

No. 19-

In The
UNITED STATES SUPREME COURT

MICHAEL A. DEEM
Applicant,

v.

JOHN P. COLANGELO, JUSTICE OF THE SUPREME COURT,
COUNTY OF WESTCHESTER,

ALAN D. SCHEINKMAN, PRESIDING JUSTICE, SUPREME COURT OF THE
STATE OF NEW YORK – APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT,

LAWRENCE K. MARKS, CHIEF ADMINISTRATIVE JUDGE,
STATE OF NEW YORK,

JANET DiFIORE, CHIEF JUDGE, STATE OF NEW YORK, and

LORNA M. DiMELLA-DEEM
Respondents.

**Application for an Extension of Time Within Which to File a Petition for a
Writ of Certiorari to the New York Court of Appeals**

To the Honorable Ruth Bader Ginsburg, Associate Justice of the
United States Supreme Court and Circuit Justice for the Second Circuit

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To the Honorable Ruth Bader Ginsburg, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Department:

Applicant, Michael A. Deem, *pro se*, respectfully requests an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The earliest deadline for Applicant to file his petition is September 4, 2019, which is ninety days from June 6, 2019, the date the New York Court of Appeals issued an order dismissing Applicant's appeal. For good cause set forth herein, Applicant requests that this deadline be extended by sixty days so that the new deadline would be Monday, November 4, 2019.¹

BACKGROUND

This case challenges a custom and practice of the New York State Supreme Court Appellate Division, Second Judicial Department (2d Dep't) and/or New York State Unified Court System (NYS UCS) of denying litigants in custody disputes all discovery, even when minimum standards of child care have been provided.

The matrimonial court monopolizes all discovery through court appointed actors (attorneys for the children and forensic evaluators) under threat of sanctions, including contempt of court, preclusion of evidence at trial and jail. Litigants are compelled to pay the fees and expenses of court appointed actors, at exorbitant rates without caps on hours to be devoted or fees charged, regardless of how they fulfill their obligations or what they recommend to the matrimonial court.

¹ Pursuant to Supreme Court Rule 30.1, one day was added to this calculation to move the due date from Sunday, November 3, 2019, to the "next day that is not a Saturday, Sunday, federal legal holiday [], or day on which the Court building is closed," namely, Monday November 4, 2019.

The instant matter commenced as a hybrid Article 78 proceeding and civil rights action in the 2d Dep't seeking mandamus to compel and for prohibition, and declaratory action under state law and 42 U.S.C. § 1983.

The complaint/petition alleged violation of Applicant's rights to: 1) free speech under the state and federal constitutions; 2) equal protection under the state and federal constitutions; 3) due process under the state and federal constitutions; 4) parental relations under the state and federal constitutions; and 5) "divorce by judicial proceedings" under the state constitution. The 2d Dep't transferred the matter to the 3d Dep't, *sua sponte*.

The New York State Solicitor General appeared for the state defendants and filed a motion to dismiss for: 1) lack of personal jurisdiction; 2) a claim under 42 U.S.C. § 1983 cannot be combined with a state claim for mandamus; 3) there is no clear legal right to discovery in custody disputes; 4) because the "best interest of the child" standard is statutory it cannot be challenged; and 5) the writs for mandamus and prohibition should be dismissed, and not converted to claims for declaratory judgment pursuant to controlling case law.

The 3d Dep't granted the Solicitor General's motion and dismissed the matter without opinion.

OPINION BELOW

Applicant appealed as of right to the New York State Court of Appeals. That court dismissed the matter "upon the ground that no substantial constitutional question is directly involved." I submit, the NYS UCS is unwilling or unable to

address the constitutional issues that are in fact directly involved. The decision is attached at Appendix A.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257.

REASON EXTENSION IS JUSTIFIED

The specific reasons why an extension of time is justified are:

After eighteen years,² Applicant retired from the practice of law in 2016. His vocation is now far removed from law and he can no longer afford counsel. The only time he has to devote to the instant matter is a few hours during the week, weekends and federal holidays. And, Applicant no longer has access to legal research software, which would save countless hours.

Moreover, Applicant is involved in six ongoing related matters:

1. *Deem v. DiMella-Deem*, 68616/17 (Westchester Cnty S. Ct.) (Post-trial briefs and appeals are pending in the underlying divorce and custody matter);
2. *Deem v. DiMella-Deem*, File No. 153622 (White Plains Family Ct.) (High conflict family court proceedings where Applicant's parental rights have in effect been summarily terminated based on fabricated allegations, and without due process of law pursuant to customs and practices within the 2d Dep't and/or NYS UCS that deny: (1) all discovery for restraining orders; and (2) all pre and post

² Applicant was admitted to the bar of this Court in about 2009. This is his first appearance before the Court.

deprivation hearings. Applicant's children were not even involved in those proceedings.);

3. *Deem v. DiMella-Deem, et al.*, 18-2266cv (2d Cir.) (Oral argument is scheduled for August 26, 2019 and involves § 1983 claims that arose during the related family court proceedings);

4. *Deem v. DiMella-Deem, et al.*, 19-1630cv (2d Cir.) (Applicant filed his brief on August 1, 2019. That matter involves additional § 1983 claims alleging a conspiracy between Applicant's estranged wife, her attorney and the family court.);

5. *Deem v. DiMella-Deem*, A.D. No. ____ (A.D. 3d Dep't) (Applicant is appealing the order appointing an attorney for the children, even though minimum standards of care were provided, and compelling Applicant to pay a portion of the attorney for the children's legal fees and expenses); and

6. Applicant is drafting a complaint that will challenge: (a) customs and practices within the 2d Dep't and/or NYS UCS that commit fraud on every law enforcement agency and tribunal charged with enforcing restraining orders pursuant to 18 U.S.C. § 2265. The 2d Dep't and/or NYS UCS represent(s) that subjects of restraining orders will receive or have received due process, when in fact they are denied it, summarily; and (b) New York State's system of electing, appointing and supervising judges in family court and matrimonial parts in state supreme court because the current system permits unwritten, unconstitutional customs and practices that result in unconstitutional decisions and orders that hurt children by separating them from loving, loved, caring and cared for fathers.

Applicant prays the above demonstrates he cannot comply with the 90-day filing requirement. He has limited resources to devote to the instant and related matters. Applicant and his children will be severely prejudiced if the instant application is denied.

CONCLUSION


For the foregoing reasons and good cause shown, Applicant respectfully requests that this Court grant this application for an extension of time to file a petition for writ of certiorari.

Dated: August 3, 2019

Respectfully submitted,


Michael A. Deem, *Pro Se*

I swear under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Michael A. Deem

State of New York

Court of Appeals

*Decided and Entered on the
sixth day of June, 2019*

Present, Hon. Jenny Rivera, *Senior Associate Judge, presiding.*

SSD 26

In the Matter of Michael A. Deem,
Appellant,

v.

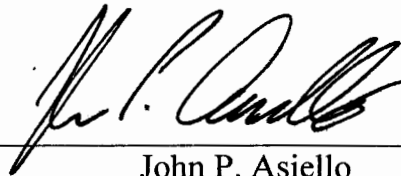
John P. Colangelo, &c., et al.,
Respondents.

Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is dismissed without costs, by the Court sua sponte,
upon the ground that no substantial constitutional question is directly involved.

Chief Judge DiFiore took no part.



John P. Asiello
Clerk of the Court