacting Mr. Theriot-Orr as he did. Moreover, the Court

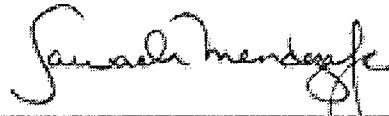
1 has no reason to doubt that defense counsel fully expected Mr. Theriot-Orr to  
2 communicate with Plaintiff before disclosing any privileged information. In fact,  
3 that is exactly what Mr. Theriot-Orr did. ECF No. 177-1. Accordingly, the Court  
4 does not consider defense counsel's behavior to warrant sanctions or disciplinary  
5 referral.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Plaintiff's motion for sanctions, **ECF No. 179**, is **DENIED**.

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
9 provide copies to all counsel.

10 **DATED** this 28<sup>th</sup> day of March 2022.

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 SALVADOR MENDOZA, JR.  
13 United States District Judge