

Appendix C - Facts of &/or Malfeasance of Reversible Error
(Facts Necessary to Understand Petitions)

or as parts of the record that may be essential to understand the matters set forth in the petition

MEMORANDUM AND ORDER (ECF No. 55) Issued July 11, 2017 by Respondent

ISSUE PRESENTED: *in support of a Writ of Certiorari &/or a Writ of Prohibition*

FACT: The Respondent stricken from the record, Petitioner’s **Doc. Nos. 2 & 3**, however, the Real Party in Interest’s 12(f) motion (ECF No. 51) made no mention of these filings, nor attempted to strike the facts or evidence entered into the record on 02/16/2017.

LAW: The Court erred, when the Respondent made a *wrongful assumption* of the *existing record* pertaining to **ECF No. 8**, whereby **Doc. No. 1** was stricken from the record on 02/23/17.

Real Party in Interest:

FACT: On June 29, 2017 the Real Party in Interest filed (**ECF No. 51**) a **12(f) motion** to strike Petitioner’s notice pleadings (Doc. Nos. 44, 45) or, in the Alternative, for an Extension of Time.

FACT: “Defendant argues that Plaintiff Terry Lee Hinds’ June 14 Filings (ECF Nos. 44 and 45), if construed as an amended complaint, should be stricken for failure to comply with Rule 8.”

FACT: This party also, simultaneously filed a Memorandum in Support (**ECF No. 52**) **but failed** to [p]roperly incorporate this orphan brief into their *motion*. (**ECF No. 51**).

Petitioner:

FACT: On July 5th 2017 Petitioner gave notice for leave and filed (**Doc. No. 53**) in opposition to the pending **12(f) Motions to Strike**, or in the Alternative, for an Extension of Time, captioned as:

PLAINTIFF’S NOTICE & OPPOSITION TO DEFENDANTS’ REQUEST FOR A SIXTY-DAY
EXTENSION OF TIME PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1)

OR, IN THE ALTERNATIVE,

GRANT LEAVE FOR PLAINTIFF TO FILE A COMPREHENSIVE BRIEF OF LAW & REASONS
WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME
PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1)

FACT: Petitioner simultaneously filed on July 5th 2017 (**Doc. No. 54**) raising a legal request, & response to DEFENDANTS’ MOTION TO STRIKE “June 14 Filings” captioned as:

PLAINTIFF’S REQUEST & OPPOSITION TO DEFENDANTS’ MOTION TO STRIKE
“June 14 Filings” Pursuant to Federal Rules of Civil Procedure, Rule 12(f)

FACT: Petitioner, simultaneously filed with the Court, MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF said filings set forth on the Court's docket sheet as (**Doc. No. 54** attachments #1).

FACT: Petitioner, simultaneously filed with the Court, a NOTICE OF FILING EXHIBIT IN Support of (**Doc. No. 54**) set forth on Court's docket sheet as (Doc. No. 54 attachments #2).

FACT: Attached to the NOTICE OF FILING EXHIBIT IN Support of (**Doc. No. 54**) and entered into the record was **Exhibit #U27** comprising 12 U.S. Supreme Court decisions regarding "notice pleadings" to assist the Court with the proper precedent and the law, Respondent shall rely upon.

Respondent:

FACT: The Respondent issued a decision (**ECF No. 55**) regarding United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of Time. Re: **ECF No. 51**.

FACT: The Respondent issued the following Orders: Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting an Amended Complaint (ECF No. 44) is construed as an amended complaint.

IT IS FURTHER ORDERED that Defendant United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of time (ECF No. 51) is **GRANTED IN PART** and **DENIED IN PART**. Defendant is ordered to file a responsive pleading within **sixty (60) days** of this Order.

IT IS FURTHER ORDERED that "Plaintiff's First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff's Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6)" (ECF No. 38) is **DENIED as moot**.

IT IS FURTHER ORDERED that the Clerk of the Court will change the "Cause" listed on the docket sheet to reflect that the matter is brought pursuant to § 1983.

IT IS FINALLY ORDERED that the Clerk of Court will mail a blank civil cover sheet and civil nature of suit code descriptions sheet to Plaintiff.

FACT: The Respondent, erred as a matter of law when she stated and held, to wit:

Plaintiff argues that Rule 8 does not authorize the Court to construe the June 14 Filings as an amended complaint. However, "captions do not control" a filing if the body of that filing presents a claim. See *Estate of Snyder v. Julian*, 789 F.3d 883, 886 (8th Cir. 2015).
(**ECF No. 55**, page 2, at 2nd paragraph)

FACT: The Respondent, erred as a matter of law, manifesting an Amended Complaint being limited to and decided as (**ECF No. 44**) being construed as an "amended complaint".

FACT: The Respondent, erred as a matter of law, by Ordering that the Clerk of the Court will change the “Cause” listed on the docket sheet to reflect that the matter is brought pursuant to § 1983.

FACT: The Respondent, erred as a matter of law, when she decided that (**ECF No. 38**) should be DENIED as moot, failing to uphold due process of law and endorsing improper or wrongful acts conduct within the procedures of this case.

Petitioner:

FACT: On July 24th 2017, Petitioner appropriately or precisely addressed certain issues and to (1) rectify clear errors of law, (2) reversible or manifested errors of law or fact and (3) prevent manifest injustice, as well as, (4) others malfeasance issues, thereby filed (**Doc. No. 56**) captioned as:

PLAINTIFF’S MOTION TO RECONSIDER THE COURT’S RULING OF JULY 11, 2017
to *correct clear errors of law* and *prevent manifest injustice* under Rule 59(e), in conjunction
with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6)

OR, IN THE ALTERNATIVE,

Federal Rule of Civil Procedure Rule 54(a)(b) and Rule 46- Objecting to a Ruling or Order

Petitioner contemporaneously filed (**Doc. No. 57**) as a Memorandum of Law and Brief in support thereof and attached thereto.

FACT: Petitioner presented to the Court, vital premises, argument and points of law within (**Doc. No. 57**) on page 13, 14, so Respondent’s legal determination of the law would conform with the facts and law within this case, to wit:

An “amended complaint” practice is a misapplication, mistake of law or a manifest error of law or fact. Rule 15(a)(2) “Other Amendments” governs “notice pleadings” in furtherance of a compelling governmental interest using the least restrictive means of furthering that compelling governmental interest. But according to the Court, [OCV/Petition] does not exist. A complaint must exist before “Other Amendments” can take effect in application to the legal process. Pursuant to Fed. R. Civ. P., Rule 15(a):

“*Amendments Before Trial*” with Rule 15(2) endorses “Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.”

Defendants have made a claim in their *orphan brief* that “notice pleadings” *aka other amendments before trial* is the same as “June 14 Filings”. The Court’s [July 11, 2017 Ruling] manifested this:

“Plaintiff argues that Rule 8 does not authorize the Court to construe the June 14 Filings as an amended complaint. However, ‘*captions do not control a filing if the body of that filing*’ presents a claim. See Estate of Snyder v. Julian, 789 F.3d 883, 886 (8th Cir. 2015).”

“IT IS HEREBY ORDERED that Plaintiff’s Hybrid Pleading Making a Conscientious Effort to Comply with Court’s Orders Manifesting an Amended Complaint (ECF No. 44) is construed as an amended complaint.”

The misapplication or mistake of law is clear about ‘*captions do not control*’ when understanding that “notice pleadings” *aka other amendments before trial*, is not the same as or in support of a “*post-trial motion*” when “‘*captions do not control*’ if the body of the motion or memorandum presents a claim.”

FACT: Petitioner presented to the Court, vital premises, argument and points of law within (Doc. No. 57) on page 14, so Respondent could rectify or reconsider the Order thus conform with the facts and the law within this case, to wit:

The Court held Estate of Snyder v. Julian, 789 F.3d 883, 886 (8th Cir. 2015):

“A *post-trial motion* “cannot be measured by [] unexpressed intention or wants,” and a *motion to set aside a verdict* and for a new trial is not sufficient to satisfy the rule requiring a motion for judgment as a matter of law. Johnson v. New York, N.H., & H.R. Co., 344 U.S. 48, 51 (1952). At the same time, however, “[t]echnical precision is not necessary in stating grounds for the motion so long as the trial court is aware of the movant’s position,” Rockport Pharmacy, Inc. v. Digital Simplistics, Inc., 53 F.3d 195, 197 (8th Cir.1995) (internal quotation omitted), and “*captions do not control*” if the body of the motion or memorandum presents a claim. Cosgrove v. Bartolotta, 150 F.3d 729, 732 (7th Cir.1998); see Elm Ridge Exploration Co. v. Engle, 721 F.3d 1199, 1220 (10th Cir.2013).” (Emphasis added)

FACT: Petitioner presented to the Court, in (Doc. No. 57) on page 14, so that Respondent’s legal determination of the law would conform with the facts and law within this case, to wit:

Plaintiff’s argues notice pleadings (Doc. No. 44 and 45)
are not a motion or memorandum, nor are they
“June 14 Filings” rather present *establishment/exercise clause claims*

FACT: Respondent misread the law and misplaced facts, because this case was a pre-trial status; with *notice pleadings* (Doc. Nos. 44, 45) not the same as *the body of a motion or memorandum*.

FACT: Petitioner presented to the Court, in (Doc. No. 57) “*Seven Primary Arguments as Issues Presented for Reconsideration, to Rectify and Relief*”; so that Respondent could rectify or reconsider the Order thus conform with the facts and the law within this case, to wit:

- (A/1): *The Bad faith in Crafty Bespeaks Defenses for Extension of time, inter alia*
- (A/2): “As a final matter” a *Standard of Moot vs. a Clear Abuse of Discretion*
- (A/3): *This Court as the adversary, not as the arbiter for justice*
- (A/4): ‘Amended Complaint’ is [To LIVE as EVIL]
- (A/5): *Misapplication, mistake of law or a manifest error of law or fact*
- (A/6): *The Merits, a Lack of Due Process and stricken from the record*
- (A/7): *Notice Pleadings with the “Religiosity of Facts” 1 to 7.* (ECF No. 45.)

FACT: On August 18, 2017, Respondent made a decision of *bias dictum* and of *unbridled power* that Petitioner’s legal premises &/or arguments presented were moot and issued Order in (ECF No. 66) “that Plaintiff’s motion to reconsider (ECF No. 56) is **DENIED.**”

FACT: Respondent did not response to or address Petitioner’s “*Seven Primary Arguments as Issues Presented for Reconsideration, to Rectify and Relief*”.

LAW: The District Court err as a matter of law, by failing to analyze or apply the *controlling law* correctly; when Respondent reaches *a decision so arbitrary & unreasonable* as to amount to a clear and prejudicial error of law; thus, manifesting irreparable harm with no adequate remedy by way of appeal for "judicial enforcement of established rights" or *ultra vires relief* with constitutionally protected interests or essential rights that merits enforcement or protection by law.

An Act of Reversible Error

FACT: Respondent professed, in part, issued in (ECF No. 55):

“This matter comes before the Court on Defendant United States Government’s Motion to Strike Filings or, in the Alternative, for an Extension of Time. ECF No. 51. ***In its motion, Defendant argues that Plaintiff Terry Lee Hinds’ June 14 Filings (ECF Nos. 44 and 45), if construed as an amended complaint, should be stricken for failure to comply with Rule 8.*** In the alternative, if the Court were to construe the June 14 Filings as an amended complaint, Defendant requests 60 days to file responsive pleadings. Plaintiff opposes the motion. ECF No. 54-1. The Court will deny in part and grant in part Defendant’s motion.” (Emphasis added).

Egregious Act for Reversible Error:

“Defendant argues that Plaintiff Terry Lee Hinds’ June 14 Filings (ECF Nos. 44 and 45), if construed as an amended complaint, should be stricken for failure to comply with Rule 8.” but nevertheless, the Respondent ***striking the merits*** of Petitioner’s case by ***excluding evidence*** which Petitioner was entitled to have admitted, (Doc. Nos. 2, 3.) thereby manifesting ***reversible error***.

Bias dictum and unbridled power - ECF No. 55

FACT: Respondent professed, in part:

“However, the Court notes that Plaintiff’s originally-filed complaint, brief in support, and exhibit list (ECF Nos. 1-3) have been stricken by the Court. ECF No. 8. As a result, Plaintiff cannot incorporate those filings into his amended complaint. Therefore, to the extent the amended complaint references Plaintiff’s previously-filed complaint, brief and support, and exhibits, those provisions will be stricken.” *Id. at page 2, last paragraph.*

Fatal Fact: The Respondent, committed a ***plain error***, when professing:

“the Court notes that Plaintiff’s originally-filed complaint, brief in support, and exhibit list (ECF Nos. 1-3) have been stricken by the Court. ECF No. 8.”

FACT: The record plainly reveals that Magistrate Judge JOHN BODENHAUSEN *had stricken only the complaint (Doc. No. 1) not the brief in support (Doc. No. 2) or the exhibits and its list* entered into the record (**Doc. No. 3**) when originally filed on 02/16/2017.

As a clear abuse of discretion

FACT: The Respondent did not address Petitioner’s objections, arguments or the many legal issues presented in (**Doc. Nos. 53, 54.**).

FACT: The Respondent, as an act of *unbridled power*, did issue an Order of *fundamental error*:

IT IS FURTHER ORDERED that “Plaintiff’s First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff’s Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6)” (ECF No. 38) is **DENIED as moot. *Id. at page 4, 3rd order.***

FACT: The issues and matters presented required *substantive & procedural due process of law & with judicial review of strict scrutiny standard.*

Prejudicial error of law and fact

FACT: The Respondent, clearly abused her discretion, by violating Fed. R. Civ. P., Rule 8(e) (CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.) with (**Doc. No. 44**) or in her decision *not to incorporate (Doc. No. 45)* when presented by Petitioner and was objected to by Real Party in Interest *via* their motion, **ECF. No 51.**

FACT: Petitioner’s had a legal right (Judiciary Act 1789, SEC. 32. & Fed. R. Civ. P., Rule 15(a)(2)) to incorporate “Other Amendments” (**Doc. Nos. 28, 33, 34, 45**) to manifest as an amended complaint. The Court Ordered Petitioner to file an amended complaint, *without guidance.*

FACT: The Respondent, *alters the law*, Rule 8(a) thereby to assist the Real Party in Interest, at some point or later date, if necessary, by declaring:

Although *Plaintiff’s Hybrid Pleading does not comply with the Court’s orders* to file a short, plain statement, the Court finds that Plaintiff has sufficiently pled violations of his First Amendment rights to put Defendant on notice of his claims and allow Defendant to file a responsive pleading.¹
(Emphasis added)

¹ ECF No. 44 and its attachments (Revelations Nos. 1 through 6) set forth jurisdiction, venue, parties, and laws at issue.

FACT: The Real Party in Interest's 12(f) motion concerned only "June 14 Filings" (ECF Nos. 44, 45) not (**Doc. No. 1**) nor the brief in support (**Doc. No. 2**) nor the exhibits entered into the record (**Doc. No. 3**) originally filed by Petitioner 02/16/2017.

Egregious fact: Fed. R. Civ. P. do not define or what shall constitute an "amended complaint".

Egregious fact: Real Party in Interest used there 12(f) motion *in lieu of*, but in legal reality was a motion for summary judgement.

Egregious fact: Respondent totally ignored the legal issues and facts of (**Doc. No. 45**) a **notice pleading** and discounted or disregarded, (by not addressing in full Petitioner's arguments, objections), or worse overlooking controlling law raised in (Doc. No. 46, 49, 53, 54.)

Controlling Law:

Required Standard of Review: Fed. R. Civ. P. Rule 8(e) CONSTRUING PLEADINGS.

Application of Law: Judiciary Act of 1789, *passim* in SEC 32.

Applicable Rules: Fed. R. Civ. P. Rule 15(a)(2) "Other Amendments"
Rule 12(d) Result of Presenting Matters Outside the Pleading

U.S. Supreme Court Precedents on "notice pleadings": Entered into the record, set forth in (Doc. No. 54) Exhibit U#27

Court Doctrine: *Unconstitutional Conditions Doctrine*, *The Doctrine of Substantive Due Process* and the *Doctrine of Procedural Due Process of Law*

Malfeasance Issue #1: *a defect of justice committed* with Petitioner's motion (**Doc. No. 54**) to wit:

"Wherefore, premises considered and for the *germane* facts herein, the Plaintiff respectfully request legal and constitutional relief from Defendants' "Motion to Strike Filings or, in the Alternative, for an Extension of Time" (Doc. No. 51) pursuant to Federal Rules of Civil Procedure and within Plaintiff's legal and constitutional rights, with the Court issuing an Order that the Defendants' motion be stricken from the record, or in the alternative, denied or such other relief as the Court deems proper."

FACT: *This motion was not granted*, or worse, the legal premises &/or Petitioner's arguments are not properly *nor* fully addressed by the Court.

Malfeasance Issue #2: *a defect of justice committed* with Petitioner's motion (**Doc. No. 53**) to wit:

"Plaintiff makes this request in accordance with U.S. Supreme Court *due process doctrine* and to maintain the appearance for fundamental fairness. Plaintiff also, requested the Court grant leave

allowing the Plaintiff to prepare a legal brief that shall not exceed 60 pages in breath, to proper address DEFENDANTS SIXTY-DAY EXTENSION OF TIME.” (See **entire breath of motion**)

FACT: *This motion was not granted*, or worse, the legal requests &/or Petitioner’s premises are not properly *nor* fully addressed by the Court.

Malfeasance Issue #3:

FACT: Real Party in Interest’s 12(f) motion being utilized as *summary judgement* or *in lieu of* Fed. R. Civ. P., Rule 56 Summary Judgment (a) Motion for Summary Judgment or *Partial Summary Judgment*

Malfeasance Issue #4:

The Court advancing a defect of justice, when the Local Court Rule 7 - 4.01 Motions and Memoranda decreed, in part: “No party shall file any motion, memorandum or brief which exceeds fifteen (15) numbered pages, exclusive of the signature page and attachments, without leave of Court.”

This local rule, in First Amendment case only, or where the due process clause of Fifth Amendment comes into existence, is an *unconditional condition*, violating protected speech of pure speech and defeats the constitutional guarantee to protest, in a limited public forum and *quarantines* the constitutional right to petition, a branch of “United States” government, vital to due process of law

FACT: Petitioner’s request and motion for leave (Doc. No. 54) was ignored by the Respondent’s *unbridled power*, thereby, *to work a manifest injustice*. (Doc. No. 54) seeks, in part:

GRANT LEAVE FOR PLAINTIFF TO FILE A COMPREHENSIVE BRIEF OF LAW & REASONS
WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME
PURSUANT TO FED. R. CIV. P. - RULE 6(b)(1)

FACT: [S]hould this Court believe that Petitioner’s so-called “amended complaint” is somehow deficient, the appropriate remedy is not to dismiss the case, but to allow Petitioner leave to file an “amended complaint” or brief through the just power of a Writ of Certiorari.

LAW: In United States law, a *reversible error* is an **error** of sufficient gravity to warrant reversal of a judgment on appeal. It is an **error** by the trier of law (judge), or the trier of fact (the jury, or the judge if it is a bench trial), or malfeasance by one of the trying attorneys, which results in an unfair trial. *Prejudicial error:* This kind of **error** is a mistake about the law or court procedures that causes substantial harm to the appellant. *Prejudicial error* can include things like mistakes made by the judge about the law, incorrect instructions given to the jury, and errors or misconduct by the lawyers or by the jury.

FACT: Respondent crossed these thresholds with impunity.

*See Petitioner’s filings entered into the Court’s Pacer system for germane documents.
See Clerk of Court Office, Eastern District of Missouri stored in paper form for such Exhibits.*