

Case No.

IN THE SUPREME COURT OF THE UNITED STATES

Jay J. John,

Applicant-Petitioner,

v.

Quality Loan Service Corp. et al.

Appellee-Respondents.

**EXTENSION OF TIME REQUEST FOR A
PETITION FOR WRIT OF CERTIORARI**

APPLICATION TO THE HONORABLE JUSTICE ELNA KAGAN OF THE
SUPREME COURT OF THE UNITED STATES

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Counsel of Record

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Jay. J. John hereby requests a 60-day extension of time within which to file a petition for a writ of certiorari up to and including Thursday, March 14, 2022.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment on September 3, 2021, for which review is sought is, *John v. Deutsche Bank NA Trust Co., et al.*, No. 20-35843, which is attached hereto as Exhibit 1. The Ninth Circuit Court of Appeals denied Applicant's petition for rehearing or en banc review on October 13, 2021, which is attached hereto as Exhibit 2.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before January 11, 2022. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Ninth Circuit Court of Appeals in this case, up to and including March 14, 2021.

1. Applicant's counsel is 72 years-old and suffers from conditions making him particularly susceptible to contracting the COVID-19 coronavirus, including without limitation diabetes, heart disease, and a

compromised immune system. In part because of counsel's susceptibility to the virus, his staff—a lone paralegal—works mostly out of her own office in Mount Vernon, Washington.

2. Applicant's counsel is presently preparing two petitions for certiorari. One in this case and another in *PNC Bank, National Association, et al. v. Laura Cozza et al.*, which is due to be filed in this Court on January 4, 2022.
3. Because of recent snowstorms in this area the ceiling in the paralegal's office has collapsed causing water to continue to flow from the roof and saturate areas her office where the space is not useable, so it is unlikely that she will be able to help prepare either petition in that location. This is problematic with the deadline for filing the Cozza's petition being only a few days away and the John petition so quickly approaching.
4. In mid-January applicant's counsel is scheduled to participate in a bench equity trial in the case of *JP Morgan Chase Bank NA et al. v. Morton*, (Case No. 14-2-07014-0) before a judge of the Pierce County Washington Superior Court.
5. Although that trial will not likely be long and Applicant's counsel will try to complete the petition for certiorari as soon as he can do so, he requests a sixty-day extension of time because he is concerned that he may be advised by his doctor to rest. In any event, Applicant's counsel represents that he will file the Petition as soon as is practicable under the circumstances, but in no event later than March 14, 2021.

CONCLUSION

For the foregoing reason, Applicant respectfully requests that this Court grant an extension of 60 days, up to and including March 14, 2022, within which to file and petition for a writ of certiorari in this case.

DATED this 30th day of December 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing documents with the Clerk of the Court and that I will provide service of this document by electronic and U.S. First Class Mail, with postage prepaid to the party listed below.

Bryan Brown
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Counsel for Deutsche Bank National Trust Company

DATED this 30th day of December 2021, at Arlington, Washington.

By: s/ LeeAnn Halpin
Lee Ann Halpin, Paralegal
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Exhibit 1

John v. Quality Loan, et al.

FILED

NOT FOR PUBLICATION

SEP 3 2021

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAY J. JOHN,

Plaintiff-Appellant,

v.

QUALITY LOAN SERVICE CORP OF
WASHINGTON,

Defendant,

and

DEUTSCHE BANK NATIONAL TRUST
COMPANY; NATIONSTAR
MORTGAGE LLC, DBA Mr. Cooper,

Defendants-Appellees.

No. 20-35843

DC No. 4:20-cv-05008-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Stanley A. Bastian, Chief District Judge, Presiding

Submitted September 1, 2021 **
Seattle, Washington

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)(C).*

Before: HAWKINS, TASHIMA, and McKEOWN, Circuit Judges.

Plaintiff-Appellant Jay John appeals the order of the district court denying in part the motion by his attorney, Scott Stafne, to withdraw as John's attorney or in the alternative to "delay the briefing related to Defendants' motion to dismiss until such time as Stafne can recoup from the impact of the Covid-19 pandemic on his ability to practice law." We have jurisdiction under 28 U.S.C. § 1291, we review for an abuse of discretion, *LaGrand v. Stewart*, 133 F.3d 1253, 1269 (9th Cir. 1998), and we affirm.

1. The district court did not violate the principle of party presentation.

See United States v. Sineneng-Smith, 140 S. Ct. 1575, 1579 (2020) (explaining that under the principle of party presentation "we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))). The district court decided only the issues Stafne raised and did not reach claims, issues, or theories that the parties themselves did not present. In addition, the district court had the authority to rule on Stafne's motion without waiting for Defendants to file a response.

2. We reject John’s contention that the district court failed to consider Stafne’s “personal situation” and the State’s Covid-19 orders. First, there is nothing in the record to suggest that the court failed to consider Stafne’s contentions, and we assume that the court did so. Second, the district court was not required to reject Stafne’s factual contentions on the record. *See Fed. R. Civ. P.* 52(a)(3) (“The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.”). Third, district courts are not required to state on the record their reasons for rejecting every argument made by a moving party in support of a motion. *E.g.*, *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982).

3. Although John argues that the district court lacked the constitutional authority to order Stafne to work in contravention of the State’s public health orders, John has not shown any conflict between the State’s orders and the district court’s order. The State’s orders required Washington residents to stay at home, but included an exception for essential workers, including “[p]rofessional services, such as legal or accounting and tax preparation services, when necessary to assist in compliance with legally mandated activities and critical sector services.” Office of the Governor, Proclamation 20-25, at p.3 & Appendix, at p. 11 (Mar. 23, 2020).

4. The district court did not deny John his right to counsel. First, there is no general right to counsel in civil cases. *See Turner v. Rogers*, 564 U.S. 431, 441 (2011); *United States v. Sardone*, 94 F.3d 1233, 1236 (9th Cir. 1996). Second, the *in forma pauperis* statute upon which Stafne relies, 28 U.S.C. § 1915(e)(1), does not apply here. Third, even if § 1915 applied, this case did not present exceptional circumstances. *See Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004) (“The decision to appoint such counsel . . . ‘is granted only in exceptional circumstances.’” (quoting *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984), *abrogated on other grounds by Neitzke v. Williams*, 490 U.S. 319 (1989))).

5. The district court did not deny John due process by ruling on Defendants’ motion to dismiss without affording him an opportunity to oppose the motion. The court afforded John an opportunity to respond (even granting an extension of time), but he failed to avail himself of that opportunity.

• • •

In sum, we hold that the district court did not abuse its discretion by denying Stafne’s motion. Stafne failed to establish good cause to withdraw as counsel or delay the proceedings indefinitely. **AFFIRMED.¹**

¹ Because we affirm, we need not address John’s argument that this case should be reassigned to a different judge on remand.

Exhibit 2

John v. Quality Loan, et al.

FILED

NOT FOR PUBLICATION

OCT 13 2021

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAY J. JOHN,

Plaintiff-Appellant,

v.

QUALITY LOAN SERVICE CORP OF
WASHINGTON,

Defendant,

and

DEUTSCHE BANK NATIONAL TRUST
COMPANY; NATIONSTAR
MORTGAGE LLC, DBA Mr. Cooper,

Defendants-Appellees.

No. 20-35843

DC No. 4:20 cv-5008 SAB
ED Wash., Richland

ORDER

Before: HAWKINS, TASHIMA, and McKEOWN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. Judge McKeown votes to deny the petition for rehearing en banc and Judges Hawkins and Tashima so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f). The petition for panel rehearing and the petition for rehearing en banc are denied.