UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 5, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No: 17-1732

IN RE: JOHN H. DAVIS, Attorney Disciplinary Proceeding
Respondent.

MOTION TO RECONSIDER DISCIPLINARY ORDER INSTANTER/MOTION TO STAY EXECUTION OF ORDER

Comes now, Attorney John H. Davis and files Motion to Reconsider Disciplinary Order Instanter/Motion to Stay Execution of Order and in support thereof states the following:

1. On December 4, 2017, this Court rendered a ruling on Respondent Attorney John H. Davis' Oral Argument of November 14, 2017 denying said argument and Ordered Respondent to file a Response to Show Cause.

2. Said Order to Show Cause was based upon allegations by the Court via Its staff attorneys or whomever that Attorney John H. Davis "*may have violated"* certain ethical rules in that Attorney John H. Davis

filed an appeal on the instant case to the appellate court in a *"pro se"* manner representing himself, his ex-wife, and his autistic son "*pro se"*.

(See Copy of Notices of Appeal filed by undersigned attorney in two cases using FORM 1- Notice of Appeal from US Courts' website, DOC #74 & DOC #100 *marked as* **EXHIBIT A** *attached and made apart hereto).*

(See Copy of Court's Ruling/Order, DOC #65 and DOC #66, *Dated December 4, 2017 marked as* **EXHIBIT B** *attached and made apart hereto).*

3. This Ruling/Order **specifically** sets forth that Attorney John H. Davis *"may have violated"* certain ethical rules by filing *"pro se"*, therefore it was clearly indicated that the Ruling/Order to Show Cause was to address the allegations of filing in a "pro se" manner. In reading **EXHIBIT B** there is **nothing** else in said Ruling/Order that Respondent was requested to address.

4. Respondent is not re-litigating the case dismissed by the Court, however, confining this Motion to Reconsider based upon a miss-interpretation or direct statement of the status of Attorney John H. Davis which the pleadings clearly show were never entered as ***"pro se".*** Additionally, dismissal under Rule 8 is **not** discretionary. Thus, this attorney did **not** violate any orders of the district court regarding

non-compliance with Rule 8 and Rule 10(b) in that discretionary dismissal is neither permitted under Rule 8 nor is permitted under Rule 10. See below the Court's erroneous statement charging this attorney for failing to comply with Rule 8 and Rule 10. Thus, the Appellate Court's statement is not accurate when the Court says: "Moving to the merits, dismissal for noncompliance with Rules 8 and 10(b) is discretionary, and our review is for abuse of that discretion." *(Again, See Copy of Court's Ruling/Order of December 4, 2017, DOC #65 top of Page 4 of* **EXHIBIT B***).*

5. Discretionary dismissal by the Court is applicable to *Federal Rule of Civil Procedure 41(b).*

6. *Federal Rule of Civil Procedure 10(b)* sets forth the manner in which a complaint is prepared. This Respondent, as attorney, set in responsive pleadings to various defendants' motions to dismiss the argument that plaintiffs did, in fact, comply with Rule 10(b) in the manner in which each count was "limited as far as practicable to a single set of circumstances." Each count/claim was also numbered. See Federal Rule of Civil Procedure 10(b). This fact was also set forth in plaintiffs' pleadings in the appellate briefs. It appears that staff attorneys or other individuals unknown apparently decided to ignore or, in fact, did not read appellants' briefs or records of appellants' responses in the Indiana district court to numerous defendants' motions to dismiss.

(See also Copy of Respondent's Response to Court's Ruling/Order to Show Cause filed December 20, 2017marked as **EXHIBIT C,** *DOC #72-1, and* **EXHIBIT D,** *DOC #72-2 attached and made apart hereto).*

7. In *Kadamovas v. Stevens, 706 F.3d 843, 844 (7th Cir. 2013),* this case sets forth the following from the 7th Circuit Court of Appeal Judge Posner's position on the matter:

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.

Sourced from Website last read April 23, 2018
https://www.leagle.com/decision/infco20130207165

8. The First Amended Complaint ("FAC") which was appealed to the 7th Circuit Court of Appeal conformed with all analysis and opinions set forth above from Judge Posner. The case on appeal was a case that, when amended pursuant to the Indiana district court's Order, resulted in **twenty-two (22) pages** of claims which were affected by the need to list the claims against approximately **sixteen (16)** separate

defendants, approximately **thirty (30)** separate claims, covering more than **sixteen (16)** years of wrongdoing, including criminal acts of harm to **three (3)** different plaintiffs - some acts of which were repeated monthly for over 16 years. The FAC clearly conforms to the elements set forth in a proper pleading under the cases cited by Judge Posner. In fact, the pleadings submitted to the 7th Circuit set forth those elements conforming to a well-pled FAC (complaint).

It should be noted that the instant case was **not dismissed** by the Indiana district court for 'unintelligibility', but in fact was dismissed only on the basis of Rule 8 and Rule 10.

9. Risking the ire of the staff attorney(s), or whoever authored the Court's Ruling/Order (DOC #65), this attorney must again set forth elements of his legal experience and practice. See page 2 of DOC #65: "… Rather, Davis discusses his duties as a father and his time as an Indiana prosecutor and public defender."

Furthermore, this staff attorney(s) or whoever implies that Attorney John H. Davis is not capable of representing himself, let alone others. See page 2 of DOC #76: "… We affirmed that decision and expressed concerns about Davis's professional competence to represent the interests of his clients." Therefore, this attorney must again set forth his competence and ability to represent his clients. For

a number of years, this attorney represented the State of Indiana as an Indiana prosecutor.

10. The undersigned attorney's experience consists of years as a Deputy Prosecuting Attorney in Lake County, Indiana under the supervision of Jack Crawford, and later under the supervision of Jon De Guilio, who is now a Judge with the Indiana Northern District Court. During that period, the undersigned counsel handled an average caseload of 200 cases and had a conviction rate of approximately **80%** as a Deputy Prosecuting Attorney. Also, as a defense attorney, the undersigned attorney has defended several defendants charged with murder, rape, robbery, etc., some of which resulted in **Not Guilty** verdicts.

11. The undersigned counsel's work as a Deputy Prosecuting Attorney included a period where the undersigned attorney worked with the Drug Task Force prosecuting drug cases while working with the Drug Enforcement Agency **(DEA),** the Federal Bureau of Investigation **(FBI)**, and the Lake County Sheriff's Department. Additionally, the undersigned attorney worked as a Deputy Prosecuting Attorney with the Marion County, Indiana Prosecutor's Office **(Indianapolis, Indiana)** handling drug prosecution cases working with the DEA, FBI, and the Marion County Sheriff's Department.

On more than one occasion during the undersigned attorney's prosecution of criminal cases in Lake County, Indiana, the undersigned attorney was *threatened* by family and friends of defendants. And, on one occasion, the threats were such that the court in which the prosecution was proceeding had the bailiff escort the undersigned attorney to his car.

12. The undersigned attorney also has been a Hearing Officer for the Gary Police Commission which entailed hearing violations of rules, including illegal acts alleged against police officers. This work required that the undersigned attorney *carefully review* the facts alleged against an officer, in that, on more than one occasion, the undersigned attorney had to recommend the discharge of an officer who had served a large number of years. This task was **not** taken lightly.

13. The undersigned attorney has sat on numerous occasions, over the years, for a Judge in Lake County, as a *Pro Tem Judge*. This task required the *careful analysis* of judicial matters.

14. The undersigned counsel has also authored two (2) books which can be found on Amazon based upon social issues.

15. All of the above background and experience is set forth to reflect the ample experience that the undersigned counsel possesses which also reflects his ability to handle the type of case herein. The undersigned

counsel's numerous responses to defendants' motions to dismiss in the instant case exemplify the degree of research, investigation, and analyses conducted in the case. This record is before the 7th Circuit Court of Appeal whether or not it was reviewed.

16. This Court is invited to review the pleadings of the undersigned counsel in several cases that are before the 7th Circuit Court of Appeal.

(See U.S. v. Phillip Jefferson; U.S. v. Ulric Jones; Kennedy v. Schneider Electric). **NOTE:** None of these cases indicate that the undersigned attorney was acting in a *"pro se"* manner.

17. The staff of this Court (7th Circuit) has **always** been very professional and helpful. On a few occasions in the instant case the staff has directed plaintiffs to correct or supplement pleadings regarding "deficiencies". None of said "deficiencies" were directed towards the undersigned attorney pleading the case in a *"pro se"* manner. In fact, the Indiana district court acknowledged that the undersigned attorney was representing himself, his son and his ex-wife as their attorney.

18. The staff attorney(s) or whoever authored the Court's Ruling/Order (DOC # 76 filed on 5/29/18) uses the plural term "we" implying that the Ruling/Order represents the entire 7th Circuit Court. The undersigned attorney does not believe that the entire Court would be in accord with the miss-statements and error of law as set forth in the Ruling/Order

(DOC #76). The undersigned attorney has the belief that the majority of the Circuit Judges in the 7th Circuit would **not** agree with the erroneous Ruling and Order set forth by the staff attorney(s) or whomever.

The Rules on appeal do **not** permit the introduction of new facts or evidence. Therefore, the criticism of the Ruling/Order **(DOC #76)** indicating that the undersigned attorney continues to repeat the same argument as initially used in the appellants' brief negates the fact that citation of the same argument is only done to follow the Rules of the Court which requires that **no** new material be introduced. The facts remain the same. The undersigned attorney continues to *respectfully disagree* with the Indiana district court regarding the facts and continues to repeat the same facts in that the undersigned attorney has not changed position regarding those facts.

(See Federal Rule of Appellate Procedure 10 and 30).

19. It should be noted that the instant case on appeal was not determined to be *frivolous* based upon the 7th Circuit Court of Appeals rules and criteria;

(See Federal Rule of Appellate Procedure (F.R.A.P.) 34(a)(2)(A)(B)(C) - Standards regarding frivolous appeals in the 7th Circuit).

20. The undersigned attorney was initially identified as 'Counsel of Record' for the instant case pursuant to the filing of the Notice of Appeal and said counsel's status was never removed or changed before Oral Argument on November 14, 2017.

(See F.R.A.P. - Circuit Rule 3(d) regarding Counsel of Record).

21. The undersigned attorney has acted as intake deputy prosecutor for the Lake County, Indiana Prosecutor's Office on many occasions. An intake entails reviewing the reports and investigations by law enforcement agencies that are submitting a case for criminal charges. This review is done to determine whether or not **specific facts** are available to make a *probable cause* determination to file criminal charges. This process is not done lightly and cannot be supported by unspecified comments of 'unintelligible' information or certainly not alluding to suggestions that the investigative agency is submitting a case using a "kitchen sink" approach to filing criminal charges. Indeed, **specificity** is needed to support charges which affect an individual's **due process rights** as provided by the United States' Constitution. Moreover, using generalizations such as the "kitchen sink" approach and/or using unspecified comments such as "unintelligible" to support negating an individual's due process rights do not comport with the Rule of Law.

(See Copy of the Undersigned Attorney's Affidavit marked as **EXHIBIT E** *attached and made apart hereto).*

22. This undersigned attorney is **not** "estranged" from his autistic adult son who has a mental handicap.

23. This undersigned attorney never sought rehearing from the panel but filed a Petition for Rehearing En Banc. It appears that whoever is reviewing the undersigned attorney's pleadings in *this* case (instant case) continues to switch the criticism from one fact to another opposing fact. This Court's (7th Circuit) Rules do **not** provide that a petition can be filed simultaneously for both *en banc rehearing* **and** *panel rehearing*. This Court's Rules use the word **OR** to designate the choice of *en banc rehearing* or *panel rehearing*. However, whoever reviewed the petition filed for *en banc rehearing* states that the petition was a `request` for an *en banc rehearing* **AND** *panel rehearing*.

(See Copy of 1st Page Only of DOC #71- PETITION FOR REHEARING EN BANC marked as **EXHIBIT F** *attached and mad apart hereto).*

(See Copy of DOC #73 - ORDER denying both marked as **EXHIBIT G** *attached and mad apart hereto).*

This individual *should* be aware of the Court's Rules (appellate) in this regard.

(See Federal Rule of Appellate Procedure 35(a)(b) also See Circuit Rule 35).

24. According to Federal Rule of Appellate Procedure 40, petitions for **panel rehearing** are separate from petitions for **rehearing en banc.** Moreover, Circuit Rule 40(b) requires petitioner to submit **30 copies** of a petition for en banc rehearing to the Clerk of the Court as opposed to **15 copies** for a petition for panel rehearing. The undersigned attorney submitted 30 paper/bound copies of his Petition for Rehearing En Banc - **DOC#71 filed on 12/18/2017.** (Expensed greater than a 15 copy submittal).

25. The undersigned attorney respectfully submits that his petition and pleadings are being reviewed microscopically by pointing out an individual's perception of *'woefully substandard'* pleadings, yet the undersigned attorney has noted and pointed out a number of miss-stated facts, including Rules of this Court that **should have been** within the knowledge of this individual's skill-sets. The undersigned attorney also respectfully submits that this individual's knowledge-base is *woefully substandard.*

(See Copy of Court's Ruling/Order, **DOC #76,** *dated May 29, 2018 marked as* **EXHIBIT H** *attached and made apart hereto).*

WHEREFORE, Respondent Attorney John H. Davis respectfully requests this Court grant this Motion to Reconsider Disciplinary Order Instanter/Motion to Stay Execution of Order and all other just and proper remedies in the premises.

DATED: **June 5, 2018**

Respectfully submitted,

/s/ John H. Davis
John H. Davis
Attorney at Law

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P.O. Box 43
Crown Point, Indiana 46308

CERTIFICATE OF SERVICE

I hereby certify that on **June 5, 2018** a copy of the foregoing pleading/document was filed with the Clerk of the Court electronically using the CM/ECF system which will send notification of such filing to all attorneys of record.

By: *s/ John H. Davis*
John H. Davis