RULE 12 (b) (6)

Memorandum of Law

Rule 12 (b) (6) Failure to state a claim upon which relief can be granted;

The purpose of this memorandum is to clarify the FACT that civil law Rule 12 (b)(6) is not the "*Law of the Land*." The Rules Enabling Act of 1934 should never have been passed by Congress. Said Act unlawfully gave the Supreme Court the power to make rules of procedure and evidence for federal courts as long as they did not "*abridge, enlarge, or modify any substantive right*."

According to the Federal Judicial Center,[1] a government agency, on September 16, 1938, pursuant to its fictional authority under the repugnant Rules Enabling Act of 1934,

> "*The Supreme Court enacted uniform rules of procedure for the federal courts. Under the new rules, suits in equity and suits at common law were grouped together under the term "civil action,"* claiming that "*rigid application of common-law rules brought about injustice*," see attachment to this Memorandum of Law.

This was an Act of High Treason whereas the Supreme Court and Congress under the teachings and guidance of the treacherous subversive American BAR Association, in an Act of Treason, a silent coup, claiming the abrogation of Common Law, a/k/a "Natural Law," with its unalienable rights that are endowed by our Creator covertly substituted them with civil rights legislated by lawless men. Thereafter all fifty states, their counties, cities, towns, and villages having followed suite with the "Organic Act of 1871" incorporated thereby becoming municipalities which wrote "*municipal law*" a/k/a "*civil law*" and thereby unlawfully exercise the same.

"*Civil Law*," "*Roman Law*," "*Roman Civil Law*,"[2] Justinian Law, and Babylonian Law are exchangeable phrases more properly called "*municipal law*" to distinguish it from the

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[1] **The Federal Judicial Center** is the research and education agency of the judicial branch of the United States Government. The Center supports the efficient, effective administration of justice and judicial independence. Its status as a separate agency within the judicial branch, its specific missions, and its specialized expertise enable it to pursue and encourage critical and careful examination of ways to improve judicial administration. The Center has no policy-making or enforcement authority; its role is to provide accurate, objective information and education and to encourage thorough and candid analysis of policies, practices, and procedures. https://www.fjc.gov/history/timeline/federal-rules-civil-procedure-merge-equity-and-common-law

[2] **CIVIL LAW:** "Civil Law," "Roman Law" and "Roman Civil Law" are convertible phrases, meaning the same system of jurisprudence. That rule of action which every particular nation, commonwealth, or city has

"*law of nature.*" Because the People have been kept ignorant of the law and are not taught civics or constitutional studies in school, they have no idea of their heritage, "*being Liberty under Common Law.*" Nor do they know what "*civil law*" is, which is used to control the behavior of the masses and fleece them of their property. Neither Congress nor the Judiciary had the authority to abrogate "*Common Law*" and it's "*Common Law Rules,*" that is treason.

Rule 12 (b)(6) particularly is repugnant to the U.S. Constitution for many reasons three of which are;

1) Article I Section 1: "**ALL** legislative powers shall be vested in Congress …" And, Article III Section 1 vested the Supreme Court with judicial powers and not legislate powers. The People did not give Congress any vesting powers. Therefore, Congress cannot apportion any legislative powers to the Supreme Court. There can be only one conclusion which is "*Rule 12 (b)(6) like all the rules is null and void*" because there is no constitutional authority for its existence.
2) The Supreme Courts Civil law rules abrogated the Common Law by claiming to combine "*Law and Equity*" under "*civil law.*" Combining Law and equity is like trying to combine water and oil it's impossible! God's Law is perfect whereas equity is "*flawed man's*" law, they cannot mix. Furthermore, equity is applied upon fiction (*corporations and governments*) whereas Law is applied upon living souls. Samuel Adams one of our Founding Fathers who participated in the construction of the "*Law of the Land,*" said, "*The natural liberty of man is to be free from any superior power on Earth, and not to be under the will or legislative authority of man, but only to have the law of nature for his rule.*" Rule 12 is null and void because it is man's law and would pollute God's Law and man's law cannot be applied upon the People.
3) The Supreme Court's rules abrogated the "*Rules of Common Law*" and thereby the "*Common Law*" in violation of Amendments V, VI, VII and U.S. Constitution Article VI. "*Rule 12 is null and void*" because it alters Common Law process, eliminates evidence, and denies American Jurisprudence.
4) An affidavit in itself is sufficient to open a "Court of Record"[3] and gives the People the right to enter a court of Justice and be heard and not be denied their right of due process by a rule which is not a law.

The Supreme Court's rules deny due process because it abrogates our substantive right of due process protected by our 5th Amendment specifically the right to be heard. Any

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established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law. See Bowyer, Mod. Civil Law, 19; Sevier v. Riley, 189. Cal. 170, 244 P. 323, 325.

[3] "*Indeed, no more than affidavits is necessary to make the prima facie case.*" [United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982]

judge who entertains and executes Rule 12 (b)(6) to throw one of the People out of the People's "*court of record*" wars against the constitution and the People.

We the People through the U.S. Constitution empowered elected and appointed servants to guard the same. The Constitution cannot be altered or abolished by the legislative servants who took an oath to protect it. "Any judge who does not comply with his oath to the Constitution for the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason."[4]

There is a general rule that a ministerial officer, who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign.[5] "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it."

> "*It is the only supreme power in our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives."[6] When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost*."[7]

"Due course of law, this phrase is synonymous with 'due process of law' or 'law of the land' and means law in its regular course of administration through courts of justice."[8] Under the "Law of the Land" there is a Common Law Maxim that states, "*For every injury there must be a remedy*" Rule 12(b)(6) denies the "*unalienable right of a remedy*."

Rule 12(b)(6) is "*Obstruction of Justice*"[9] thereby having no further force or effect because, clearly it abridges common law and thereby our founding documents." Any judge denying a "Natural Law Court" is concealing courts of Law. Any judge proceeding under rule 2 wars against the Constitution. Congress was clear in that the "Rules Enabling Act of 1934" under §2072(b) which clearly stated;

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[4] Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).
[5] Cooper v. O'Conner, 99 F.2d 133
[6] U.S. v. Lee, 106 U.S. 196, 220 1 S. Ct. 240, 261, 27 L. Ed 171 (1882)
[7] Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326
[8] Kansas Pac. Ry. Co. v. Dunmeyer 19 KAN 542.
[9] OBSTRUCTION OF JUSTICE 18 USC § 1505: "*Whoever corruptly… obstruct[s], or impede[s] the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, … Shall be fined under this title, imprisoned not more than 5 years*."

> “*Such rules* ***shall not abridge****, enlarge or* ***modify*** *any substantive right, all laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.*”

The conclusion cannot be denied by any rational mind in that Rule 12(b)(6) is not the Law of the Land and cannot be applied against the People. Rule 12(b)(6) is repugnant to the Constitution and therefore is null and void as per Marbury vs. Madison, Miranda vs. Arizona, and Hoke vs. Henderson.

> "*All laws, rules and practices which are repugnant to the Constitution are null and void*" – Marbury v. Madison, 5th US (2 Cranch) 137, 180;

> "*Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them*" – Miranda v. Arizona, 384 U.S. 436, 491;

> "*... that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land.*" – Hoke vs. Henderson,15, N.C.15,25 AM Dec 677.