

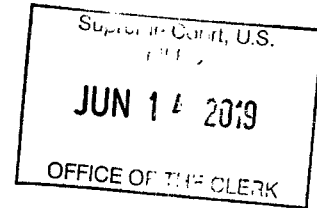
CASE NO. 18-1560

In The
SUPREME COURT OF THE UNITED STATES

Richard Leland Neal,
Petitioner,

vs.

B. MARC NEAL,
RICHARD WAYNE NEAL,
MICHAEL KENNETH NEAL.
Respondents.



ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Arizona District Court and the Ninth Circuit created a split by holding that “defendants timely responded to Plaintiff’s amended complaint by filing a motion to dismiss (pursuant F.R.Civ.P. Rule 12(b)(6)). If the Court denies the motion to dismiss Defendants will be required to answer Plaintiff’s complaint;”App.1a

PARTIES TO PROCEEDING

Petitioner is Richard Leland Neal and the Plaintiff in the United States District Court for the District of Arizona and the Appellant in the United States Court of Appeals for the Ninth Circuit;

Respondents are B. MARC NEAL, RICHARD WAYNE NEAL, and MICHAEL KENNETH NEAL, and the defendants in the United States District Court for the District of Arizona and Appellees in the United States Court of Appeals for the Ninth Circuit;

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Supreme Court Rule 29.6 petitioner, Richard Leland Neal has no parent corporations and no publicly held company that owns 10% or more of any entity;

Petitioner, Richard Leland Neal has a 25% interest in an entity known as the Claude K. Neal Family Trust;

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard Leland Neal respectfully petitions for a writ of certiorari to review the Arizona District Court's order (Doc. 65.1) denying Petitioner's motion (Doc. 64) for a judgment by default pursuant to F.R.Civ.P. Rule 55(a)(2);

OPINIONS BELOW

The Arizona District court reports could not be found by Petitioner for the following orders (Doc. 65.1) entered July 26, 2017 and reproduced in the Appendix ("App.") at App. 1-2, and the Ninth Circuit memorandum (Doc. 17) entered December 19, 2019 is unpublished and reproduced in App. at 3-4, and the Ninth Circuit order (Doc. 21) entered April 04, 2019 is reproduced in App. 8, and the Ninth Circuit Mandate (Doc. 22) entered April 12, 2019 is reproduced in App. 9;

JURISDICTION

The federal question is timely and properly raised in the court of first instance and the appellant court that allegedly entered a final order April 04, 2019 (Doc. 21), and the Court's jurisdiction is invoked to review the District Court order (Doc. 65-1) on a timely Writ of Certiorari pursuant to 28 U.S.C. § 1254(1) providing Petitioner with the equal protection rights and due process of law guaranteed Petitioner pursuant the 5th and 14th amendments of the U. S. Const., as adequate relief cannot be obtained in any other form or court;

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The case before the Court involves F.R.Civ.P. Rule 12(b)(6), constitutional provisions pursuant the Fifth and Fourteenth Amendments of the United States Constitution, Federal case laws, statutes, and the Federal Rules of Civil Procedure which are set forth in the reasons for granting the Writ;

INTRODUCTION AND STATEMENT OF THE CASE

The record unequivocally shows respondents failed to file a timely responsive pleading or otherwise defend Petitioner's amended complaint in compliance with the Federal Rules of Civil Procedure, a fatal, final, and fundamental mistake;

The Court's proceeding involves a question of such exceptional importance, based on the Arizona District Court's and the Ninth Circuit's opinions are so extraordinary that it is necessary for a Writ of Certiorari to issue to secure and maintain uniformity of existing court opinions that substantially affects rules of national application in which there is an overriding need for national uniformity;

The case concerns the Federal Rules of Civil Procedure Rule 12(b)(6) and previous appeal court opinions both in the Ninth Circuit and other Circuit Courts of appeal which are set forth in the reasons for granting the Writ;

Petitioner's exclusion from the basic right to participate as a Plaintiff in a Federal civil RICO action as an unrepresented party with the same basic rights, equal protections, and due process as bar licensed union workers, is especially injurious because there is no apparent rationale for the District Court's order, (Doc. 65-1) where the facts, Federal Rules of Civil Procedure, and case law provides no justification for denying Plaintiff's motion for a Judgment by default;

Notwithstanding the arbitrary discrimination concerning Petitioner's fundamental right to file an action in Federal court for relief from alleged damages that otherwise caused Petitioner's injuries pursuant the civil RICO statutes as an unrepresented party, where the Arizona District Court and the U. S. Court of Appeals for the 9th Circuit rejected Petitioners equal-protection and due process claims pursuant the Federal Rules of Civil Procedure and previous opinions by the 9th Circuit and other appeal Courts' opinions, in violation of Title 18 U.S.C. § 241 conspiracy against Petitioner's rights and Title 18 U.S.C. § 242 deprivation of Petitioner's property rights;

In so holding the Arizona District Court and the Ninth Circuit created a split in federal authority over basic principles that a motion to dismiss pursuant F.R.Civ.P. Rule 12(b)(6) suspends the time in which to file an answer to an amended complaint until after the Court rules on the motion to dismiss, and if the Court denies the motion to dismiss respondents will be required to answer the complaint;

REASONS FOR GRANTING THE WRIT

1. The case presents a compelling reason and the ideal vehicle to resolve the fundamental and recurring conflict the decisions entered by the lower courts creates, a clear and direct split among the district and circuit courts regarding the issue that “a motion to dismiss pursuant F.R.Civ.P. Rule 12(b)(6) suspends the time in which to file an answer to an amended complaint until after the Court rules on the motion, and respondents would only be required to file an answer if respondents’ motion to dismiss is denied;”

a. The lower courts have so far departed from the accepted and used course of judicial proceedings and other district and circuit courts’ decisions with no basis in logic or precedent that are such imperative public importance as to justify the exercise of the Supreme Court’s supervisory powers;

The Arizona District Court's and the 9th Circuit's, so extraordinary, and unfounded theory, is fundamentally flawed as shown by the following points and authorities;

The F.R.Civ.P. Rule: 7 states "there shall be a complaint and answer no other pleading shall be allowed;"

Pursuant, F.R.Civ.P Rule 12(a)(1)(A)(i) allows only one twenty-one(21) day period of time after service of summons and complaint to file an answer, or responsive pleading;

F.R.Civ.P. Rule 12(a)(4) does not extend the time for filing an answer to an amended complaint when the time remaining for filing a responsive pleading to the original pleading has elapsed, see *General Mills Inc. v. Kraft Foods Global Inc.*, 495 F.3d 1378 (Fed. Cir. 2007);

The express terms in F.R.Civ.P. Rule 12(a)(4) only alters "these periods of time" enumerated immediately before, in F.R.Civ.P. Rule 12(a)(1)(2)(3), and the period of time to answer an amended complaint is missing from that list of affected periods;

F.R.Civ.P. Rule 15(a)(3) sets the period of time to answer an amended complaint after the original pleading time has elapsed at fourteen(14) days after the day of service unless the court orders otherwise;

The District Court's order (Doc. 29) tolled respondents' answer to the amended complaint due 14 day after the District Court's ruling (Doc. 30) on May 2, 2017;

The record shows respondents failed to comply with the court order (Doc. 29), tolling the deadline on 05/16/2017 to file respondents' answer to the amended complaint;

The record shows respondents filed a motion (Doc. 38) to dismiss on 05/17/2017, one day past the deadline to file an answer or responsive pleading to the amended complaint making respondents' motion (Doc. 38) to dismiss a moot point as to any issues, for the District Court to rule on;

The record shows respondents failed to file a motion for an extension of time to file an answer or responsive pleading to the amended complaint for the District Court to rule on;

The record shows respondents failed to request a late filing past the deadline to file respondents' answer to the amended complaint that joins issues, for the court to rule on;

The record shows respondents never filed an answer or responsive pleading to the amended complaint (Doc. 27) at any time, for the District Court to rule on;

The record shows respondents' motion (Doc. 38) to dismiss is not an answer, or a responsive pleading to the amended complaint (Doc. 27), see *Centifanti v. Nix*, (3d Cir. 1989) citing *Reuber v. United States*, 750 F.2d 1039, 1061 n. 35 (D.C. Cir. 1984); *Domino Sugar Corp. v. Sugar Workers Local 392*, 10 F.3d 1064, 1068 n.1 (4th Cir. 1993) citing *United States v. Newbury Mfg. Co.*, 123 F.2d 453 (1st Cir. 1941);

A motion to dismiss is not a responsive pleading for purposes of F.R.Civ.P. Rule 15(a), see *McDonald v. Hall*, 579 F.2d 120, 121 (1st Cir. 1979); *McLellan v. Mississippi Power & Light Co.*, 526 F.2d 870, 872n.2 (5th Cir. 1976); *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1374 (9th Cir. 1981);

Respondents admitted on page 17 in the appeal answering brief, that a Rule 12(b)(6) motion is not a responsive pleading, and supported respondents' admission, with the 9th Circuit Court's opinion in *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 f.2d 1369, 1374 (9th Cir. 1981);

A responsive pleading is a pleading which joins issues and replies to a prior pleading of an opponent in contrast to a dilatory plea or motion which seeks to dismiss on some ground other than the merits of the action, through general denials are not commonly accepted today, an answer in which specific denials are set forth and an answer by way of confession and avoidance are examples of responsive pleading, as defined in Blacks Law Dictionary;

The 9th Circuit's "not appropriate for publication disposition," is evidence that the 9th Circuit knew or should have known the unsigned memorandum disposition (Doc. 17) is wrong, prejudicial, discriminatory, and inconsistent with the Federal Rules of Civil Procedure and other 9th Circuit's own opinions and other appeal courts' opinions, in violation of the 5th and 14th Amendments of the United States Constitution;

The 9th Circuit Court's unsigned memorandum disposition (Doc. 17) directly conflicts with the existing 9th Circuit Court opinions, and directly conflicts with other court of appeals' opinions, and substantially affects rules of national application, and the Court's memorandum disposition is such an extraordinary and unfounded theory that no mandate should have been allowed to issue (Doc. 22) from such an unsigned memorandum disposition;

As a result of the District Court's and the 9th Circuit Court's non-performance, is the evidence that shows a breach of the administrative officers' oath of office base on exclusion of Petitioner's basic rights pursuant the 14th Amendment Equal Protection Clause "under the law to all people;"

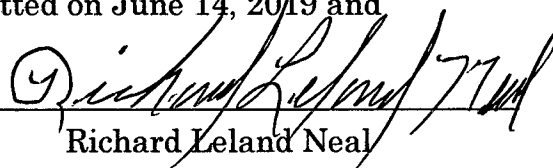
Such misconduct is evidence of a violation of the Taft-Hartly Act (Running a closed union shop) and the Smith Act (overthrowing the Constitutional form of Government) pursuant to Title: 18 U.S.C. § 2385, kidnaping pursuant to A.R.S. Title 13 § 1304(5), concealment pursuant to Title 18 U.S.C. § 2071, conspiracy against Petitioner's rights pursuant to Title 18 U.S.C. § 241, and a deprivation of Petitioner's property rights pursuant to Title 18 U.S.C. § 242, which is interfering with Petitioner's commercial affairs and causing the damages that are otherwise injuring Petitioner;

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's petition for a Writ of Certiorari;

Respectfully submitted on June 14, 2019 and

Affirmed by


Richard Leland Neal
Unrepresented litigant

CASE NO. _____

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**APPENDIX TO
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Good faith notice and fair warning (Doc. 20) entered on January 16, 2019 by Appellant;.....App. 5-7

Order (Doc. 21) of the 9th Circuit Court of Appeal denying Neal's petition for rehearing en banc, and motion to stay the mandate, closing the case No. 18-15612, entered on April 04, 2019;.....App. 8

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