

No. _____

In The
Supreme Court of the United States

Roda Hirananeek,

Applicant,

v.

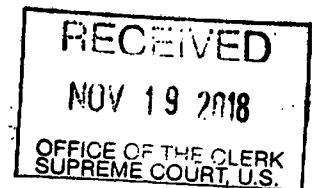
L. Michael Clark, *et al.*,

Respondents.

**MOTION TO ORDER CLERK TO FILE
PETITION FOR WRIT OF CERTIORARI,
ALTERNATIVELY, APPLICATION FOR
EXTENSION OF TIME TO FILE**

To the Honorable Elena Kagan
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit, and
Justices of The United States Supreme Court

Roda Hirananeek
C/o Adil Hirananeek
80 South Market Street
San Jose, California 95113



INTRODUCTION

88 year old disabled Applicant/petitioner-plaintiff-appellant, Ms. Roda Hiranmanek respectfully request for (1) an order directing this court clerk to perform its ministerial duty to file a timely lodged petition for certiorari, or (2) grant an extension of time to file the same. Sup. Ct. R. 13.5.

Court's clerk interpretation of the law and as to when the ninety days clock starts and on tolling appears to be wrong.

While applicant's position is backed-up by this court's cited case law precedent, the court clerk takes a mechanical ninety day math, alleging expiry on Sept. 17, 2018, disregarding the intervening events that toll the ninety day clock.

Alternatively, for good cause set forth herein, Applicant asks that this deadline be extended by sixty days to Monday, November 19, 2018¹.

BACKGROUND

This case arises from multiple causes of action, including denying 88 year old disabled applicant's requested ADA accommodations re. access to Santa Clara County California State Superior Court [the defendants/respondent].

Applicant's district court action 13-0228 survived 28 U.S.C. §1915(e) review, *and* also survived defendant's Fed. R. Civ. Proc. Rule 12(b) dismissal motion.

Unknown to applicant, California's state and federal judiciary is heavily controlled by the California Judicial Council ["CJC"], who is the de-facto defendant.

Unhappy with the applicant's federal action surviving two dismissals above,

¹ Pursuant to Supreme Court Rule 30.1, one day was added to this calculation to move the due date to the "next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed".

CJC recruited and tampered with this case by transferring it to a Federal Judge² with serious conflict of interest; e.g. whose last employment before being a federal judge was with the defendant Santa Clara County State Superior Court, and whose spouse still earned living from the defendant, so admitted by this proxy judge.

Worse, applicant's federal action was thwarted where district court orders were admittedly authored by CJC/their agents, even so admitted by the Federal Judge, nor denying that charge on court record.

Applicant found out that this Federal Judge was repeatedly recruited to cover up and torpedo other similar complaints against public/state authorities.

By Oct. 31, 2016, under public pressure, this Federal Judge was no longer on the bench, but not before damaging applicant's case, leaving appeal as sole remedy.

As the appealable orders arose at different time periods, applicant and co-appellant Adil Hiranmanek (also ADA disabled) lodged three separate notices of appeal with Ninth Circuit, nos. 17-15086, 17-15087, 17-16436. This application concerns the first two appeals, i.e. 17-15086-87 because the last one, 17-16436 is still an active appeal with the Ninth Circuit, although limited in its scope.

Mar. 27, 2018 appellate order set April 20, 2018 date for opening brief, by which date appellants lodged their opening brief & motion to permit oversized brief.

On May 16, 2018 defendants/respondent filed a motion to dismiss appeal, or grant them five months extension to file answering brief.

On June 19, 2018, CJC corrupted Ninth Circuit staff attorney, Delaney Anderson, whose "DA" initials appear at the bottom of the order, dismissed the two

² Ronald McLeod Whyte

15086 & 87 appeals without good cause, see Appendix A to Certiorari Petition.

Shocked as to appeals were dismissed, the next day on June 20, 2018 co-appellant contacted Chief Clerk of Ninth Circuit, Molly Dwyer see Exhibit A, who asked applicant/co-appellant to file reconsideration/vacate motions

Applicant moved stating she has never been served with the June 19, 2018 order, which is even true to date, as applicant is not registered as an electronic filer

Both appellant's motions were promptly filed, and per Ninth Circuit's Court, see Exhibit B, "In the meantime - I strongly suggest that you submit a brief that conforms to the rules [i.e. not oversized] by the end of the 14 day time period to move for reconsideration". Although not mandatory, in two weeks, opening briefs within 14,000 words limit were filed, separately, for applicant, and co-appellant.

On July 16, 2018, the same corrupted Ninth Circuit Delaney Anderson staff attorney issued an order stating "Appellant's motion to vacate the June 19, 2018 order is denied", see Appendix B to Petition of Certiorari. Same day, appellants filed Petition for Rehearing With Suggestion for Rehearing En Banc.

On July 26, 2018 a Motion to Remand due to "fraud on the court" was filed.

On Sep. 7, 2018, the same corrupted Ninth Circuit Delaney Anderson staff attorney ordered that "the [Ninth District] court will take no action on appellants' petition for rehearing and rehearing en banc, and motion for remand", Appdx.C.

Around Sep. 8, 2018 applicant mailed a short Petition For Certiorari, see Exhibit D, postage meter date. Not hearing from this court, multiple calls/messages were left.

This court's clerk Mr. Higgins Jr.'s, Oct. 19, 2018 letter argues that petition

is out of time because it reached this court after Sept. 17, 2018, counting 90 days from the initial June 19, 2018 order, ignoring tolling due to intervening motions.

After a few conversations with Mr. Jeffrey Atkins of this court, the latter stated that the only way the court clerk will file the petition for writ of certiorari is if this court orders them to do so, or alternatively grants extension.

JURISDICTION

Per Article III of U.S. Constitution, 28 U. S. C. § 1254(1), and §1651.

REASONS TO ORDER CLERK TO FILE PETITION

GROUND #1: Motion For Reconsideration/Vacate, Tolls Clock

Per U.S. Supreme Court Rule 13.1, the 90 day clock starts “after entry of the judgment”. Here, there is no entry of judgment, but 6/19/2018 dismissal of appeal, based on appellees motion to dismiss-Petition-Appendix A. The e-filed dismissal order was never served on 88 year old disabled applicant, not registered for e-filing.

Per Ninth Circuit’s direction, both appellants filed timely motion(s) to reconsider/vacate dismissal, co-appellant on 6/20/2018, and applicant on 7/3/2018-arguing no-service. On 7/16/2018 9th Circuit denied the motions-Petition-Appendix B

A motion attacking the judgment tolls the time to appeal that judgment, see *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 149, 100 S. Ct. 2069, 2079, 65 L. Ed. 2d 10 (1980) (despite motion for new trial attacking only a sub-set of the issues). “[T]he Court held that the motion for partial reconsideration tolled section 2101 for the entire case. *Id.* at 150, 100 S.Ct. at 2079.”, *Clarke v. United States*, 898 F.2d 162, 164 (D.C. Cir. 1990).

Same “Appellees’ motion for reconsideration of October 3 suspended the

finality of the judgment of September 28 until the District Court's denial of the motion on October 4 restored it. Time for appeal thus began to run from October 4 and the notice of appeal filed November 29 was timely", *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 445–46, 94 S. Ct. 656, 660, 38 L. Ed. 2d 635 (1974)

Also "This conclusion is firmly rooted in Supreme Court precedent. As the Court stated in *FCC v. League of Women Voters*, 468 U.S. 364, 104 S.Ct. 3106, 82 L.Ed.2d 278 (1984):

We have observed ... that the filing of a petition for rehearing or a motion to amend or alter the judgment 'suspend[s] the finality of the [original] judgment,' thereby extending the time for filing a notice of appeal 'until [the lower court's] denial of the motion ... restores' that finality

Id. at 373 n. 10, 104 S.Ct. at 3113 n. 10 (quoting *Communist Party v. Whitcomb*, 414 U.S. 441, 445, 94 S.Ct. 656, 659, 38 L.Ed.2d 635 (1974) (Court's emendations)) (emphasis added); see also *Leishman v. Associated Electric Co.*, 318 U.S. 203, 205, (1943) (noting "the general rule that where a petition for rehearing, a motion for a new trial, or a motion to vacate, amend, or modify a judgment is seasonably made and entertained, the time for appeal does not begin to run until the disposition of the motion." (emphasis added)). In other words, for tolling purposes, the caption of the pleading is immaterial so long as the pleading seeks "an 'alteration of the rights adjudicated.' " *United States v. Dieter*, 429 U.S. 6, 8–9, (1976) (quoting *Pink*, 317 U.S. at 266, 63 S.Ct. at 234)", *Clarke v. United States*, 898 F.2d 162, 164 (D.C. Cir. 1990)

Since 90 day clock starts from 7/16/2018, denial of motion, petition is timely.

GROUND #2: Timely Petition For Rehearing Tolls The Clock

Separately, on 7/16/2018, the very day, appellants motions for reconsideration

was denied, a petition for rehearing ["PFR"] was filed. On 9/7/2018 9th Cir. rejected/took no action on PFR; see Appendix D with applicant's Oct. 26, 2018 letter.

"Since *Department of Banking of Nebraska v. Pink*, 317 U.S. 264, 63 S.Ct. 233, 87 L.Ed. 254 (1942), it has been the consistent practice of the Court to treat petitions for rehearing timely presented to the Courts of Appeals as tolling the start of the period in which a petition for certiorari must be sought As *46 was explained in *Pink*, "[a] timely petition for rehearing ... operates to suspend the finality of the ... court's judgment, pending the court's further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties." *Id.*, at 266, 63 S.Ct., at 234", *Missouri v. Jenkins*, 495 U.S. 33, 45, (1990)

"[Recalling mandate] suspended the judgment's finality under § 2101(c), just as a timely filed rehearing petition would", *Hibbs v. Winn*, 542 U.S. 88, 97, (2004)

See also, timely filing of Petition for Rehearing tolls 90 day period, see Period ran out because "Wapnick failed to move for reconsideration, and no petition for certiorari was filed within the prescribed 90-day period. See 28 U.S.C. § 2101(c); Sup.Ct. R. 13.1", *Wapnick v. Comm'r*, 365 F.3d 131, 132 (2d Cir. 2004)

Since Petition for rehearing tolls time until rejected on 9/7/2018.

GROUND #3: None of the orders, including the dismissal order, have ever been served on the applicant, even as of to date.

GROUND #4: The postage meter/mailing date of the Petition for writ of certiorari is Sep. 8, 2018, see Exhibit D. Per this court clerk Mr. Atkins, it is not unusual for mail to take several weeks from west coast to east coast, and then sorted and delivered to the clerk, given the heavy mail traffic at this court.

To sum, for any one of the four separate grounds, certiorari petition is timely.

REASONS FOR ALTERNATIVE EXTENSION RELIEF

Supreme Court Rule 13.5 provides that “An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are as follows:

1. Pro se applicant fell victim to the Ninth Circuit trap. Post June 19, 2018 order, per Exhibit A to C, Ninth Circuit asked appellants to file motion for reconsideration/vacate giving hope that dismissal would be vacated/reconsidered.

2. Fed. Rules of Appellate Procedure [“FRAP”] authorizes motions for reconsideration. In fact, 9th Circuit Rule 27-10(a) authorizes such motions within 14 days from June 19, 2018 order, and both appellant’s motions were filed within 14 days, June 20, 2018 and July 3, 2018 respectively.

Asking pro se, 88 year old disabled applicant to file a motion for reconsideration/vacate, while Ninth Circuit runs the clock down on certiorari petition placed applicant in a no-win, impossible situation. Applicant’s certiorari petition was unripe until the decision on reconsideration/vacate motion.

To the extent the ninety day clock started from June 19, 2018, Ninth Circuit deceived appellants into false belief, and ran that clock down, leaving applicant with practically no time, and at the mercy of mail delay.

3. The procedural *timing* of the orders also made the schedule for certiorari petition extremely compressed, for e.g. if applicant had not fallen victim to

the trap above of running down the clock, she would not be prone to the risk of mailing the petition on Sep. 8, 2018 risking non-receipt before Sep. 17, 2018, given the mail time from west coast to east coast, weekend and holidays, and time it takes for court's heavy workload of mail to be sorted and sent to the clerk. This tight and demanding schedule needlessly put applicant at significant disadvantage. This delayed schedule further hampered applicants' ability to meet the ninety days deadline, if counted from June 19, 2018, during pendency of, and while she was also following Ninth Circuit directions to challenge it at appellate level.

3. Applicant cannot afford FedEx or other expensive means of submitting her certiorari petition (see accompanying IFP application) and this court does not have any fax, electronic means of receiving, which is yet another good cause factor.

4. Applicant and co-appellants are both disabled and have to rely on others, and are at the mercy of the latter's schedule to do the printing and mailing work, which is yet another good cause factor.

5. Applicant has been suffering from several life threatening ailments, and is tethered to life support machines. Applicant's deteriorating health, including serious illness during July-Sept. 2018 timeframe, and partial incapacitated state is yet another good cause factor.

CONCLUSION

For the foregoing reasons and good cause shown, Applicant respectfully request that this Court order the court clerk to file petition for writ of certiorari, or alternatively grant this 60 day application for an extension of time to file.

Dated: Nov. 8, 2018, San Jose, California

R. Hiramane/c
Roda Hiramane/c

**Additional material
from this filing is
available in the
Clerk's Office.**