

No.

19A354

**In The
Supreme Court of the United States**

MAKO ONE CORPORATION. ET.AL,

Petitioner,

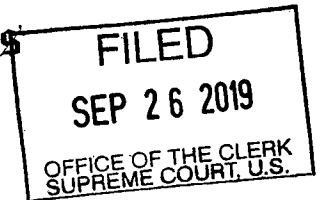
v.

CEDAR RAPIDS BANK AND TRUST, ET AL.,

Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

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TO THE HONORABLE NEIL GORSUCH, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE EIGHTH CIRCUIT:

Pursuant to this Court's Rules 13.5 and 30.2, Petitioners Mako One Corporation, Badgerow Jackson LLC, Badgerow Jackson Mt LLC, and Bruce DeBolt pray for a 60-day extension, or until December 2, 2019, to file their petition for a writ of certiorari in this Court.

1. Timeliness, Jurisdiction, and Opinion Below.

On March 21, 2019, the United States Court of Appeals for the Eighth Circuit issued a decision affirming the lower court's judgment for money damages against Petitioners, reversed the District Court's denial to disqualify Plaintiff-Appellee's counsel, and remanded for further proceedings. After the decision, Petitioner Bruce DeBolt filed a Petition for Rehearing En Banc/En Panel pro se that was denied on July 5, 2019.

The District Court's judgment is contained in Appendix A, the Eighth Circuit's original decision is contained in Appendix B, and the denial for rehearing is contained in Appendix C. A petition for writ of certiorari would be due, pursuant to this Court's Rules 13.1, 13.3, and 30.1 on or before October 3, 2019. While this application is being filed fewer than ten days before that date, *see* Rule 30.2, Petitioner can show extraordinary circumstances (as explained in Section 2) that warrant this extension.

The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

2. Reasons for Granting the Extension.

a. Procedural history.

On appeal from the United States District Court for the Northern District of Iowa, the Eighth Circuit Court of Appeals found that an actual conflict of interest existed by Respondent's then counsel, the law firm of Winthrop & Weinsteine ("Winthrop"), who had previously represented the Petitioners. Appendix B at 11 ("We conclude that the district court erred in failing to disqualify Winthrop as counsel for CRBT"). But the Court affirmed the money judgment against Petitioner because "Petitioner [made] no showing of harm by the representation." *Id.* at 12.

b. Grounds for certiorari exist.

Grounds for certiorari exist as the Eighth Circuit's decision raises serious implications about the rights of persons to fair proceedings without the taint of conflicted legal counsel. Petitioner was never given an opportunity vis-a-vis evidentiary hearing to prove or argue the extent to which they were prejudiced by conflicted counsel, and the Eighth Circuit's decision creates procedural uncertainty for future litigants as the Court refused to reverse a lower court judgment despite finding an actual conflict existed. As justification, the Court stated Petitioner "made no showing of harm" without affording Petitioner an opportunity or hearing to show harm. This raises considerable questions as to whether Petitioner's constitutional due process rights under the Fourteenth Amendment were violated.

Further grounds for certiorari exist as the Circuits are widely split on the proper analysis in determining whether a conflict of interest exists and the proper

remedy once a conflict of interest is found; we believe a different Circuit would have arrived at a different decision.

c. The need for an extension of time.

Petitioner and undersigned counsel recognize this Court will not normally grant extensions when the timeframe is truncated, as it is here, without some extraordinary circumstances. We believe those circumstances exist.

Petitioner contacted the undersigned counsel's firm in August 2019 seeking assistance in filing the subject writ of certiorari. This firm's managing partner and member of the Bar of this Court, Donald C. Holmes, agreed to represent Petitioner. Unfortunately, Mr. Holmes unexpectedly died on September 15, 2019. The 60-day extension we are seeking is necessary for Petitioner to find replacement counsel, so they may properly file their writ.

To be fully forthcoming with the Court, undersigned counsel is not a member of the Bar of this Court and is only appearing for the limited purpose of submitting this Application of Extension of Time on the Petitioner's behalf. Undersigned counsel is a law partner of the deceased Mr. Holmes and has the responsibility to ensure Mr. Holmes's clients are not neglected, and there are no other attorneys belonging to Mr. Holmes's law firm who are members of the bar of this Court. Undersigned counsel understands there is normally an e-filing requirement for members of this bar that he cannot meet because he is not a member, but this requirement may be waived for pro se litigants. If in fact, the lack of e-filing requirement is the only disqualifying

issue, we ask the Court to view this Application filed pro se by Petitioner Bruce DeBolt in his individual capacity.

To say Petitioners have had bad luck in legal representation would be an understatement. First, when Petitioners were entering the business transactions that are the subject of this litigation, it retained Winthrop, the law firm which would later turn against Petitioners and be found by the Circuit Court to have a conflict. Later, at the District Court and Circuit Court, Petitioners retained an attorney that is now debarred for reasons unrelated to this case. And now, Petitioners find themselves in a situation where the attorney who should be filing the writ of certiorari died 19 days before the writ is due. Petitioner needs the 60-day extension to find competent counsel to have access to this Court.

WHEREFORE, the Applicant-Petitioner requests an Order be entered extending by 60 days the time within which he may petition this Court for certiorari, to and including December 2, 2019.

Respectfully submitted,

/s/ Yuki Haraguchi

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