Notice

of

Nonappearance

by

Dan Meador

Notice of Nonappearance

Dan Meador; Jan. 21, 1999

Open mouth, insert foot, in my reply to Mr. Stewart (I spelled his name with an ending "d" I need to apologize for), I mentioned the "Notice of Nonappearance". Evidently more people read messages sent via the discussion groups than I realized, as a swarm have asked for the notice of nonappearance I developed and Gail and I used in three civil actions. Some specifically asked for the 2-page notice of nonappearance Don used, but I don't feel I can send actual case information around as we don't know for certain that it will be successful. I didn't intent to share the form in open discussion until we secured actual judicial remedies, but it is an interesting instrument in that it puts the onus back on the plaintiff, and so many people have asked for it that I just as well introduce it in the mix. Maybe others who have experience with it will add to understanding, and might improve it with details that haven't occurred to me.

While I was at FMC-Lexington, I received variations of three different notices of nonappearance from three different sources, and had the opportunity to study the instrument in American Jurisprudence. Am. Jur. discussion I had available treated only the Federal side. It appeared that that the notice of nonappearance can be used after judgment as well as at the on-set and in the course of a case. It is strictly a defensive action intended to abort suit, administrative initiatives, etc. If it works on the Federal side, it also works on the State side.

The notices of nonappearance I saw were naked. They didn't incorporate authority other than a disclaimer: "I am John Doe, these papers made out to JOHN DOE were served in error, so I'm returning them to the court."

If you employ an attorney, he is required to file a "Notice of Appearance", and thereafter becomes "attorney of record." If you enter a pleading, you make an appearance, and the fact that you engaged the case to traverse issues is your factual appearance. If you ask the court to do something, to rule on points of law, fact, etc., issue orders, or whatever, you "appear" and have therefore submitted to jurisdiction of the court. The "Notice of Nonappearance" simply informs the court that you aren't going to be there, and because the service was fraudulent or in error, you are returning the papers intended for JOHN DOE. In a sense, the notice of nonappearance is a courtesy, a "special appearance", that aids the court in determining whether or not essentials necessary to proceed in a case or controversy are present. The first matter at issue, of course, is having proper parties present.

As we get into the discussion, I need to issue a caution: Use the strategy discussed here at your own risk, I am not an attorney at law. What I have to say about legal instruments is my considered opinion, nothing more, so anyone who chooses to employ tactics and instruments Gail and I have used, or that others who aren't attorneys have used, does so at his or her own risk and possible peril.

The common element for virtually all "statutory" State courts and private United States District Courts is that attorneys at law and guberment prosecutors will proceed in the name of a corporate fiction against a corporate fiction, i.e., UNITED STATES OF AMERICA vs. JOHN DOE, or THE FIRST BANK OF FRAUD vs. JOHN DOE.

The first, most obvious question, "Who is JOHN DOE?"

The model I'm going to construct here doesn't call on outside evidence, but when I was considering approaches, the thought came to mind that we might make a good faith effort to help the plaintiff locate JOHN DOE. To prove who we respectively are, we have birth certificates, John Doe, not JOHN DOE -- so certified copies of those can be attached as exhibits. However, we went a step further: We wrote to the Secretary of State to request a records search for JOHN DOE or any variation thereof that might be registered as a corporation, trust, or any similar entity to engage in business or other enterprise in Oklahoma. Searches cost $10.00 each, and to secure a certified letter telling us that no such entity was found (State seal on Secretary of State official letterhead), it will cost an additional $20.00 each. We simply attached the records search printout declaring no such entity is registered with the Secretary of State. We elected not to use birth certificates as an "affidavit" (sworn statement) must be accepted as true unless there is evidence to the contrary. If two or more people are named in the litigation, each must effect an affidavit to attach to or incorporated in the body of the notice of nonappearance.

We know where the bogus legal fiction is, when John Doe was born, the birth certificate his parents filled out was registered with the State bureau of vital statistics; that's the birth certificate we have a copy of, then the State department of commerce effected a second "birth certificate" in the name of JOHN DOE, the second, hidden certificate serves as a security traded in international markets. JOHN DOE is a State, and implicitly, "UNITED STATES OF AMERICA" chattel asset. But we don't have to tell the good people at the courthouse that we know, and we know that they know about this hidden JOHN DOE. If they want to drag the JOHN DOE security out and show how the "UNITED STATES OF AMERICA" has perfected a lien against the corporate fiction, we want the "claim" put in record, comment not intended as an aspersion against my Hispanic friends, but I'm willing to play Mexican Sweat on that deal! So we're going to call their bluff: "Put up or shut up, Bubba!"

In order to demonstrate the necessity of proper names, I'm going to cite from the Oklahoma Statutes Annotated (O.S.Ann.), in Title 12, which is the Oklahoma code of civil procedure. The section is 12 O.S.Ann. ß 51, Presumption of identity:

"In all instruments or court proceedings and decrees affecting the title of real estate, which have been recorded or entered for a period of ten (10) years prior to a date six (6) months after the effective date of this act, and thereafter when they shall have been recorded or entered for a period of ten (10) years, in which any of the following variations in names appear, to wit: (a) where in one instance a Christian name or names of a person is or are used, and in another instance the initial letter or letters only of any such Christian name or names is or are used but the surnames are the same or idem sonans (b) where in one instance a Christian name or initial letter is used, and in another instance is omitted, but in both instances the other Christian names or initial letters correspond and the surnames are the same or idem sonans, and no action shall have been instituted within said period in a court having jurisdiction seeking to assert an interest in or lien upon such real estate by reason of the invalidity of one of such instruments, it shall be presumed that the person referred to by one of such variant names is the same as the person referred to by the otherÖ"

I'm not going to reproduce the whole section, but basically, it gives a remedy for adverse possession via fraud, exactly what we're dealing with when a corporate name is substituted for the proper Christian and surnames. The window of opportunity is open for ten years after judgment. However, when you demonstrate fraud and lack of subject matter jurisdiction, the window of opportunity is never closed. We can demonstrate fraud and lack of subject matter jurisdiction in real property and many other cases, but that's beyond current focus. We're addressing only the defense instrument: If you hire an attorney, he has to give the court and opposing counsel notice he is going to appear, so we simply want to give the court and opposing counsel notice that they have the wrong turkey, we're not going to appear. The section above clearly states that a defendant must be sued or prosecuted in his or her proper Christian & surnames, the CORPORATE NAME is a fraud. So we have support for our contention that we must be sued or prosecuted in our real names. Therefore, we want to tell whoever elects to sue or prosecute a corporate fiction, "Here's your papers, Charlie, go find another sucker!"

In the example, I'm going to cite the statutory authority from the Oklahoma Statutes Annotated, so anyone who wishes to take this approach in his or her State should look up corresponding provisions. For a Federal case, look at F.R.Civ.P., Rule 9(a), Pleading Special Matters, and (b), Fraud, Mistake, Condition of Mind (also, F.R.Crim.P., Rule 9(a) & (b)).

The simplified version my friend employed, where he didn't have his birth certificate available, and didn't want to take time to order a records check from the Secretary of State, is on this order (double space text):

IN THE DISTRICT COURT OF HOPE COUNTY,
STATE OF JUSTICE

THE FIRST BANK OF FRAUD,	)	) Plaintiff,
)	) vs.	) Case No. Civ.-98-789
) JOHN DOE,	)	) Defendant.
)		

Notice of Nonappearance

Now comes John Doe, as myself in proper person, by special and not general appearance, to return papers erroneously and fraudulently served relating to the above-styled case, the papers including a PETITION FOR FORECLOSURE and a SUMMONS, the latter dated the 29th day of December in the year 1998, the action issuing against an unknown and unidentified legal fiction, JOHN DOE.

Affidavit of Fact & Truth

My proper Christian and surname are John Doe; I was born live to Jake and Anna Doe on the 18th day of March in the year 1950 in the community of Buck Tussle, county of Hope County, State of Justice; I am commonly known as and conduct most private affairs merely as J. Doe.

I do not know who or what the legal fiction JOHN DOE is, nor do I serve in the capacity of trustee, administrator, fiscal agent, or in any other fiduciary capacity for the said JOHN DOE.

Under penalties of perjury, I attest that to the best of my current knowledge, understanding and belief, all matters of fact herein are accurate and true, so help me God.

Signature & date [it wouldn't hurt to have this certified by a notary public]

Law Governing

12 O.S.Ann. ß 683. Dismissal of action, grounds and time: An action may be dismissed, without prejudice to a future action: Third. By the court, for the want of necessary parties.

Under penalties of perjury, I attest that to the best of my current knowledge, understanding and belief, all matters of fact and law contained herein are accurate and true, so help me God.

Signature & date (put address & telephone number under name below the signature line here)

Attachments

1. Original PETITION FOR FORECLOSURE & exhibits 2. Original SUMMONS, dated the 29th day of December, 1988

Notice of Service

I John Doe certify that on the date set out below, I am mailing by first class post, with sufficient postage paid to assure delivery, a true and correct copy of this Notice of Nonappearance and attending attachments to counsel for plaintiff:

Joe Law, Bar #9876 No. 1 Harlot Lane Buck Tussle, Justice 12345

Signature & date

If a case is being opened against an adverse judgment, the notice of nonappearance presents an inherent problem: Theoretically, a judge would have to call a hearing in order to determine validity of the notice of nonappearance, and to vacate judgment as being void. Where the court has never secured jurisdiction, it's a different matter. If the opposing attorney wants a hearing, the judge is going to say, "Well, Joe, what are we going to hear? Just leave it set. I'll dispose of the case on the disposal docket when it comes up, or if you want to amend you suitÖ"

Do they want to amend to sue or prosecute John Doe in a statutory or private court? To the best of my knowledge, it hasn't been done yet. If the plaintiff hasn't proven jurisdiction of the court over a proper defendant, there is no need for a hearing. But if an old case is opened, there is a possibility that the defendant who opens it will have to schedule a hearing to get the judgment declared void and vacated. Then you're back into the same round you were probably in before, back in front of the same judge, and he isn't going to be a happy camper. You can bet he will use every trick in the book to get to you.

It so happened that the same judge sat on the two cases we were most interested in, and we had quite a round with him, so the same day we filed notices of nonappearance, we submitted a letter claiming bias and prejudice and demanded that he recuse himself from all existing and future cases we are or might be involved in. Copies of the letter were sent to the chief judge of the district, and to the State court administrator, who has offices at the State Capitol. Then within a few days we sent administrative notices of intent to file complaints against the bank to the chief executive officer at the local branch. In other words, we took a three-pronged approach.

We've done some preliminary research on banks that our six-member advisory group and several other people are looking over, so I don't want to get into particulars concerning banks here. I might say that when a Federal Reserve-member or FDIC-insured financial institution engages lending activity, or acts in relation to taxes, it is acting as fiscal agent of the United States. For purposes here, it is enough that initial actions against JOHN DOE were fraud, and that the Oklahoma Constitution secures due process in the course of the common law, where the bank secured foreclosure and seizure against us in the framework of the Uniform Commercial Code, which proceeds in the course of the civil law, equity, admiralty, and maritime jurisdictions. Needless to say, the bank has not timely responded to the notices of nonappearance or the administrative notice of intent to file complaints. Both sides have technically been defaulted.

Too few people grasp that the "legal" system, as it were, is adversarial in nature. Maybe they understand that, but they don't necessarily understand how it works: If you have a cause of action, or a defense, your right of action must be taken within certain timeframes or you lose the right of action. For example, under Oklahoma law, a plaintiff files an action, then the defendant must answer within 20 days of service. Thereafter, both plaintiff and defendant must respond to adversarial pleadings within 15 days. If one or the other defaults (fails to respond), the other has the right to take judgment, move for trial or whatever. In our situation, the bank has failed to respond, to rebut matters of law or fact in our notice of nonappearance and the administrative notice of intent to file complaints, so we now have a choice of action, and will not secure lawful remedies until we take further action.

There are several choices: One is to submit a default notice in the original cases and submit an order to vacate judg-

ment for a replacement judge to sign. Our original judge has defaulted, failed to controvert fact and law, in our notice to recuse, so he will put himself in jeopardy if he attempts to preside in either of the cases. But there is a certain element of risk there that I don't particularly like even if we have another judge. A second option would be to sue the bank in an original action to overcome adverse possession of the property and to secure damages. But I'm presently inclined in the direction of a third alternative which Howard Griswald studied extensively a few years ago: File an ex parte action for declaratory judgment to declare the foreclosure void and thereby nullify orders of the court. Nullification of the judgment simultaneously nullifies the sale, and certifies our deed as the superior claim, the adverse possession deed (sheriff's deed) is null and void.

The beauty of the declaratory judgment is that both administrative and judicial defaults can be put into evidence to prove fraud, deprivation of constitutionally secured due process of law, etc., etc. The object of the ex parte action is simply to gain possession of what is ours; the right to secure compensation for damages and other loss can be reserved.

The "Ex parte, John Doe" action for declaratory judgment is a unilateral suit to determine rights, the First Bank of Fraud has already had the opportunity to rebut in judicial and administrative forums, and by saying nothing, confessed to fraud and depravation of constitutionally secured due process of law. All the First Bank of Fraud and other interested parties are due is courtesy service, the current squatter is an interested party, but has no cause of action as you are attacking a judgment that is antecedent to his interest. He might get mad as the devil, but his course of action must be against the First Bank of Fraud, not John Doe. Whether he made the purchase in good faith or not, he cannot benefit from fraud effected by the court and the third party.

The process from this point forward will be interesting, we haven't decided how to proceed. I'm simply sharing possibilities, everything addressed here, including the notice of nonappearance, needs further study before being generally used.

This is one of the primary reasons Gail established the Dan Meador Legal Fund. The nation's patriot researchers needed a vehicle where law resources are made available, research on subjects can be compiled, and remedies such as the notice of nonappearance, the declaratory judgment, etc., can be researched, proven, and made generally available. Several researchers have committed to participate in the forum, so we're looking for good things in the future and hope others will join in the effort with funding and research participation.