

DOCKET NO. 00 - 35555

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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VAL ALBERT and GALEN COOK,

Appellants, pro se,

v.

LARRY JOHNSON, LOCAL 302 of the INTERNATIONAL  
UNION of OPERATING ENGINEERS, CLYDE WILSON,  
JACK JAKUBIEC, and BARRY RIEDESEL,

Respondents.

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Appeal from the U.S. District Court for Western Washington  
at Seattle  
Cause No. C98 - 1180Z  
The Honorable Judge Thomas Zilly, Presiding

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**REPLY BRIEF**

Submitted by Appellants, Pro se

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INTRODUCTION

The appellee's answer concludes with three specific requests to the Court: (1) dismissal of this appeal on grounds that the appellants failed to comply with the Court's deficiency order, (2) alternatively, that the Court affirm the grant of summary judgment from the defendant's motion, and (3) fees and costs be awarded to the appellees. The appellants respectfully request that the Court deny all three requests for the reasons stated herein.

The appellant's reply brief includes: (1) clarification of the Statement of the Case, (2) a denial of the appellee's corresponding Statement of Facts, (3) a rebuttal to the corresponding arguments by the appellees, (4) a Conclusion, and (5) an attached Appendix with supplemental exhibits.

STATEMENT OF THE CASE

On August 25, 1998, the plaintiffs filed two separate, but essentially identically briefs. U.S. District Court No. C98-1180Z was filed against the business manager, Larry Johnson. No. C98-1181C was filed against Local 302 and three subordinate officers. The plaintiffs separated the actions because Johnson resigned in early 1997, just eight months into his new 36-month term, and the plaintiffs believed that the union should be barred from paying Johnson's legal bills over an action that emanated from Johnson's participation and orchestration of fraud. The plaintiffs believed that they could demonstrate a reasonable

1 likelihood of success on the merits. See Milone v. English,  
2 306 F2d 814, 817 (D.C. Cir. 1962).

3           The plaintiffs also attempted to disqualify the regular  
4 union attorney, Russell J. Reid, (Court Docket 8) from defending  
5 individual union officers, because Reid was intimately familiar  
6 with the officers charged in wrongdoing and because a conflict  
7 existed when Reid attempted to represent both the union officers  
8 and the union entity. Reid's intimate knowledge of union  
9 affairs, obtained at the expense of the union, worked against  
10 union democracy, and more particularly, against the democratic  
11 rights of plaintiff Val Albert. From an ethics viewpoint, Mr.  
12 Reid should have self-disqualified, to disrupt the cozy  
13 relationship between union officers and regular counsel and  
14 to preserve democracy within the entity. (see Appendix;  
15 Deposition of Barry Riedesel as Exhibit No. 1 in this Reply).

16           Instead, Mr. Reid was granted his motion to consolidate  
17 the two cases under C98-1180Z, thereby simultaneously defending  
18 the union officers (both active and resigned) and the union  
19 entity from Albert, who's democratic union rights had been shrunk  
20 by the defendants and the union attorney. As a result of lost  
21 democratic union rights, Mr. Albert faced false charges by the  
22 supposedly fair and neutral election chairman, and further faced  
23 a kangaroo trial conducted by the incumbent officers who cheated  
24 Mr. Albert out of a fair election.

25           Meanwhile, plaintiff Cook, who had taken an honorable  
26 withdrawal after 15 years of service in the union, had his  
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1 withdrawal cancelled by the defendants and the union attorney.  
2 The defendants maintain that Cook was not protected under the  
3 LMRDA because Cook was no longer a member when the complaint  
4 was filed. But the union's constitutional provision from which  
5 Cook's alleged violation occurred applies only to active members.  
6 Without any due process afforded to Cook whatsoever, the union  
7 discarded the residual democratic rights entitled to Cook under  
8 an honorable withdrawal. The union (in its haste to punish  
9 and retaliate against Cook), technically made Cook a full member  
10 through operation of the union constitution during the time  
11 the charges were levied against Cook to cancel his withdrawal.  
12

#### 13 STATEMENT OF FACTS

##### 14 **Galen Cook:**

15 Cook, originally from Fairbanks, Alaska, served as  
16 a loyal rank-and-file member of Local 302 for 15-years. In  
17 1990, Cook received an honorable withdrawal and put himself  
18 through law school with personal funds earned from his work  
19 as a member.  
20

21 Cook never urged Albert to file the 1996 injunction  
22 against the union. Cook merely informed Albert of the options  
23 available to him in an attempt to restore the democratic rights  
24 of union members who faced undemocratic elections. Cook never  
25 brought the suit, nor did he sign the 1996 Complaint on behalf  
26 of Albert's attorney, Stan Talcott (presently a law school dean  
27 in Florida). See Exhibit No. 7 of Appellant's Excerpt of Record.  
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1  
2 In an effort to seek an honest election, Albert sent  
3 a fax to election committee chairman, Barry Riedesel, requesting  
4 six additional safeguards. Even though the election was just  
5 a few weeks from occurring, the fax was a clear attempt by Albert  
6 to pursue his internal remedies before the suit was filed. (see  
7 Appendix; Deposition of Barry Riedesel as Exhibit No. 2 in this  
8 Reply).

9 By letter dated November 1, 1996, Cook's withdrawal  
10 card was cancelled due to Cook's alleged violation of Article  
11 XVII, §4 "All Court Actions Superceded" of the Constitution  
12 of the IUOE. (see Exhibit No. 25 of the Appellant's Excerpt  
13 of Record). The defendants and Mr. Reid alleged that Cook  
14 himself brought suit against the union as a **member**, without  
15 first exhausting his internal remedies. (see page 24 of the  
16 Appellant's Opening Brief). The fact is, Cook never brought  
17 suit against the union in 1996, nor was Cook ever a named  
18 plaintiff in the 1996 action.

19 Article XVII, §4 "All Court Actions Superceded" of  
20 the Constitution of the IUOE, makes no reference whatsoever  
21 in its provision for the actions filed by non-members.  
22 Moreover, the article makes no reference to the suits of those  
23 individuals on honorable withdrawal, or those individuals who  
24 'urge' members to file suits. The article only applies to  
25 members. (see Appendix; Article XVII, §4 of the Constitution  
26 as Exhibit No. 3 in this Reply).

Val Albert:

1  
2 In 1997, Albert and Cook sought judicial review of  
3 the Secretary's decision not to invalidate the 1996 election.  
4 The evidence demonstrated that violations of the LMRDA, the  
5 union constitution, and the bylaws were intentionally committed  
6 by the incumbent officers and the election committee chairman  
7 to defeat Albert's candidacy.

8 In 1998, union attorney Russell J. Reid was granted  
9 a motion to consolidate the present cases under the same federal  
10 judge who denied Albert and Cook judicial review of the  
11 Secretary's decision.

12 There is no pending request by the appellants in this  
13 appeal for review of the actions previously raised by the  
14 appellants under Title IV, for violations in the 1996 election.

15 Election committee chairman Riedesel who had no  
16 experience at all in union elections, but supposedly believed  
17 in fairness, brought charges against Albert but not against  
18 business manager Johnson for committing identical acts. (see  
19 Appendix; Deposition of Barry Riedesel as Exhibit 4 in this  
20 Reply). Albert filed cross-charges against chairman Riedesel,  
21 which were promptly denied by the incumbents. Riedesel had  
22 been communicating and bargaining with incumbent officers during  
23 the election and just prior to Albert's expulsion trial, even  
24 though Riedesel provided sworn testimony that no communication  
25 had ever occurred. (see Exhibit Nos. 16 and 17 of the Appellant's  
26 Excerpt of Record).

27 Albert was not afforded an attorney at his trial.  
28

1 The tribunal was located at the defendant's new union hall before  
2 approximately 100 regularly attending members who are friends  
3 and employees of the incumbents. Local 302 has over 9000  
4 members.

5 Albert had prepared a written defense statement,  
6 coordinated to respond to charges as they were enumerated in  
7 the formal letter sent to Albert on September 6, 1996. At the  
8 trial, the incumbents abruptly disallowed Albert to continue  
9 reading his defense statement in answer to the first charge.  
10 Albert was ruled out of order by the incumbent officers and  
11 ordered to surrender his written defense statement. Albert  
12 complied. The incumbent officers shouted at Albert, intimidating  
13 and ridiculing him before the tribunal.

14 Albert was ordered and escorted out of the union hall  
15 during the tallying of votes at the trial phase. Albert was  
16 not allowed to have an attorney represent him, he was not allowed  
17 to complete the reading of his own written defense, and he was  
18 placed in judgment before a very hostile tribunal. Then, Albert  
19 was ordered to leave the hall. Albert did not know that he  
20 would be asked to return to face the remaining charges. Albert  
21 did know that he would face an increasingly hostile and  
22 potentially dangerous pack of incumbent officers if he did return  
23 to the trial room.

24 Albert, a 40-year member in good standing and a former  
25 business manager, was convicted by a narrow margin of the votes  
26 cast. Albert was swiftly expelled by President Clyde Wilson,  
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1 who exercised complete discretion per his authority under the  
2 constitution. Wilson was appointed by the Executive Board  
3 (comprised of incumbents) to be the new business manager  
4 in 1997, only eight-months after Larry Johnson mysteriously  
5 resigned.  
6

7 The two remaining charges, which also resulted in  
8 convictions and fines against Albert, were mysteriously expunged  
9 33-months after the trial.  
10

#### 11 ARGUMENT

12 **APPELLANT'S DID NOT FAIL TO COMPLY WITH THE COURT'S**  
13 **DECEMBER 12, 2000 DEFICIENCY ORDER.**

14 Gerald Rosen, Deputy Clerk for the Ninth Circuit Court  
15 of Appeals, first apprised the appellants of deficiencies in  
16 their opening brief on November 27, 2000. The appellants  
17 contacted the Court by phone on December 1, 2000. On that same  
18 day, the appellants corrected the deficiencies by sending the  
19 Court (1) fifteen darker blue covers, (2) a Certificate of  
20 Compliance, and (3) a Statement of Related Cases. On January  
21 17, 2001, Deputy Clerk Rosen confirmed to the appellants by  
22 telephone that all of the deficiencies had been corrected.  
23 (see Appendix; Letter to the Court as Exhibit 5 in this Reply).

24 The appellee's false accusation is typical of their  
25 actions now and throughout this case. Ironically, it is the  
26 appellees who's brief should be deemed as deficient, as the  
27 appellees have submitted the wrong docket number on the cover  
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1 of their answer. The appellees used Docket No. 99-35919, a  
2 case which already has been dismissed. To compound matters  
3 of error, the appellees cited the wrong U.S. District Court  
4 Docket number, also on their cover. Cause number C98-1181Z  
5 is a non-existent case. In fact, it was the appellee's attorney,  
6 Russell J. Reid, who successfully motioned for the plaintiff's  
7 cases C98-1180Z and C98-1181C to be consolidated into C98-1180Z.  
8

9 **APPELLEE'S ATTACK ON THE FORM OF APPELLANT'S**

10 **PRO SE BRIEF IS BASELESS.**

11 The appellees make a generalized attack on the form  
12 of the appellant's Excerpt of Record. They loosely accuse the  
13 appellants of unsubstantiated allegations in the appellant's  
14 Excerpts of Record, without ever mentioning any specific example  
15 of an unsubstantiated allegation. This is further typical of  
16 the appellees and their attorney, to berate and ridicule the  
17 form of a brief by appellants who are pro se and have never  
18 presented an opening brief before this court. Appellants stand  
19 by their Excerpts of Record as an accurate record which is  
20 adequately referenced. However, the real fear of the appellees  
21 is not the form of the appellant's brief, but rather the  
22 substance contained within.

23 The "timeline" presented by the appellants shows the  
24 relevant relationship between crucial events in 1996 and the  
25 actual telephone communication by key defendants who previously  
26 denied the existence of the communication while under sworn  
27 oath. The "timeline" is not an official telephone record.  
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1 It is the reproduction of factual events used by the appellants  
2 to prove their allegations and to rebut the false denials  
3 provided by the defendants, who lied under sworn oath.  
4

5 Further, the appellants had a suspicion that the  
6 defendant's attorney was being provided with information from  
7 the District Court that was not equally shared to the plaintiffs.  
8 This suspicion was raised in several instances during  
9 depositions, when the defendant's attorney alluded to having  
10 knowledge of a key event about to happen at the order of the  
11 Court. When asked further, the defendant's attorney would not  
12 answer the plaintiff's inquiry. Besides being generally  
13 obnoxious and arrogant during the depositions, the defendant's  
14 attorney repeatedly interrupted the plaintiffs during oral  
15 examination of the defendants and in one instance, the attorney  
16 failed to inform the plaintiffs that he was representing a  
17 deposed retired officer, until pressured by the plaintiffs  
18 mid-way through the deposition.

19 Finally, the appellees and their attorney continually  
20 refer to the appellants as "experienced litigators," and not  
21 typical pro se plaintiffs. Cook did graduate from law school.

22 The only  
23 experience Cook and Albert have acquired as litigators are in  
24 these related cases.

25 Any technical oversight in the production of these  
26 briefs is unintended by the appellants. The appellants therefore  
27 apologize to the Court for their inexperience and lack of  
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1 training. It is also the sincerest request by the appellants  
2 to equally consider the briefing deficiencies by the appellees  
3 and their attorney, who has practiced law for 40-years.  
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5  
6 **COURT'S ERROR IN GRANTING SUMMARY JUDGMENT.**

7 **As to Galen Cook:**

8 **A. The Court Abused its Discretion.**

9 Here, the District Court failed to administer  
10 discretion in a consistent manner that would lead reasonable  
11 people to believe that the Court was acting fairly. The example  
12 cited in the appellant's opening brief shows the failure of  
13 consistency through a double standard of justice. Before the  
14 same District Court Judge in 1997, the appellants motioned for  
15 summary judgment in another related matter. The appellants  
16 filed the motion under Western District of Washington LCR 7(b)(4)  
17 because the defendant was untimely in filing a response.

18 However, in 1999 the same judge granted summary  
19 judgment to the defendants in this matter because the plaintiff  
20 genuinely did not understand the filing deadline. The deadline  
21 was compounded by the granting of a 60-day extension of  
22 discovery, and by the pending request for additional time to  
23 respond to the summary judgment motion.

24 Besides failing to consider that a pro se plaintiff's  
25 document is to be liberally construed in favor of the plaintiff  
26 (see Estelle v. Gamble, 429 U.S. 97, 106 (1976)), the Court  
27 is supposed to administer discretion in a consistent manner.  
28