

No. 19A_____

**In the
SUPREME COURT OF THE UNITED STATES**

VALERIA CALAFIORE HEALY¹

Applicant,

v.

Anna Gatti, IQSystem Inc., IQSystem LLC, Almaviva S.P.A.,
Almawave S.R.L., and Almawave USA Inc.

**APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Pursuant to Rules 13.5 and 30.2 of this Court, Applicant Valeria Calafiore Healy (“Counsel”) respectfully requests a 60-day extension of time, up to and including July 8, 2019, within which to file her petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on November 9, 2018, en banc rehearing denied on February 7, 2019. App., *infra*, 1a-9a. The court of appeals summarily affirmed the sanctions issued against Counsel in the case she prosecuted for her client, Loop AI Labs Inc. (“Loop-AI”), in the United States District Court for the Northern District of California, Case No. 4:15-cv-798. *Id.* Unless extended, Counsel’s time for filing a petition for a writ of certiorari will expire on May 8, 2019. Counsel would invoke this Court’s jurisdiction under 28 U.S.C. § 1254(1).

¹ Counsel’s Appeal in the Ninth Circuit was filed at case number 17-15608 and consolidated with the appeal of her client, Loop AI Labs, Inc., at case number 17-15621.

Counsel respectfully requests this extension of time for the following reasons:

1. This case concerns punitive inherent power sanctions issued by the district court *sua sponte* against Counsel without *any* prior notice or opportunity to be heard, and without any finding of bad faith. The sanctions (1) revoked Counsel's *pro hac vice* admission in the Northern District of California, (2) imposed a lifetime bar on Counsel appearing before the presiding district judge, and (3) concluded that Counsel violated specific rules of ethical conduct.² App., *infra*, 34a-40a.

2. In *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. ___, 137 S. Ct. 1178 (2017), this Court held that *punitive* sanctions cannot be imposed without heightened process guarantees. *Goodyear*, 138 S. Ct. at 1186. Basic due process jurisprudence also requires a judge who wishes to sanction a lawyer *sua sponte* to first provide the lawyer notice and an opportunity to be heard.³ In this case Counsel received *no* notice or opportunity to be heard. *Compare* App., *infra*, 41a-43a and 10a-40a.

Counsel was admitted *pro hac vice* on February 25, 2015 in connection with her representation of Loop-AI. Counsel was Loop-AI's lead counsel for the duration of the action, until the case was dismissed as a sanction in an order

² When a court reaches "a legal conclusion" that a lawyer has violated "a specific rule of ethical conduct, . . . such a finding, *per se*, constitutes a sanction." *United States v. Tillman*, 756 F.3d 1144, 1150 (9th Cir. 2014).

³ *E.g.*, *In re Ruffalo*, 390 U.S. 544 (1968); *Martens v. Thomann*, 273 F.3d 159, 176–77 (2d Cir. 2001).

entered on March 9, 2017, titled “Terminating Sanctions Order” (“sanctions order”).

The order to show cause preceding the sanctions did not provide Counsel with any notice that the court was considering imposing sanctions on her. App., *infra*, 41a-43a. In addition to denying Counsel notice and an opportunity to be heard *before* issuing its sanctions order, the court denied Counsel any opportunity to respond *after* the sanctions order was issued, by declaring in the sanctions order that the court would not entertain any motion for reconsideration and that the case was closed. *Id.* at 40a.

The court of appeals summarily affirmed the sanctions against Counsel on the basis that the attorney briefed her personal defenses in Loop-AI’s response to the show-cause order and suggested that, in any event, nothing else Counsel might have presented would have made a difference. *Id.* at 8a. These findings are unsupported by anything in the record. Counsel didn’t, and couldn’t, brief personal defenses to charges of which she was wholly unaware.⁴ The show-cause order contained none of the factual allegations and legal arguments against Counsel that the court subsequently laid out in its sanctions order. And the court of appeals had no way of knowing how the charges “would have been met had

⁴ Counsel had no way to decipher the district court’s cryptic show-cause order even as it applied to her client Loop-AI. Counsel requested more information and an evidentiary hearing. The district court ignored both requests and claimed instead that “[e]verything about counsel’s response to the [show-cause order] reinforce[d] why terminating sanctions [were] necessary.” App., *infra*, 32a (emphasis added).

[they] been originally included” by the district court in the OSC. *In re Ruffalo*, 390 U.S. at 551.

The court of appeals’ reasoning renders procedural due process meaningless because it would give the lower courts free rein to dispense with due process protections at will. It is also contrary to the Ninth Circuit’s own law and the law of other Circuits, which all require strict compliance with procedural due process. *United States v. Tillman*, 756 F.3d 1144, 1150 (9th Cir. 2014); *In re Corrinet*, 645 F.3d 1141 (9th Cir. 2011); *Cole v. United States Dist. Court for the Dist. Of Idaho*, 366 F.3d 813 (9th Cir. 2004); *Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194 (9th Cir. 1999); *Martens*, 273 F.3d at 176–77; *Sec. Nat’l Bank v. Jones Day*, 800 F.3d 936, 944–45 (8th Cir. 2015) (requiring courts to “give particularized notice of the nature of the sanction it had in mind so that counsel would have a meaningful opportunity to respond”); *Saldana v. Kmart Corp.*, 260 F.3d 228 (3d Cir. 2001) (holding that counsel was “entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions”).

In addition to being issued without affording *any* procedural due process protections, the *sua sponte* sanctions against Counsel were impermissibly punitive. This is readily demonstrated by the fact that the same sanctions order in which Counsel was sanctioned also ended the case. App., *infra*, 8a. Revoking Counsel’s *pro hac vice* admission in a case the court had just ended couldn’t possibly be a remedial sanction, and therefore necessarily was punitive. The

other sanctions imposed on Counsel (a bar on future appearances and findings of ethical violations) also lacked any remedial function and served solely to punish Counsel. *Goodyear* **requires** courts that wish to issue such punitive sanctions under their inherent power to (1) make a finding of bad faith, and (2) afford heightened process—specifically, the “procedural guarantees applicable in criminal cases.” *Goodyear*, 137 S. Ct. at 1186. These requirements were violated. The court didn’t make any bad faith finding, and never notified Counsel that it was considering sanctioning her personally. The court of appeals’ affirmance of the punitive sanctions against Counsel also conflicts with controlling precedent even if viewed as a disciplinary measure against a *pro hac vice* counsel. The Northern District of California permits a presiding judge to *sanction* a lawyer if “authorized by applicable law,” but forbids a judge presiding over a case to himself *discipline* lawyers appearing before him. N.D. Cal. L.R. 11-6(a). The district court rules reserve the power to discipline attorneys, including *pro hac vice* attorneys, exclusively to the Court’s Standing Committee or the Chief Judge and in accordance with stringent confidentiality and other procedures. *Id.* This Court’s precedent requires district courts to comply strictly with their own local rules. *Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010) (“[Local] rules have ‘the force of law.’”) “Courts enforce the requirement of procedural regularity on others, and must follow those requirements themselves.” *Id.* at 184. Under these precedents, the court of appeals’ affirmance of the *sua sponte* sanctions against Counsel could not stand even as a “discipline order.”

3. This case presents important questions concerning whether an attorney admitted *pro hac vice* can be subjected to punitive sanctions imposed without *any* due process protections, and in a manner different than other members of that court's bar. Attorney sanctions implicate questions of exceptional importance because they affect a lawyer's ability to practice and impact reputation, which is one of the most valuable assets a lawyer has. Such sanctions also implicate the right of a litigant to be effectively represented by its counsel of choice.

4. Counsel respectfully requests a 60-day extension of time, up to and including July 8, 2019, within which to file her petition for a writ of certiorari. The requested extension of time is warranted in order to assure the best possible presentation of the issues in the petition to this Court and in light of Counsel's other professional obligations. As set forth in Loop-AI's concurrent Application for an extension of time, Counsel also has to prepare Loop-AI's petition for a writ of certiorari, which is also due on the same date. In addition, Counsel has several other professional commitments in other matters pending in other courts. The additional time is therefore needed to properly prepare and print the petition in this case.

5. The requested extension does not affect the Term in which the Court will hear this case, if the writ is granted, and the respondents will not be prejudiced by the granting of this application. A sixty-day extension of time,

from the current due date of May 8, 2019, to July 8, 2019, is therefore reasonable under these circumstances.

6. For all these reasons and good cause shown, it is respectfully requested that this Application for extension of time to file a petition for a writ of certiorari be granted.

Respectfully submitted.

/s/ Valeria Calafiore Healy

VALERIA CALAFIORE HEALY

HEALY LLC

154 Grand Street

New York, NY 10013

(212) 810-0377

In propria persona.

March 21, 2019.