

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

FILED

CONTROL NUMBER:
09111466
(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: K. PERMSAP
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov	

NOVEMBER 2003
Month Year

No. 946

NEUYAS ETAL
MORGAN vs.

Name of Filing Party:
Dominic J. Morgan, Prose
(Check one) Plaintiff Defendant
(Check one) Movant Respondent

INDICATE NATURE OF DOCUMENT FILED:

Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
Is another petition/motion pending? Yes No
If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side) ANSWER (MOTION/PETITION) FILED	PETITION/MOTION CODE (see list on reverse side) MTRANS
ANSWER/RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding): MTCIA - MOT - CERTIFY ORDER INTERLOC APPL	

I. CASE PROGRAM

Is this case in the (answer all questions):

A. COMMERCE PROGRAM
Name of Judicial Team Leader: _____
Applicable Petition/Motion Deadline: _____
Has deadline been previously extended by the Court?
Yes No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____
Name of Judicial Team Leader: _____
Applicable Petition/Motion Deadline: _____
Has deadline been previously extended by the Court?
Yes No

C. NON JURY PROGRAM
Date Listed: _____

D. ARBITRATION PROGRAM
Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM
Date Listed: _____

F. OTHER PROGRAM: _____
Date Listed: _____

II. PARTIES (required for proof of service)
(Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

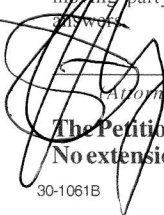
Maureen Fitzgerald, Esquire
Eckert Seamans Cherin Mellott
Two Liberty Place
50 South 16th Street – 22nd Floor
Philadelphia, PA 19102

Leon Silverman, Esq.
Stein & Silverman, P.C.
230 S. Broad St. 18th Fl
Philadelphia, PA 19102

Dominic J. Morgan, Prose
PO BOX 1011
MARLTON, NJ 08053

III. OTHER

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

 DECEMBER 2 2009 Dominic J. Morgan
(Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.
No extension of the Answer/Response Date will be granted even if the parties so stipulate.

FILED

02 DEC 2009 02:19 pm

Civil Administration

K. PERMSAP

HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D., and	:	TRIAL DIVISION
NEVYAS EYE ASSOCIATES, P.C.,	:	Philadelphia County
Plaintiffs	:	NOVEMBER TERM, 2003
	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	Control Number <u>01-09111466</u>
STEVEN A FRIEDMAN	:	Jury Trial demanded on Counterclaim
Defendants	:	

PROPOSED ORDER

AND NOW, this _____ day of _____, 2009, upon consideration of plaintiffs' Motion for Interlocutory Appeal and Responses thereto, it is hereby ORDERED that plaintiffs' Motion is DENIED.

BY THE COURT

Rogers, J.

Dominic J. Morgan, *pro se*
PO Box 1011
Marlton, NJ 08053
(610) 364-3367

HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
ANITA NEVYAS-WALLACE, M.D., and	:	TRIAL DIVISION
NEVYAS EYE ASSOCIATES, P.C.,	:	Philadelphia County
Plaintiffs	:	NOVEMBER TERM, 2003
	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	Control Number 01-09062101
STEVEN A FRIEDMAN	:	Jury Trial demanded on Counterclaim
Defendants	:	

PRO SE DEFENDANT MORGAN'S RESPONSE TO PLAINTIFFS' MOTION FOR INTERLOCUTORY APPEAL

1. Denied. Only defendant Morgan published, and he published factual information.
2. Denied. Plaintiffs misrepresented defendant Morgan's publication.
3. Admitted.
- 4-14. Denied. Plaintiffs' statements are either conclusion of law or speculation, or both, for which no response is needed from defendant Morgan.

WHEREFORE defendant Morgan moves this Honorable Court deny Plaintiffs' Motion for Interlocutory Appeal.

Respectfully submitted,



Dominic J. Morgan

Dominic J. Morgan, *pro se*
PO Box 1011
Marlton, NJ 08053
(610) 364-3367

HERBERT J. NEVYAS, M.D., and	:	COURT OF COMMON PLEAS
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NEVYAS EYE ASSOCIATES, P.C.,	:	Philadelphia County
Plaintiffs	:	NOVEMBER TERM, 2003
	:	NO. 946
vs.	:	
DOMINIC MORGAN, and	:	Control Number <u>01-09111466</u>
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Defendants	:	

**PRO SE DEFENDANT MORGAN’S MEMORANDUM LAW IN SUPPORT OF HIS
RESPONSE TO PLAINTIFFS’ MOTION FOR INTERLOCUTORY APPEAL**

ARGUMENT:

This Court’s October 4, 2009 Order complies with the Superior Court remanding this case “for further proceedings consistent with this Opinion,” and does not abuse discretion. *Nevyas et al v. Morgan and Friedman*, 921 A.2d 8 at ¶31, 2007 PA Super 66.

Defendant Morgan incorporates herein by reference the Argument in Defendant Friedman’s Memorandum of Law in Support of Friedman’s Response to Plaintiffs’ Motion for Interlocutory Appeal, and adds that *the Third Circuit has a practical test to determine what is a controlling issue of law:*

A. Controlling Question of Law

... In order to determine if an issue presents a controlling question of law, the focus is on whether a different resolution of the issue would eliminate the need for trial. *Id.*; see *Giansante v. Allan Kanner & Associates, P.C.*, No.94-1770, 1994 WL 630209, at *2 (E.D.Pa. Nov. 3, 1994). *Fox v. Horn*, Not Reported in F. Supp.2d, 2000 WL 288388 at p. 2 (E.D. Pa., 2000, underlining added).

Plaintiffs' instant motion does not claim that this Court's Order eliminates the need for trial, but only that this Court's Order makes plaintiffs' success at trial more difficult.

According to plaintiffs' argument, almost anything a judge orders is a "controlling issue of law" and subject to piecemeal appeal, including defendant Morgan's *unopposed* cross-motions currently before this Court. ¹

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- ¹ The *unopposed* proposed order for defendant Morgan's cross-motions is:
1. Plaintiffs are censured for ignoring Judge Sylvester's instructions.
 2. Plaintiffs are censured for filing an erroneous federal lawsuit.
 3. Plaintiffs are censured for wasting court time, and the claims against defendant Friedman are dismissed.
 4. Plaintiffs are censured for wasting court time, and the claims against defendant Friedman are dismissed.
 5. Plaintiffs are censured for subverting this court's orders about adding a defendant while restricted to not otherwise amending the complaint, and claims that Morgan conspired with Friedman are stricken.
 6. The two orders decided while the case was officially in abeyance are rescinded and vacated.
 7. Judgment on the Pleadings is granted and the case against defendant Morgan is dismissed.
 8. [not applicable]
 9. A Compulsory Nonsuit or Judgment of *Non Pros*, and/or Motion for Judgment on the Pleadings; and/or Motion for Summary Judgement to Counts I and II of Plaintiffs' Amended Complaint is granted.
 10. A Compulsory Nonsuit or Judgment of *Non Pros*, and/or Motion for Judgment on the Pleadings; and/or Motion for Summary Judgement to Counts I and II of Plaintiffs' Amended Complaint is granted.
 11. The defamation suit against Morgan is dismissed.
 12. The defamation suit against Morgan is dismissed.
 13. The defamation suit against Morgan is dismissed.
 14. The Nevyas plaintiffs are at least limited purpose public figures, and acts of negligence alone do not make defendant Morgan liable for defamation.
 15. Plaintiffs are censured for swearing falsely, and not producing documents.
 16. Plaintiffs are censured for wasting court time.

CONCLUSION:

This Court's October 4, 2009 Order complies with the Superior Court remand and does not abuse discretion. Defendant Morgan moves this Honorable Court deny Plaintiffs' Motion.

VERIFICATION:

I, Dominic J. Morgan, defendant *pro se* verify these statements to be true, and understand that these statements are made subject to penalties of 18 Pa.C.S. Sec. 4904 relating to unsworn falsification to authorities.

CERTIFICATE OF SERVICE:

I certify that a true and correct copy of the attached document has been e-mailed or mailed first class prepaid to the persons listed below on the date listed below:

Leon Silverman, Esquire
Stein & Silverman, P.C.
230 South Broad Street, 18TH Floor
Philadelphia, PA. 19102

Maureen Fitzgerald, Esquire
Eckert Seamans Cherin & Mellott, LLC
2 Liberty Place
50 South 16th Street - 22nd Floor
Philadelphia, PA 19102
mfitzgerald@eckertseamans.com

Respectfully submitted,



Dated December 2, 2009

Dominic J. Morgan, *pro se*