

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1868

MARC A. STEPHENS, TYRONE STEPHENS as individuals,
Appellants

v.

CITY OF ENGLEWOOD, ENGLEWOOD POLICE DEPARTMENT,
DET. MARC MCDONALD, DET. DESMOND SINGH, DET. CLAUDIA CUBILLOS,
DET. SANTIAGO INCLE JR., AND DET. NATHANIEL KINLAW,
Individually and in official capacity, NINA C. REMSON ATTORNEY AT LAW, LLC, AND
COMET LAW OFFICES, LLC
Appellees

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 2:14-cv-05362-WJM-MF)
District Judge: Honorable William J. Martini

**Appellants Motion for Reconsideration En Banc
Motion for Stay of Proceedings, Motion to Expedite Decision**

Marc A. Stephens and Tyrone Stephens
Plaintiffs-Appellants
Pro se

MOTION FOR RECONSIDERATION AND STAY

Pro Se, Appellant Marc and Tyrone Stephens, petition for a Motion for Reconsideration en banc of the Order dated December 28, 2016, **Doc. 003112498078**, which dismissed Appellants request for Leave to Amend the opening brief, File Two Separate Reply Briefs, Extend Page/Word Count for Reply Brief, and Reconsider Previous Order dated 10/31/2016. Appellants hereby respectfully request this court stay the proceedings pending the decision en banc. Appellants reply brief is due January 12, 2017. Appellants also respectfully request to expedite the decision.

PROCEDURAL HISTORY

1. On August 2, 2016, court issued briefing schedule, **Doc: 003112369585**.
2. On September 2, 2016, Court issued compliance order stating Appellants can not submit three opening briefs, **Doc: 003112398121**.
3. On September 8, 2016, Appellants submitted revised 17 page brief, **Doc: 003112401759**.
4. On October 10, 2016, Defendant City of Englewood submitted a response brief, **Doc: 003112430711**, and Englewood Officer's submitted a brief, **Document: 003112432091**.
5. On October 11, 2016, Defendant Nina C. Remson Attorney at Law, LLC submitted a response brief, **Doc: 003112432044**.
6. On October 13, 2016, Clerk issued compliance order to defendants, **Doc: 003112434437**.
7. On October 21, 2016, Appellants requested to amend their opening brief to be in compliance with Rule 28, and motion to extend page/word court **Doc: 003112441832**, and Reply, **Doc: 003112448646**.
8. On October 31, 2016, Court granted extension of time, and denied motions to amend opening brief, and to extend page/word court, **Doc: 003112450301**.
9. On November 4, 2016, The appellants filed a consolidated reply brief to City of Englewood and Officers, **Doc: 003112455788**, reply brief to Remson, **Doc: 003112455789**, and motion to extend page/word count, **Doc: 003112455790**. Defendant Comet did not respond.
10. On December 28, 2016, Court denied appellants motion to submit two reply briefs, motion to extend page/word court, and motion for reconsideration, **Doc: 003112498078**.

LEGAL ARGUMENT

WHY THE MOTION FOR RECONSIDERATION EN BANC SHOULD BE GRANTED

A. Majority of defendants consented to Appellants page/word count extension request and Comet did not respond.

Appellants respectfully contacted the defendants for their consent to increase the page/word limitation. The defendant City of Englewood consented “*my clients...have no objection to the court...relaxing its page/word limits..*”, **Doc: 003112445354, page 2**, Englewood Officers objected because “appellants stated the case is easy”, and Remson consented, “*With regard to plaintiffs’ requests to extend the time for filing their reply brief and to enlarge the length of same, Remson has no objection*”, see **Doc: 003112445660, Page 2**. Comet did not respond and consent is not needed for the other defendants to amend the opening brief.

The appellants requested to extend their reply brief since the panel denied their motion to amend their opening brief. The appellants wanted to amend their opening brief to be in compliance with **Rule 28**, see appellant motion, **Doc. 003112441832**, and reply brief **Doc. 003112448646**. Appellant Tyrone, who is incarcerated and not represented by a lawyer, did not have access to a legal library to look up the procedural rules in the court of appeals, which is why an extension of time was requested to file the opening and reply brief. “some procedural rules must give way because of the unique circumstance of incarceration”, **McNeil v. United States, 508 US 106 - Supreme Court 1993 at 113**. “It is acknowledged that the Third Circuit “tend[s] to be flexible when applying procedural rules to pro se litigants.” **Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 244 (3d Cir. 2013)**. Cf. **Schacht v. United States, 398 U.S. 58, 64 (1970)** (“The procedural rules adopted by the Court for the orderly transaction of its business ... can be relaxed by the Court in the exercise of its discretion when the ends of justice so require.”).

B. Appellants substantially complied with the Court statues under common law

The City of Englewood submitted a '30 page' response brief which raised an extensive “Monell” defense. The Englewood Officers submitted a '33 page' response brief, which raised an extensive “Probable Cause” defense, and Remson submitted a '22 page' response brief, which raised an extensive “Legal Malpractice” defense. In total, the defendants submitted 'three' separate response briefs totaling '85 pages'. In addition, the appellants must address the district court orders, and raise a legal argument regarding Comet Law Offices, LLC.

On November 4, 2016, the appellants submitted a ‘consolidated brief’ for the City of Englewood and all Englewood officers, which totaled 26 pages, and a second brief for Nina C. Remson Attorney At Law, LLC, which was 12 pages. Comet Law Offices, LLC never responded to the initial complaint, or appeal. Remson’s case is separate in merit and legal argument from the other defendants. If the pages were averaged out by the two Englewood

defendants it would total out to **13 page briefs** for each defendant. It is next to impossible to address all three defendants legal arguments in one consolidated 15 page brief. Again, **2 of 3 defendants consented** to the extension of page/word count, which means they were not prejudiced. “The doctrine of substantial compliance is used by courts to “avoid technical defeats of valid claims,” **Zamel v. Port of New York Auth., 56 N.J. 1, 6, 264 A.2d 201 (1970)** and requires: “(1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute.” **Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 353, 771 A.2d 1141 (2001)** at 1149, **Palanque v. Lambert-Woolley, 774 A. 2d 501 at 506.** **Bernstein v. Board of Trustees of Teachers' Pension Annuity Fund, 151 N.J.Super. 71, 376 A.2d 563 (App.Div.1977).**

C. The District Court allowed Appellants to submit three separate briefs

Because the case involves multiple parties who are raising different legal arguments, and have three different lawyers filing three separate briefs, throughout the entire legal proceedings the district court allowed the appellants to submit three separate reply briefs, see appellants reply briefs in district court **ECF no. 71, ECF no.72, ECF no. 77.**

The 3 judge panel is now requesting that appellants submit a 'consolidated' 15 page reply brief, for **all defendants**, and the brief can not exceed 7,000 words. This causes prejudice and prevents appellants argument from being on the record. “[T]here is no legislative interest in barring meritorious claims brought in good faith[.]” **Ferreira, supra, 178 N.J. at 150-51, 836 A.2d 779 (quoting Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 359, 771 A.2d 1141 (2001)).** Indeed, the Legislature did not intend “to `create a minefield of hyper-technicalities in order to doom innocent litigants possessing meritorious claims.” **Ryan, supra, 203 N.J. at 51, 999 A.2d 427 (quotation omitted).**

D. Denying the motions and ordering a 15 page brief for all defendants will deprive the appellants of their fundamental right to due process

The appellants use of the court system is a fundamental right secured by the constitution. The rules of the court enacted by its legislature applies to lawyers, and pro se appellants must substantially comply with the rules of court. “Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers”, **McNeil v. United States, 508 US 106 - Supreme Court 1993 at 113.** The appellants have a fundamental right to due process and barring, or limiting, appellants arguments in their brief, by a statue, is unconstitutional and causes prejudice. “At its core, the right to due process reflects a fundamental value in our American constitutional system”, **Boddie v. Connecticut, 401 US 371 - Supreme Court 1971 at 374.** “Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” **Miranda v. Arizona, 384 US 436 - Supreme**

Court 1966 at 491. See also, **Ex parte Hull, 312 U.S. 546 (1941), Johnson v. Avery, 383 U.S. 483 (1969), and Bounds v. Smith, 430 U.S. 817 (1977).** “The Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. “No right granted or secured by the Constitution of the United States can be impaired or destroyed by a state enactment”. **Connolly v. Union Sewer Pipe Co., 184 US 540 - Supreme Court 1902 at 558.** “The Government may not prohibit or control the conduct of a person for reasons that infringe upon constitutionally guaranteed freedoms”, **Smith v. United States, 502 F. 2d 512 - Court of Appeals, 5th Circuit 1974 at 516.** “Congress cannot interfere with the right of the citizen...”, **McDonald v. City of Chicago, Ill., 130 S. Ct. 3020 - Supreme Court 2010 at 3077.**

CONCLUSION

Appellants are respectfully asking the court to please grant their motions to amend the opening brief, or to extend the reply brief, in order to make sure appellants are allowed due process, stays in substantial compliance with Rule 28, and that appellants meritorious claims are not defeated due to technicality. Appellants substantially complied with all court rules.

Respectfully Submitted,

January 5, 2017



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se

CERTIFICATE OF SERVICE

Plaintiffs-Appellants, pro se, hereby certify that on **January 5, 2017**, Plaintiffs filed (1) Motion for Reconsideration En Banc and Motion to Stay proceedings to the United States Court of Appeals for the Third Circuit using the CM/ECF system, which will then send a notification to the defendants, and their counsel:

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