

IN THE SUPREME COURT OF THE UNITED STATES

Case No. 18-6003

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DAVID KAVANDI - Petitioner

v.

TIME WARNER CABLE, INC., ET. AL. - Respondents

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ON PETITION FOR WRIT OF CERTIORARIY TO  
THE SUPREME COURT OF CALIFORNIA

PETITION FOR REHEARING

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Petitioner *In Propria Persona*

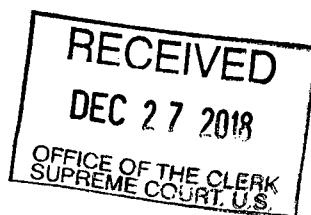


	Table of Content	Page No.
I.	PETITION FOR REHEARING .....	4
II.	REASON FOR GRANTING .....	4
III.	BREACH OF FIDUCIARY DUTY.....	5
IV.	CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	5
V.	CONCLUSION .....	6
VI.	CERTIFICATE OF PARTY.....	7

	Table of Authorities	Page No.
<u>Cases</u>		
<i>Griffin v. Illinois</i> (1956) 351 U.S. 12, 18, 76 S. Ct. 585....	5,7	
<i>Hollywood Park Land Co. v. Golden State Transp. Fin. Corp.</i> (2009) 178 Cal.App.4th 924, 939 .....	5,7	
<i>Mirabito v. Liccardo</i> (1992) 4 Cal.App.4 <sup>th</sup> 41, 45.		
<i>Pierce v. Lyman</i> (1991) 1 Cal.App.4 <sup>th</sup> 1093, 1101		

## PETITION FOR REHEARING

The petitioner respectfully moves this Court for an order (1) vacating its order of November 13, 2018, which denied the petition for writ of certiorari filed by the petitioner and (2) granting the petition for writ of certiorari. The grounds for rehearing are stated below.

### REASON FOR GRANTING REHEARING

1. The attorney defrauded his client by promising to represent him but did not do so, further asked the client to execute an unconscionable retainer fee agreement allowing the attorney (not the client) to decide whether to appeal the matter and moreover violated his fiduciary duty by abandoning his client.

### BREACH OF FIDUCIARY DUTY

The elements of a cause of action for breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach. *Pierce v. Lyman* (1991) 1 Cal.App.4<sup>th</sup> 1093, 1101. “The scope of an attorney’s fiduciary duty may be determined as a matter of law based on the Rules of Professional Conduct which, ‘together with statutes and general principles relating to other fiduciary relationships, all help define the duty components of the fiduciary duty which an attorney owes to his [or her] client.’ (*Mirabito v. Liccardo* (1992) 4 Cal.App.4<sup>th</sup> 41, 45.)

Here, the petitioner retained his trial attorney to represent him at the appeal. The attorney had the client sign an unconscionable agreement whereby the attorney (not the

client) would decide whether to appeal the matter. Further, the attorney intentionally failed to sign the fee agreement. Moreover, the attorney knew that the client was in depression and took advantage of the client by having the client sign a fee agreement without understanding the terms. Lastly, the attorney abandoned the client, failed to represent him in the appeal, failed to file a simple document - the case information statement. As a result, the court of appeal dismissed the appeal because the case information statement was not filed.

It is unjust for the petitioner to be denied his right to appeal. It is unfair to deny the petitioner his day in court for his mistake, inadvertence, surprise, or excusable neglect of his attorney. Justice requires that the petitioner have his day in court based on his right to appeal.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case involves both federal and state court cases and statutes. The federal Constitution does not require state to provide appellate courts or right to appellate review. *Griffin v. Illinois* (1956) 351 U.S. 12, 18, 76 S. Ct. 585. However, California parties have a right to appeal the trial court's decisions. *Hollywood Park Land Co. v. Golden State Transp. Fin. Corp.* (2009) 178 Cal.App.4th 924, 939 (right to appeal is wholly statutory). Petitioner's Due Process rights (5th & 14th Amendments) are violated when his appeal - a right granted to him by California - was dismissed.

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## CONCLUSION

For the foregoing reasons, and for the reasons stated in the petition for writ of certiorari, the petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition for a writ of certiorari and review the judgment below.

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December 04, 2018

Respectfully submitted by:



David Kavandi  
Petitioner