

ORIGINAL

Supreme Court, U.S.  
FILED

SEP 15 2021

OFFICE OF THE CLERK

No. 21-5773

IN THE  
SUPREME COURT OF THE UNITED STATES

ALEX BAAH

- Petitioner

v.

AT&T WEST, ET AL.,

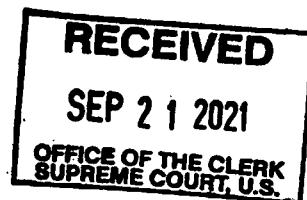
- Respondents

On Petition For Writ Of Certiorari

To The United States Court Of Appeals For The Ninth Circuit

**PETITION FOR WRIT OF CERTIORARI**

Alex Baah  
P.O.Box 17215  
Irvine, California 92623



## QUESTIONS PRESENTED

- (1) Did the Ninth Circuit Court and the District Court completely overlooked a clear procedural rule proving that the respondents filed an untimely response to petitioner's motion for reconsideration and that the respondents consented and conceded as in (Skrabec v. Town of North Attleboro, F3d (1<sup>st</sup> Cir. 2017)?
- (2) Did the Ninth Circuit Court overlooked that the district court abused its discretion in denying petitioner's motion for reconsideration which was filed under Rule (59), and Local Rule; 7-18, when the respondents failed to request for an extension of time and thereby filed an inexcusable untimely response to the motion?
- (3) Did the Ninth Circuit Court of Appeals erroneously ruled in its Memorandum that "The district court did not abuse its discretion in denying reconsideration because Baah failed to demonstrate any basis for relief?
- (4) Weather or not the District Court Abused Discretion in dismissing plaintiff's complaint with prejudice when on November 2, 2016, the court signed an order to refer the case to an ADR Procedure No.2, to be completed by August 22, 2017?
- (5) Was petitioner's notice of appeal pertaining to the motion for Disqualification and Reconsideration for Disqualification untimely as to those orders?

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- APPENDIX B: Amendment to Complaint.
- APPENDIX C: Proposed Amended Complaint.
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- APPENDIX E: District Court's September 12, 2018, Order, denying plaintiff's Rule 60(b)-(d), Motion .
- APPENDIX F: District Court's March 10 and April 6, 2020, orders denying Disqualification and Reconsideration for Disqualification
- APPENDIX G: District Court's September 27, 2020, Order denying Notice Of Motion For Reconsideration under Rule(59), and Local Rule 7-18
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## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

**[ ] For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix F1G to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

**[ ] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 1, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 24, 2021, and a copy of the order denying rehearing appears at Appendix 3.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

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

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.  
  
2

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.  
  
2

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## TABLE OF AUTHORITIES

### FEDERAL CASES:

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5. Rule 59(e), and Local Rule 7-18 .....	6,7,9,10,11,12.

## STATEMENT OF THE CASE

Plaintiff's original complaint was filed on December 2, 2015, in the United States District Court, Central District of California. Plaintiff's original federal complaint alleged causes of action for (1) Civil Conspiracy To Terminate Employment (2) Wrongful Termination In Employment (3) Denial Of Vested Pension Benefits. (4) Age Discrimination In Violation of ADEA Statute, and Discrimination in Pension Benefits In Violation of Employee Retirement Income Security Act (ERISA). See (Appendix A). On December 22, 2015, plaintiff made an amendment to the complaint to ascertain the true names of all three named defendants in plaintiff's complaint. These defendants are Fidelity Investments, AT&T Corp., and Pacific Bell Telephone Company. See (Appendix B). Plaintiff served the defendants a copy of the summons and complaint on March 22, 2016. On April 21, 2016, plaintiff and the defendants stipulated and agreed to extend all three defendants deadline to respond to Plaintiff's complaint to May 20, 2016. It was further stipulated and agreed by both parties that if defendants were to file any responsive pleadings to plaintiff's complaint, defendants shall not request a hearing date prior to October 28, 2016, in order to provide plaintiff adequate time upon his return from his emergency trip to Africa to respond to defendants motion. On July 7, 2016, both parties filed a Final Rule 26, Report with the court and the court's order scheduling conference was set for November 4, 2016. On May 20, 2016, defendants then filed a Notice of Motion and Motion to dismiss plaintiff's complaint and requested a hearing date for November 4, 2016. On November 2, 2016, the court signed an order referring the case to ADR Procedure No. 2. See (Appendix D). Based on the ADR order, the ADR proceeding was to be completed by August 22, 2017. On November 2, the court also set the matter for a Jury Trial on November 14, 2017. This implies that between November 2, 2016, and August 22, 2017, the case was pending in ADR Procedure NO. 2. and that the hearing on the defendants motion to dismiss was to be stayed. On September 28, 2016, on the court's own motion, the hearing for the defendants Notice of Motion and Motion to dismiss complaint was ordered continued from November 4, 2016, to November 10, 2016. Plaintiff had a death in his family in Africa, and plaintiff returned to the United States on October 13, 2016. Upon plaintiff's return, plaintiff diligently filed a timely opposition on October 31, 2016, to the defendants motion to dismiss based on

**the parties stipulation agreement which was approved by the Court.**

On November 7, defendants filed its Reply to Plaintiff's Opposition to Defendants Motion to dismiss. However, in wake of all the above scheduling order by the court, including the ADR Order, on November 10, 2016, the court granted defendants motion to dismiss plaintiff's complaint with prejudice even-though the case was still pending in the ADR Procedure NO. 2. Plaintiff appealed but the district court denied plaintiff leave to proceed on appeal in forma pauperis. According to the court the appeal is not taken in good faith under 28U.S.C. 1915(a), and it is frivolous, without merit and does not present a substantial question within the meaning of 28 U.S.C. 753(f). Plaintiff then filed a timely statement outlining the reason why the appeal should go forward in the Ninth Circuit Court. However on May 18, 2017, the court filed an order dismissing plaintiff's appeal as frivolous, pursuant to 28 U.S. C, Section 1915(a). Unfortunately plaintiff did not receive a copy of the court's order through his mailing address until June 3, 2017. Due to the fact that plaintiff did not receive the prior order dismissing plaintiff's appeal on time, plaintiff was unable to file a petition for rehearing within the 14 days period or the time required by law. The court then issued it's mandate on June 9, 2017. On July 1, 2017, plaintiff filed a request to recall the mandate together with a petition for rehearing En Banc. On August 29, 2017, The Ninth Circuit Court denied plaintiff's petition for rehearing en banc. According to the court's order, there are no "extraordinary circumstances" to support such relief". Plaintiff then filed a Writ of Certiorari but January 22, 2018, The Supreme Court of the United States denied plaintiff's Petition for a Writ of Certiorari. Therefore the last order pertaining to the dismissal of plaintiff's original complaint by the District Court was January 22, 2018. The merits on all the issues which supported the district court decision in dismissing plaintiff's appeal was not decided by either the Ninth Circuit Court nor the Supreme Court of the United States. On June 15, 2018, Plaintiff then sought for relief from the district court's order which was entered in civil minutes on November 10, 2016, under Federal Rules of Civil Procedure, Section 60(b), et seq. Plaintiff's motion was accompanied by a proposed amended complaint, and a declaration in support of the notice of motion to seek relief from court's order and request for judicial notice with attached exhibits or documents from the state trial court. Plaintiff's motion was based on the following grounds (1) mistake (2) inadvertence (3) surprise (4) excusable neglect (5) new facts (6) new law and (7)

any other reason which justifies relief (Federal Rules of Civil Procedure, 60(b)). Plaintiff's Proposed Amended Complaint supporting his Rule 60(b), motion clearly alleged substantially new facts and law as well as different Causes of Action which could not have been brought into the state court's action. See (Appendix C). As demonstrated in plaintiff's Rule 60(b) motion, both the Original Complaint and the Proposed Amended Complaint could clearly afford plaintiff relief. However on September 12, 2018, plaintiff's motion seeking relief from the November 10, 2016, order was denied. The District Court's order stated that plaintiff's motion under Rule 60(b) should be filed within 1 year. See (Appendix E). On October 11, 2018, plaintiff and appellant then filed a second notice of appeal. However, once again, on October 24, 2018, the same district court judge, Josephine L. Staton filed a second order denying plaintiff leave to appeal in forma pauperis. On October 31, 2018, the Ninth Circuit Court of Appeals filed an order requiring plaintiff (1) file a motion to dismiss his appeal or (2) file a statement explaining why the appeal is not frivolous and should go forward, within 35 days from October 31, 2018. On November 19, 2018, appellant filed a motion to request extension of time due to family emergency. On December 27, 2018, the Ninth Circuit Court of Appeals granted appellant's opposed motion requesting for extension in part, and denied the motion in part. The court ruled that "Appellant may file a response to the October 31, 2018 order by February 25, 2018". Therefore on February 15, 2019, appellant filed and served his statement explaining why the appeal is not frivolous and should go forward with declarations in support of the statement. Defendants opposed and on March 5, 2019, plaintiff filed a reply to defendants opposition or response. However, on June 12, 2019, the Ninth Circuit Court affirmed the lower court's denial of appellant's leave to proceed on appeal in forma pauperis for the second time and on July 05, 2019, the court of appeal issued and filed it's mandate. Unfortunately since appellant had a death in his family in Africa as requested in the extension of time to comply with the court of appeals October 31, 2018, order, appellant was still out of the country and as a result appellant could not file a timely petition for rehearing within the 14 days period allowed by law. When plaintiff return from Africa on March 3, 2020, plaintiff diligently filed a motion for Reconsideration under both Rule 59(e), and local Rule 7-18, concurrently with a motion for Disqualification of Josephine L. Staton, the assigned Judge from the case in the district court. However on March 10, 2020, the motion for Disqualification was

denied and on April 6, 2020, Reconsideration for the Disqualification was also denied. See (Appendix F). On April 27, 2020, the district court also denied plaintiff's Notice of Motion and Motion under Rule 59(e), and local Rule 7-18, seeking reconsideration from both November 10, 2016, and the September 12, 2018, district court's orders See (Appendix G). The district court's final order or judgment pertaining to the disqualification and reconsideration for disqualification was entered on April 6, 2020, at 11: 35 AM PDT. As a result on May 5, 2020, Plaintiff and Appellant filed a combined notice of appeal for (1) Order denying Baah's motion for Reconsideration under Rule 59(e), and Local Rule 7-18. (2) Order denying disqualification and reconsideration for disqualification and (3) from the whole thereof. The combined Notice of Appeal was placed in a certified mail through USPS on April 5, 2020, and it was received and filed by the district court on April 7, 2020, at 11:08 AM PDT. See (Appendix H). On June 1, 2021 the Ninth Circuit Court of Appeals, filed it's Memorandum or decision and affirm on the grounds that (1) "The district court did not abuse it's discretion in denying reconsideration because Baah failed to demonstrate any basis for relief and supported the decision with Fed. R. Civ. P. 59 (e), 60(b)-(d); Sch Dist No. 1J, 5 F.3d at 1262-63 (setting forth grounds for reconsideration)" (2) "We do not consider the district's court post-judgment orders (1) denying Baah's motion for disqualification and (2) denying reconsideration of the order denying disqualification, because the notice of appeal is untimely as to those orders. See Fed. R.App. 4(a)(1)(A) (notice of appeal must be filed with the district clerk within 30days after entry of judgment or order appealed from)" "We do not consider Baah's contentions concerning his prior appeals Nos. 16-56793 and 18-56358" See (Appendix I). On June 8, 2021, Plaintiff and Appellant then filed a petition for rehearing on the grounds that (1) A material point of fact or law was overlooked in the decision (2) An apparent conflict with another decision of the Court was not addressed in the opinion. Unfortunately, on August 24, 2021, Baah's petition for panel rehearing (Docket Entry No. 19), was denied by the Ninth Circuit Court. See (Appendix J).

## REASONS FOR GRANTING THE PETITION

ISSUE No.1: Did the Ninth Circuit Court and the District Court completely overlooked a clear procedural rule proving that the respondents filed an untimely response to petitioner's motion for reconsideration and that the responded consented and conceded as in (Skrabec v. Town of North Attleboro, F3d (1<sup>st</sup> Cir. 2017)?

The United States Court of Appeals For The Ninth Circuit and the District Court completely overlooked an important filing procedural rule in petitioner's motion for reconsideration and in petitioner's appeal briefs which clearly proved that the respondents consented and conceded to petitioner's motion for reconsideration as in (Skrabec v. Town of North Attleboro, F3d (1<sup>st</sup> Cir. 2017). On March 3, 2020, petitioner served the respondents with plaintiff's notice of motion and motion for reconsideration. However respondents did not file its opposition within the time allowed under the rules of court until April 3, 2020, after one full month when the motion was served. (See proof of services attached to plaintiff's motion for reconsideration and proof of service attached to defendants opposition, on file with the district court). In Skrabec v. Town of North Attleboro, F3d (1<sup>st</sup> Cir. 2017), the court held that district court acted within its discretion in concluding that the Skrabec's failure to file a timely opposition is not an excusable neglect and the order was affirmed. Respondents in this case did not even request for an extension of time and that the respondents failure to file a timely opposition to plaintiff's motion for reconsideration is not excusable. Petitioner was deemed prejudiced by the respondents untimely opposition. Thus, the respondent consented and conceded. (Skrabec v. Town of North Attleboro, F3d (1<sup>st</sup> Cir. 2017)? However both the Ninth Circuit Court and the District Court completely overlooked such an important procedural filing rule in its rulings. Consequently, The District Court abused its discretion in denying the motion for reconsideration and the Ninth Circuit Court also erred in affirming the lower court's ruling on grounds that the district court did not abuse its discretion in denying reconsideration because Baah failed to demonstrate any basis for relief. (See The Ninth Circuit Court's Memorandum, Appendix I).

ISSUE No. 2: Did the Ninth Circuit Court and the District Court reviewed Petitioner's briefs differently than a similar situated person for the failure of both courts to make any mention in its rulings regarding the respondents failure to comply with a filing procedural rule without requesting for an extension of time and thereby filed an inexcusable untimely opposition to petitioner's motion for reconsideration?

As already established in ISSUE No. 1, above, On March 3, 2020, petitioner served the respondents with plaintiff's notice of motion and motion for reconsideration. However respondents did not file its opposition within the time allowed under the rules of court until April 3, 2020, after one full month when the motion was served. The respondent did not even request for an extension of time and thereby filed an inexcusable untimely opposition to petitioner's motion for reconsideration. (Skrabec v. Town of North Attleboro, F3d (1<sup>st</sup> Cir. 2017). This implies that the respondent failed to comply with a filing procedural rule. However both the Ninth Circuit Court and the District Court, never made any mention of the respondents inexcusable untimely opposition in its rulings. Petitioner believes that in addition to the fact that both courts erroneously overlooked this important fact or law in its rulings, petitioner's briefs was not given equal consideration. The underlying factor supporting petitioner's contentions here is that on September 28, on the court's own motion, the hearing for the defendants Notice of Motion and Motion to Dismiss Complaint was ordered continued from November 4, 2016, to November 10, 2016. Plaintiff had a death in his family in Africa, and plaintiff retuned to the United States on October 13, 2016. Upon plaintiff's return, plaintiff diligently filed a timely opposition on October 31, 2016, to the defendants motion to dismiss based on the parties stipulation agreement. However the District Court disregarded the parties stipulation which was approved by the court and on November 10, 2016, dismissed plaintiff's entire complaint with prejudice on grounds that plaintiff's opposition to the defendants motion to dismiss was untimely. (See parties stipulation approved by the district court on file with the district court). Also on September 12, 2018, the district court denied plaintiff's Rule 60(b), et seq. motion on the grounds that the motion was untimely (See Appendix E). The underlying question here is that if the court's considers an untimely filing of a response or

opposition as a failure to comply with a filing procedural rule in its overall decision or rulings, why is that in this situation, both courts did not make any mention about the respondents failure to file a timely opposition to plaintiff's motion for reconsideration in its rulings? In addition The Ninth Circuit Court's memorandum in this instant case ruled that the post-judgment orders (1) denying Baah's motion for disqualification and (2) denying reconsideration of the order denying disqualification is untimely but ironically, the court also overlooked a similar untimely filing by the respondents in it's memorandum? Based on all the above, petitioner believes that both the District Court and the Ninth Circuit Court erroneously abused its discretion in subjecting only plaintiff and petitioner to untimely filing procedure rule whereas the respondents inexcusable untimely filing was overlooked. Therefore petitioner strongly believes that both the district court and the Ninth Circuit Court applied a different standard of ruling to plaintiff and petitioner's pleadings and that he was treated differently than a similar situated person (corporation), such as the respondents in this case.

**ISSUE No.3: Did the Ninth Circuit Court of Appeals erroneously ruled in its Memorandum that "The district court did not abuse its discretion in denying reconsideration because Baah failed to demonstrate any basis for relief..."**

On April 27, 2020, the District Court denied plaintiff's Notice of Motion and Motion for Reconsideration seeking relief under Rule 59(e) and Local Rule 7-18. The motion sought for relief from the district court's November 10, 2016, and the September 12, 2018, orders. The September 12, 2018, order denied plaintiff's motion seeking relief under Rule 60(b)-(d), et seq, on the grounds that the motion was untimely (a motion for relief must be filed within one year of final judgment). See (Appendix E). The Ninth Circuit Court's Memorandum, which was filed on June 1, 2021, decision stated that:

"The district court did not abuse its discretion in denying Reconsideration because Baah failed to demonstrate any Basis for relief. See Fed.R. Civ. P. 59(e), 60(b)-(d), Sch. Dist No. I.J, 5 F.3d at 1262-63 (Setting grounds for reconsideration)".

However, as already established in the Appellant's Opening Brief from pages 1, through Page 33, the district court erroneously dismissed plaintiff complaint on November 2016, with prejudice. See (Appellant's Opening Brief on file with the Ninth Circuit Court, Pages 1, through Page 33). Also (See Appellant's Reply Brief on file with the Ninth Circuit Court, pages 1, through 9). Based on all the facts and law, circumstance, new facts, the denial of the vested pension allegations under ERISA, and the substantially new facts in plaintiff's proposed amended complaint which could not have been brought into the State Court's Action, as pleaded and demonstrated in the Appellant's Appellate Brief's, the only issue that was affirmed by the Ninth Circuit Court was that "Baah failed to demonstrate any Basis for relief. See Fed.R. Civ. P. 59(e), 60(b)-(d), Sch. Dist No. I.J, 5 F.3d at 1262-63 (Setting grounds for reconsideration. This implies that the district court's abused it's discretion in dismissing plaintiff's complaint on November 10, 2016. It also implies that the district court abused it's discretion in denying plaintiff's Rule 60(b)-(d), motion on the grounds that the motion is untimely. At this point, having established that all the district court's prior orders from November 10, 2016, through April 27, 202, were erroneous rulings which were not affirmed by the Ninth Circuit Court, the only remaining issue before this court regarding the reconsideration is whether or not petitioner's motion for reconsideration demonstrated any basis for relief? Here, as already demonstrated above that all the district court's prior orders were completely erroneous, and the fact that petitioner's motion for reconsideration under Rule (59), and Local Rule 7-18, sought for relief from the district court's November 10, 2016 order and the September 12, 2018, order, the district court continued to abused it's discretion in denying reconsideration on April 27, 2020. Hence, the Ninth Circuit Court also erroneously ruled in it's memorandum that Baah failed to demonstrate any basis for relief under Rule (59), and Rule 60(b)-(d).

**ISSUE No.4: Weather or not the District Court Abused Discretion**

In dismissing plaintiff's complaint with prejudice when on November 2, 2016, the court signed an order to refer the case to an ADR Procedure No.2, to be completed by August 22, 2017?

On November 2, 2016, the district court signed an order referring the case to an ADR Procedure No.2. , to be completed by August 22, 2017. However on November 10, 2016, the district court dismissed plaintiff's complaint with prejudice even-though the case was still pending in the ADR procedure. See (Appendix D). The ADR issues was raised in the Appellant's Opening Brief at page 8, in support of the notice of appeal challenging the order denying reconsideration of Appellant's Rule 59(e), and Local Rule 7-18, motion, and the order denying reconsideration for disqualification (See Appellant's Excerpts of Records Exhibit A). In reviewing the above facts and law in light of the order denying reconsideration, it gives additional strengths that the district court abused it's discretion in denying Appellants Rule 59(e), and 60(b) et. Seq,motions. Here, once again, Appellant strongly believes that the Ninth Circuit Court completely overlooked this important material facts and law regarding the ADR issues in concluding that the district court did not abuse its discretion in-denying reconsideration because Baah failed to demonstrate any basis for relief.

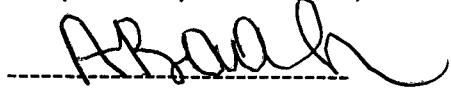
**ISSUE No. 5: Were plaintiff's appeal pertaining to the post-judgment orders denying Baah's motion for Disqualification and Reconsideration for Disqualification untimely?**

The district court's final order or judgment pertaining to the disqualification and reconsideration for disqualification was entered on April 6, 2020, at 11: 35 AM PDT. See (Appendix 8). Appellant represents himself so Appellant had no prior knowledge about the ruling until April 10, 2020, when he received the ruling in the mail. On May 5, 2020, Appellant then mailed a combined notice of appeal with a certified mail through USPS, and the certified mail was received by the district court on April 7, 2020, at 11:08 AM PDT, and it was filed on April 7, 2020. See (Appendix H). Pursuant to Rule 26, computing and extending time should exclude the day of the event that triggers the period. Therefore based on the above facts the 30 days time period to file a notice of appeal pursuant to Fed. R. App. P. 4(a) (1)(A), in this case runs from April 7, 2020, at 11:35 AM PDT. These supporting evidence clearly proves that the combined notice of appeal which includes the appeal for denying disqualification and reconsideration for disqualification was timely filed. Therefore the Ninth Circuit Court erroneously ruled that the district court's post judgment orders were untimely.

## CONCLUSION

In view of all the foregoing reasons, petitioner respectfully request that  
The petition for a Writ of Certiorari should be granted.

Respectfully submitted,



ALEX BAAH  
(Plaintiff and Petitioner)

Date: September 15, 2021