

ORIGINAL

No. 20-1323

In The
Supreme Court of the United States

Supreme Court, U.S.
FILED
MAR 18 2021
OFFICE OF THE CLERK

— ♦ —
GREGORY PATMYTHES,

Petitioner,

v.

CITY OF MADISON, WI,

Respondent.

— ♦ —
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

— ♦ —
PETITION FOR WRIT OF CERTIORARI

— ♦ —
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QUESTIONS PRESENTED

Whether a pro se litigant who in good faith followed the procedure and practice of the district court when filing posttrial motion(s) can be penalized for a CM/ECF failure that renders the clerk's office inaccessible or the clerk refuses a paper.

Whether in the interests of justice this Court should exercise its leadership and supervisory authority to immediately establish a clear and concise nationwide standard to address inaccessibility of the clerk's office for purposes of electronic filing because litigants are losing important appellate rights.

PARTIES

Petitioner Patmythes was the plaintiff in the district court and appellant in the court of appeals proceedings. Respondent City of Madison were the defendants in the district court and appellees in the court of appeals proceedings.

Patmythes is not a corporation and wishes he were.

RELATED CASES

Patmythes, Gregory v. The City of Madison

U.S. District Court Western District of Wisconsin
(Madison)

Case No.: 3:16-cv-00738-wmc

Decided June 13, 2018—Summary Judgment

Posttrial Motions: Due to technical difficulty were filed July 12, 2018, with the declaration of technical failure, as required by local procedure.

Posttrial Motions Decided: May 8, 2020

Motion for the extension of time for filing Notice of Appeal Filed: May 28, 2020

Granted: May 29, 2020

Notice of appeal filed July 8, 2020.

Patmythes, Gregory v. The City of Madison

United States Court of Appeals for the Seventh Circuit

Case No.: 20-2223

Order limiting scope of appeal entered October 19, 2020

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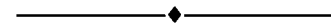
PETITION FOR A WRIT OF CERTIORARI

Gregory Patmythes, pro se petitioner (whose total and permanent disabilities limit his major life activities (including, thinking, focusing, concentrating) and major bodily functions of the brain, respiratory, immune systems), was penalized by the United States Court of Appeals for the Seventh Circuit. by limiting the scope of his appeal. Because I followed the procedure and practice of the federal district court in good faith when I experienced a technical failure in filing posttrial motions. I respectfully seek a writ of certiorari to review the order of the dated October 19, 2020.



OPINIONS BELOW

The Seventh Circuit's order and subject of this petition is reproduced at App. 1-3. The Western District of Wisconsin's denial of petitioner's posttrial motions for reconsideration is reproduced at App. 4-15. The summary judgment opinion of the District Court for the Western District of Wisconsin is reproduced at App. 16-59.



JURISDICTION

On October 19, 2020, the United States Court of Appeals for the Seventh Circuit limited the scope of the appeal to the district court order of May 8, 2020.

In accordance with the Supreme Court order issued Tuesday, March 19, 2020 the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. This petition is being filed within 150 days of October 19, 2020.

The Court has jurisdiction under 28 U.S.C. §1254(1), 28 U.S.C. §1292(e), and 28 U.S.C. §2101(e).

REGULATIONS INVOLVED

United States Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Federal Rules of Civil Procedure Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Committee Notes on Rules—2015 Amendment Rule 1 is amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to

employ the rules in the same way . . . Effective advocacy is consistent with—and indeed depends upon—cooperative and proportional use of procedure.

Federal Rules of Appellate Procedure Rule 1.
Scope of Rules; Definition; Title

(a) Scope of Rules.

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) Definition. In these rules, ‘state’¹ includes the District of Columbia and any United States commonwealth or territory.

(c) Title. These rules are to be known as the Federal Rules of Appellate Procedure.



INTRODUCTION AND STATEMENT OF THE CASE

My name is Greg Patmythes (Pat-me-this), the district court case was filed way back on November 9, 2016. Because my attempts to hire an attorney to protect my property rights, especially to own property, were fruitless, I was forced to undertake the formidable quest for justice alone while suffering from

¹ So in original

disabilities.² I am here because my rights to liberty (e.g., health, work), and own property have been jeopardized by others.

I humbly come before you to seek the fulfillment of the promises of the laws including the Equal Protection Clauses and non-enumerated rights of the Constitution.

Am I an attorney? No.

Have I ever been accepted into law school? No.

Was I successful in finding an attorney? No.

Did the courts below grant my motions for help recruiting an attorney? No.

² Anxiety, arthritis, cystic fibrosis, depression, chronic pain, and sleep apnea. These disabilities impair the major life activities including breathing, learning, concentrating, focusing, thinking, communicating, focusing, and working. Major bodily functions of the immune system, digestive, bowel, brain, and respiratory systems. "If a person has trouble getting a lawyer because the bar is hostile to civil rights claims, or because the anticipated attorneys' fees are insufficient, then there is a stronger reason to appoint counsel." *Otis v. City of Chicago*, 29 F.3d 1159, 1169 (7th Cir. 1994).

My primary modes of learning have always been visual (charts, graphs, photos, etc.) and tactile (models, representations, etc.). The 'coin of the realm' in the justice system is words. Impairments of the abilities to concentrate, focus, think, and communicate are severe disadvantages when your primary mode of learning is verbal. Since my primary modes are visual or tactile and I must perform in a verbal system with disabling abilities to concentrate, focus, think, and communicate is crushing.

Do my disabilities make thinking, focusing, concentration, and communication difficult? Yes.

Does that mean I should be denied justice? No.

Because the Constitution requires “equal protection under the law” Congress is enabled to create laws to provide “equal protection under the law.”

In signing the Rehabilitation Act and Americans with Disabilities Act into law the executive and legislative branches agreed that discrimination on the basis of disability is a national problem. They made a promise to end discrimination on the basis of disability and using the broad powers of the Congressional sweep to provide broad coverage and broad scope of protection. “Congress does not hide elephants in mouseholes.” *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001).

“It is manifest that the goal we seek is a simplified practice which will strip procedure of unnecessary forms, technicalities and distinctions, and permit the advance of causes to the decision of their merits with a minimum of procedural encumbrances.” Chief Justice Charles Evans Hughes

1. Important Federal Question—Local Rule Conflicts with Statute

A United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, when a pro se litigant complies with a district court procedure and the

pro se litigant loses rights. See *Baney v. Dept. of Justice*, 263 F.App'x 892, 894 (Fed. Cir. 2008) "Under these circumstances . . . any error regarding the filing . . . must be charged to the court . . ."

When I tendered my papers to the 'clerk' on July 11, 2018 the Clerk's office was either inaccessible, FRCP 6, or the clerk refused my paper, FRCP 5.

Enabled by Federal Rules of Civil Procedure, FRCP Rule 83, the Western District of Wisconsin adopted a local procedure for electronic filing (e-filing). The local procedure includes a standing court order for inaccessibility of the Clerk's office (technical failures). App. 60-61, 71-72. The local procedure for "inaccessibility of the Clerk's office" includes a non-mandatory "if possible" instruction. To the best of my understanding and ability I followed the technical failure procedure. As required by the order, I filed the papers, including the declaration of technical failure (Clerk's office inaccessibility) on the next business day. App. 60

Because the court of appeals limited the scope of the appeal despite the good faith effort of Patmythes in following the Western District order for the inaccessibility of the Clerk's office. The conclusion is that the Western District of Wisconsin prescribed an order that is in violation of some statute. FRCP Rule 83 prohibits enforcement of a local rule in a way that causes a party to lose any right. App. 71-72.

A United States court of appeals has decided the important question of federal law that should be settled by this Court. Whether a litigant can be penalized

because district court procedure that conflicts with a statute.

2. Imperative Public Importance—Penalty in Violation of Federal Rules

Because the matters presented in this petition are of imperative public importance, deviation from normal appellate practice is justified and requires the immediate remedy from this Court as provided in 28 U.S.C. § 2101(e).

This case also raises issues of exceptional importance under the Federal Rules of Civil Procedure Rule 83 allows district courts to establish local procedures and rules. App. 71-72. Whether the clerk refused a paper in violation of FRCP 5(d)(4) or the Clerk's office was inaccessible, FRCP 6(a)(3), in limiting the scope of the appeal a totally and permanently disabled litigant has been penalized by the Seventh Circuit for following the local procedure for inaccessibility of the clerk's office (technical failures) during electronic filing. A local procedure that is prohibited by 28 U.S.C. 2071(a) for being inconsistent with an Act of Congress or rules of practice and procedure prescribed under 28 U.S.C. 2072. App. 64.

The issues presented in this case are so far departed from the usual and accepted course of judicial proceedings requires the immediate exercise of supervisory power by this Court.

At the time the Federal district court entered the summary judgment order on June 13, 2018 the clerk fulfilled the responsibilities of FRCP 77 by serving the paper by mail to the pro se plaintiff, FRCP 5. App. 70-71.

Due to technical difficulty with the districts ECF/ECM on July 11, 2018 the posttrial motions were filed in accordance Electronic Filing Procedures—Technical Failures for the United States District Court for the Western District of Wisconsin on July 12, 2018. App. 2.

Six hundred and sixty-six days later the posttrial motions were denied, order and opinion issued May 8, 2020. Motion to extend filing notice of appeal issued May 29, 2020 ordering the notice of appeal to be filed no later than July 8, 2020. The circuit court limited the scope of the appeal to the posttrial motions on October 19, 2020. App.3.

The delay of 666 days to decide posttrial motions is contrary to the command of FRCP 1 to be ‘speedy’ and is unreasonable. “It is said that prejudice may be presumed from an unreasonable delay.” *Rogers v. Kroger Co.*, 669 F.2d 317, 322 n.7 (5th Cir. 1982).

Because it is of imperative public importance, deviation from normal appellate practice is justified and requires the immediate remedy from this Court as provided in 28 U.S.C. § 2101(e).

Whether in the interests of justice this Court should exercise its leadership and supervisory

authority to immediately establish a clear and concise nationwide standard to address inaccessibility of the clerk's office for purposes of electronic filing because litigants are losing important appellate rights.



REASONS FOR GRANTING THE PETITION

1. Reputation of Judicial Proceedings

The decision of the Seventh Circuit to limit the scope of the appeal has answered an important federal question that this Court should answer and created a divide among district in the well settled area of law.

Because this Court has a solemn duty to protect the fairness, integrity, or public reputation of judicial proceedings, burnish its own reputation, and protect due process rights. “[D]ue process is flexible and calls for such procedural protections as the particular situation demands,” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976). Remember that the “principal function of procedural rules should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts.” 346 U.S. 945, 946 (1954). *Schiavone v. Fortune*, 477 U.S. 21, 27 (1986) “the liberal policy of the Federal Rules.” *U.S. v. Schaefer Brewing Co.*, 356 U.S. 227, 240 (1958). “Simplicity and speed, when consonant with effective protection of the interests of the parties, are touchstones for the interpretation of all the Rules.” *U.S. v. Schaefer Brewing Co.*, 356 U.S. 227, 240 (1958).

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness. Federal Rules of Evidence Rule 406 Habit, Routine Practice.

a. Routine Practice

When I filed the case in 2016, I asked the clerk when I handed over the papers, about the Western District of Wisconsin's Pro Se Guide. Her instantaneous response was to laugh. She laughed in my face. She then stated, "That guide is so far out of date." The distinction between 'out of date' and 'so far out of date.' 'Out of date' being reasonably understood to be something recent. Compared with 'so far out of date' indicating there had been no effort to keep the pro se guide current in quite some time.

The practice of the Western District is to record the telephone conference. During that conference I informed the court of the clerk's actions. 1) Laughing in my face and 2) admitting the pro se guide was 'far out of date.' The court's response was "Don't worry because I'll tell you everything you need to know." Without implying anything sinister, I was told some version of 'the recording system failed.' The only irrefutable means of proof of the conversation 'failed.' Also, the

court directed a comment at me about extensions, specifically to not ask for one because you won't get it.

Well before filing deadlines I asked for help recruiting counsel. To me the term 'recruiting' means an attorney would respond favorably to the court by discussing the case and terms of payment. The court ruled on the motion months later when denying summary judgment. There can be no doubt that denial of counsel adversely impacted my ability to prove my claims and protect my appeals rights. "Never should a court jeopardize a litigant's rights for the purpose of burnishing its own reputation." *Otis v. City of Chicago*, 29 F.3d 1159, 1163 (7th Cir. 1994). "It is said that prejudice may be presumed from an unreasonable delay." *Rogers v. Kroger Co.*, 669 F.2d 317, 322 n.7 (5th Cir. 1982).

In deciding the posttrial motions important information regarding the technical failure was omitted from the opinion. Information that is pertinent to protecting my valuable appeals rights.

b. Practice by Rule

The Clerk served the judgment (FRCP 77). At the time of judgment, federal and local rules, allowed the unrepresented Patmythes to be served by mail to the last known address (FRCP 5(b)(2)(C)). App. 70, 77.

FRCP Rule 6 contains processes, 6(a) & 6(d), that are 'mechanical', 'automated', or 'automatic' for the purposes of calculation. Compare with the 'manual'

process for 6(b), which requires action by the district court whether prompted by motion or its own accord.

When a filing is due on a weekend or legal holiday Rule 6(a) functions in the same way as 6(d) in requiring no action by the court. Because they are ‘automatic’ or ‘mechanical’. The Committee Notes from various years discuss the ‘automatic’ or ‘mechanical’ nature of 6(e) and its successor 6(d). Specifically stating:

“Rule 6(e) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the party served. Three days are added after the prescribed period otherwise expires under Rule 6(a).” App. 67

In 2016 the Committee Notes involves a deeper discussion on removing the 3-day rule from calculations involving service by electronic means, FRCP 5(b)(2)(E). The discussion references change to many rules being changed by adopting periods to allow ‘day-of-the-week’ counting. I am still unclear as to what ‘day-of-the-week counting’ means but I have learned that FRCP 59 was one of the rules that was changed to 28 days. FRCP 60 can be filed within a year.

June 13, 2018 the District Court entered judgment. Computing any time period specified in these rules begins the day after the event (FRCP 6(a)(1)(A)), June 14, 2018. Motions to reconsider 59(b) or 59(d) allows a calculation of 28 days. Rule 60(b) is limited to a

year. Because notice was via USPS 6(d) adds 3 days to the period in 6(a). Making Saturday, July 14, 2018 the calculated date. If the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday (6(a)(1)(C)) making the deadline Monday, July 16, 2018.

It's confusing in the least and because I didn't write the rules any confusion should be resolved in my favor.

2. Important Federal Question—Local Rule Conflicts with Statute

a. Court Always Open; Must Accept Papers

I have learned that the 'court is always open' or at least it is supposed to be. And if the court is inaccessible, FRCP 6 provides for relief in the form of filing on the first accessible day, without penalty. App. 65. Also, the clerk must not refuse a paper, FRCP 5. App. 77.

Because the court is 'open' there is the ability to walk into the Clerk's office and file papers. "All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing, and returning process, and making motions and orders." 28 U.S. Code § 452. App. 61. "Congress does not hide elephants in mouseholes" (*Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2796 (2014)). "Apply the law as written, not as she wishes it were." Justice Barrett

When Congress says ‘courts’, ‘always’, and ‘open.’ Congress means there is no differentiation between the ‘court’ and the ‘clerk’; ‘the doors are open at all times to anyone with conduct business with the court.’ “Words that can have more than one meaning are given content, however, by their surroundings, *FDA v. Brown Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000); *Jones v. United States*, 527 U.S. 373, 389 (1999)”; *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 466 (2001).

There is no secret knock to open the door. No one checks identification. There is no secret handshake. You enter the office, approach the counter, and file your paper(s). Compare that to use of the CM/ECF system which requires permission from the court to create an identity and password to conduct business with the court.

Some circuits and some districts allow a pro se litigant to file papers directly by establishing a dedicated e-mail account at the court. For example: `ca07_pro_se_filings@CA7.uscourts.gov` is a dedicated e-mail account of the Seventh Circuit Court of Appeals for the filing of pro se papers. Not all districts within a circuit allow a pro se to file papers directly via an e-mail account of the court.

The implementation of a national standard requires minimal effort and will result in a more efficient use of scarce judicial resources.

b. Inaccessibility, includes electronic filing

The Rules Enabling Act empowered this Court to make uniform procedural rules for civil actions in the US district courts.³ In 1996 the Rules Committee, FRCP 5, wrote about ‘nationwide uniformity.’ Specifically stating “Until Judicial Conference standards are adopted, however, uniformity will occur only to the extent that local rules deliberately seek to copy other local rules.” App. 78.

In 2009 the Rules Committee under FRCP 6 writes that is content with developing concepts through caselaw. Which is inconsistent with removing procedural encumbrances.

The complacency of the committee is detrimental to the establishment of uniform procedural rules. Justice demands better.

Because the ‘court is always open’ FRCP Rule 6(a)(3) addresses the important issue of the ‘inaccessibility of the clerk’s office. App. 65.

“Inaccessibility of the Clerk’s Office. Unless the court orders otherwise, if the clerk’s office is inaccessible: (A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday

³ <https://www.fjc.gov/history/courts/rules-federal-rules-civil-procedure>

According to the Committee Notes on Rules—2009
Amendment:

“Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office. The reference to “weather” was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk’s office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, see, e.g., William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, see, e.g., D. Kan. Rule 5.4.11 (“A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.”). App. 67-68.

The Committee Notes draw attention to the circuit split in the Committee Notes on Rules—2009

Amendment to Rule 6. The notes specifically name the District of Kansas and how they address inaccessibility. There can be no doubt that the Committee highlighted this model as a ‘minimum standard’ or equivalent to a ‘D minus’ in school. Any court with a rule that is less specific is short of the ‘minimum standard.’ The Western District of Wisconsin’s procedure is less than the ‘minimum standard.’

The Seventh Circuit allows pro se litigants to file papers using the dedicated e-mail account: `ca07_pro_se_filings@CA7.uscourts.gov`. The Western District of Wisconsin has no dedicated e-mail address for pro se litigants to file papers. The courts within the Seventh Circuit lack consistency.

The District of Kansas allows “Only pro se filers may file papers in civil matters as an attachment to an email sent to the clerk’s office.”⁴ The district of Kansas also states, “May seek appropriate relief from the court.” Because there is no similar sentence in the Western District of Wisconsin procedures, the presumption is the court will ‘automatically’ grant relief upon filing the papers, including the technical failure statement.

In at least one district in the Tenth Circuit the phrase ‘always open has a different meaning than in the Western District of Wisconsin in the Seventh Circuit. Making access to justice unequal in violation of the Equal Protection Clauses of the Constitution, the

⁴ <http://ksd.uscourts.gov/index.php/local-rule/rule-77-1-record-offices-filing-of-pleadings-and-papers/>

Rules Enabling Act and others that are beyond my ability to understand.

The Committee is content to allow case law to develop on electronic filing, in the meantime litigants are losing important rights.

This Court has the responsibility and authority to immediately establish the uniform national standard. A uniform national standard that will uphold the solemn duty to protect the fairness, integrity, or public reputation of judicial proceedings, burnish its own reputation, protect due process rights, and fulfill the principal function of procedural rules to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts.

c. Inaccessibility of Clerk CM/ECF Technical Failure

On July 11, 2018 I had my paper complete, took it to the clerk, and either the clerk refused my paper, or the office was inaccessible. Either way the rules protect a litigant. Federal Rule of Civil Procedure 5 requires the clerk to accept my paper. Federal Rule of Civil Procedure 6 states that if the office of the clerk is 'inaccessible' to file my paper, that I file my paper the next business day without penalty. App. 1. App. 60, 76.

Instead of defining is a 'technical failure' the Western District defines what is 'not a technical failure.' App. 60.

“Technical problems with the Filing User’s facilities, such as phone line problems, problems with the Filing User’s Internet Service Provider (ISP), hardware or software problems, do not constitute a technical failure under these procedures or excuse an untimely filing.”

Thankfully, the Google Chrome web browser has built in features to bookmark webpages and to securely save login credentials (user ID and password) for webpages that require credentials. During a successful visit to the CM/ECF system webpage I bookmarked that page. Upon successfully logging in, Chrome prompted me to save the user ID and password, which I did.

Because I was able to look up the afterhours contact information for the clerk, contact the clerk, follow instructions by looking up the E-Filing Procedure, that shows the technical failure was with the CM/ECF. “Computers can crash, and a court’s e-filing software can have bugs. If Justice had tried to file at 11 PM on November 22, only to discover that the system would not accept his document, then he could take advantage of Rule 6(a)(3), which extends the time when the clerk’s office is inaccessible.” *Justice v. Town of Cicero*, 682 F.3d 662, 664 (7th Cir. 2012).

When I tendered the paper(s) to the court for my posttrial motions using the correct user ID and password, the CM/ECF rejected the credentials. In other words, the clerk locked the door, refused my

identification, and refused 'entry to the office.' The court was not 'open.'

The clerk was 'inaccessible', refused my 'paper' or both. I followed the local procedure, followed the required papers the next day. App. 76. During the unreasonably long delay of 666 days, I kept in contact with the clerk's office to insure I didn't miss the decision. Despite the rules I was penalized by the Seventh Circuit for matters beyond my control. That is injustice.

d. CM/ECF Has Been Upgraded

NextGen EM/ECF website has gone live. Because NextGen EM/ECF fixes problems from the prior version, that is an admission the previous version of the EM/ECF was problematic.

Remember the Seventh Circuit Court of Appeals has an e-mail address for pro se litigants to submit papers in PDF format. This is a low cost, low effort, low technology, common sense solution. There is nothing that prevented or prevents the Western District of Wisconsin from implementing this simple strategy of creating an e-mail address for pro se litigants as an aid to preserve due process, protect the dignity of proceedings, and be a useful guide to help not hinder litigants.

Both the law and the federal rules empower this Court to right the errors below and restore my right to a full appeal.

3. Important Federal Question—Prohibiting Penalty for Nonwillful Noncompliance

Title 28 of the US Code, Judiciary and Judicial Procedure, enables the Western District of Wisconsin publish “Electronic Filing Procedures.” 28 U.S. Code § 2071. FRCP 83(a). FRCP 83 prohibits the loss of rights for nonwillful noncompliance. App. 63, 71.

FRCP 83 forbids the loss of rights due to nonwillful noncompliance. Because I am a pro se that acted in good faith by following the procedure for inaccessibility of the clerk’s office (technical failure) in the Electronic Filing Procedures for the United States District Court for the Western District of Wisconsin, the FRCP 83 prohibits the loss of rights. App. 60, 71-72. FRAP 1(a)(2) commands that “filing a motion or other document in the district court, the procedure must comply with the practice of the district court.” The Seventh Circuit has penalized me by limiting the scope of my appeal. Because I followed the rules of the district court my posttrial motions were timely and tolling.

There was no failure of my internet service provider (ISP), hardware, or software because I was able to use Google to look up the afterhours number for the clerk. The clerk directed me to the procedure which I was able to look up while talking to the clerk. “Litigants, especially those without the aid of counsel, may be confused about the right means to secure appellate review, and deeming the notice of appeal a waiver of the opportunity to satisfy the condition may cause them to forfeit valuable entitlements.” *Otis v. City of*

Chicago, 29 F.3d 1159, 1168 (7th Cir. 1994). Similarly, “any error regarding the filing of his notice of appeal must be charged to the court, not to him.” *Baney v. Dep’t of Justice*, 263 Fed.Appx. 892, 894 (Fed. Cir. 2008) (unpublished); see also *Phoenix Global Ventures, LLC v. Phoenix Hotel Assocs.*, 422 F.3d 72, 76 (2d Cir. 2005).” *Royall v. Nat’l Ass’n of Letter Carriers, AFL-CIO*, 548 F.3d 137, 143 (D.C. Cir. 2008)

Nowhere does the Technical Failures procedure state a list of any documents that are excluded from the procedure. App. 60. In the time since the court limited my appeal it has come to my attention that “all courts of the United States shall be deemed always open.” This is critically important information that is absent from the Electronic Filing Procedures. “Litigants, especially those without the aid of counsel, may be confused about the right means to secure appellate review.” *Otis v. City of Chicago*, 29 F.3d 1159, 1168 (7th Cir. 1994). “it is complicated to a lay understanding and is buried in Rule 4 of the appellate rules, which anyway are less familiar than the rules of procedure.” “It seems hardly in keeping with the spirit of the federal rules to impose such forfeitures so regularly on persons without legal knowledge or representation.” *Averhart v. Arrendondo*, 773 F.2d 919, 920 (7th Cir. 1985).

I followed the procedure for technical failures. The district court provided neither relief nor mentioned the filing of docket items #46-49 in the order dated May 8, 2020. While there is no explicit requirement or form for an opinion, it must convey the vital information

necessary to protect the appeals rights. Generally, *U.S. v. Schaefer Brewing Co.*, 356 U.S. 227, 249 (1958).

Given the hostility of the clerk laughing in my face when I filed the case; the statement of the pro se guide being “so far out of date”; the unreasonable delay of 666 days to decide posttrial motions; and the opinion and order of May 8, 2020 excluding information vital to protecting my appeal rights, there is something ‘wrong’ at the district court. This Court shall exercise supervisory authority to answer the important federal question that the technical failures procedure adopted by the district court is inconsistent with 28 U.S.C. 2072 and FRCP 83. App. 64, 71-72.

The Supreme Court should therefore grant this petition for writ of certiorari in order to clarify the standard(s) for inaccessibility of the Clerk’s office; the Clerk’s refusal of a paper; assessing a penalty against a pro se for following a local procedure that effectively dismisses a cause of action and correct the Seventh Circuit’s erroneous holding in this case. “Under these circumstances . . . any error regarding the filing . . . must be charged to the court . . .” *Baney v. Dept. of Justice*, 263 F. App’x 892, 894 (Fed. Cir. 2008).

◆

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari. “The Rules of Civil Procedure reflect a well-considered policy to simplify the assertion and trial of civil rights; they discourage technicality

and form and seek to bring about determination of the rights of litigants upon the merits and, to that end, are to be liberally construed". *Fakouri v. Cadais et al.*, 147 F.2d 667 (5th Cir. 1945). *Mitchell v. White Consolidated, Inc.*, 177 F.2d 500, 502 (7th Cir. 1949).

Respectfully submitted,

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