

APPLICATION NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DON MITCHELL WILBORN, an individual,
Petitioner,

v.

ROBERT B. TUTEN, an individual, and
TUTEN LAW OFFICES, an Alabama Legal Professional Corporation,
Respondents.

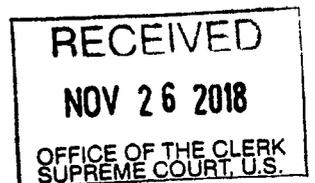
ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT
COURT OF APPEALS

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT
OF CERTIORARI (SUP. CT. R. 13.5 and 30.3)

TO: THE HONORABLE CLARENCE THOMAS

ASSOCIATE JUSTICE FOR THE ELEVENTH CIRCUIT

Don Mitchell Wilborn, appearing pro se, respectfully
moves this honorable Court, pursuant to Rules 13.5 and 30.3,
for an order granting an extension of time to file a petition
for writ of certiorari, extending the time sixty (60) days,
so that the time for filing of the petition for a writ of
certiorari will expire on January 26, 2019. As grounds in



support, Mr. Wilborn states:

On or about December 22, 2015, after the filing of the Complaint, but before the magistrate's Order to Show Cause, the statute of limitations expired for bringing this suit for legal malpractice under the Alabama Legal Services Liability Act, Ala. Code § 6-5-574(a) (1975).

"[O]n [or about] August 5, 2016, the magistrate judge notified the Plaintiff that the face of his Complaint was insufficient to meet his burden to establish federal question or diversity jurisdiction." Wilborn v. Tuten, No. 4:16-cv-106-VEH, 2017 U.S. Dist. LEXIS 107659 (N.D. Ala. July 12, 2017) (ECF No. 16). On or about August 17, 2016, Mr. Wilborn filed his First Amended Complaint. Id.; (ECF No. 17).

"Additionally, on September 2, 2016, Mr. Wilborn filed a response to Order to Show Cause. (ECF No. 19). Thereafter, Mr. Wilborn filed three responses. (ECF Nos. 20, 21, and 22)." While those three responses were initially deemed "untimely," on July 12, 2017, the district court granted Mr. Wilborn's Motion for Leave to Supplement which "request[ed] that the documents filed on January 9, March 8, and April 19, 2017, (ECF Nos. 20-22), be accepted for consideration as part of his timely-filed response to the Order to Show Cause, (ECF No. 19)." Wilborn v. Tuten, No. 4:16-cv-106-VEH, 2017 U.S. Dist. LEXIS 107659 (N.D. Ala. July 12, 2017) (ECF No. 33 at 2). On July 12, 2017, "[t]he Court EXPRESSLY f[ou]nd that the Plaintiff ha[d] failed to establish that this Court has

jurisdiction over this matter" and dismissed the case without prejudice. Id. (Capitals in original; alterations added).

On June 15, 2018, without providing Mr. Wilborn an opportunity to file an opening brief, the Eleventh Circuit Court of Appeals denied his motion for leave to proceed in forma pauperis and dismissed his appeal. Wilborn v. Tuten, No. 17-13554-B (11th Cir.). On August 28, 2018, the Eleventh Circuit Court of Appeals denied Mr. Wilborn's motion for reconsideration. Id.

In dismissing Mr. Wilborn's Complaint, and in finding Mr. Wilborn's appeal "frivolous," both the district court and the Eleventh Circuit Court of Appeals wholly ignored the affidavits/declarations and other documentary evidence provided by Mr. Wilborn in support of jurisdiction. Moreover, the lower courts also ignored that the Alabama Legal Services Liability Act ("ALSLA") provides that "the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery." Ala. Code § 6-5-574(a) (1975).

Mr. Wilborn is currently incarcerated in the Federal Bureau of Prisons. Given security- and hurricane-related lockdowns and closures of the FCI Estill Education Department, which houses the Electronic Law Library ("ELL"), as well as inmate equipment, i.e., typewriters, word processors, copy machine, etc., during the previous 90-day period, Mr. Wilborn is unable to complete his petition for a writ of certiorari

within the time allowed by Rule 13.1. Moreover, Mr. Wilborn has a ninth-grade education and requires the assistance of a fellow inmate in order to adequately access this Court. See Johnson v. Avery, 393 U.S. 483 (1969). Inmates are only authorized to assist one another in the FCI Estill Education Department. See Program Statement 1315.07, Legal Activities, Inmate, available free of charge at:

www.bop.gov/policy/progstat/1315_07.pdf.

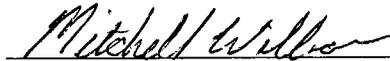
Mr. Wilborn wishes to ask this Court, inter alia, to resolve the confusion among the Court of Appeals regarding the citizenship or domicile of incarcerated individuals in relation to the jurisdiction of federal district courts. In the alternative, Mr. Wilborn seeks to ask this Court to review the lower court's failure to consider referral to a state court willing to accept the case as a matter of state law; in light of the expiration of the statute of limitations.

The functioning of the legal malpractice tribunal system, both in this case and in malpractice cases more generally, has illustrated both the propriety and the utility of acts of comity between state and federal courts. Under that system neither court purports to order actions by the other but each invites and gives effect to the other's actions pursuant to the state malpractice tribunal statute, to state decisions construing it, and to federal law, both statutory and decisional, bearing upon diversity cases. See generally Feinstein v. Massachusetts General Hospital, 643 F.2d 880

(1st Cir. 1981).

WHEREFORE, Mr. Wilborn prays this honorable Court will grant him an extension of time to, and including, January 26, 2019, within which to file his petition for a writ of certiorari.

Respectfully submitted this 9th day of November, 2018.



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