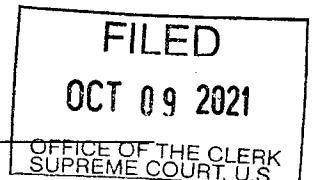


CIVIL CASE

21- A72

In The
SUPREME COURT OF THE UNITED STATES
October Term 2021



Marie Henry
Applicant/Petitioner

v.

ORIGINAL

The Florida Bar, et al,
Respondent.

Application for an Extension of Time Within
Which to File a Petition for a Writ of Certiorari to the
Fifth District Court of Appeal of the State of Florida

APPLICATION TO THE HONORABLE JUSTICE
CLARENCE THOMAS AS CIRCUIT JUSTICE

Marie Henry
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October 8, 2021

Applicant/Petitioner, *pro s*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicant/Petitioner, Marie Henry is an individual with no parent corporation. This Rule does not apply to Applicant/Petitioner.

APPLICATION FOR AN EXTENSION OF TIME

To the Honorable Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Pursuant to Rule 13.5 of the Rules of this Court, Applicant/Petitioner, Marie Henry, *pro se*, hereby requests a 60-day extension of time from October 18, 2021, within which to file a petition for a writ of certiorari up to and including, Friday, December 17, 2021.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Marie Henry v. The Florida Bar, et. al.* No: 5D20-994 (June 22, 2021) (attached as Exhibit 1). The Fifth District Court of Appeal denied Applicant's motion for rehearing and written opinion on July 20, 2021, (attached 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 the Rules of this Court, 13.1, 13.3, and 30.1, a petition for writ of certiorari was due to be filed on or before October 18, 2021. Due to extenuating medical issues, this Application is filed one day outside Rule 13.5 requirement, that the Application be made at least 10-days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

The decision to be reviewed contains three single words "Per Curiam Affirmed" (PCA) and was rendered by a panel of jurists (i) who have a property and liberty

interest in membership in good standing in a professional license issued by the defendant, the Florida Bar (“the Bar”); and (ii) over whom the Bar, indirectly exercise disciplinary jurisdiction. See e.g., *Florida Bar v. McCain*, 330 So.2d 712, 723 (Fla. 1976), Adkins concur/dissent.¹ The PCA opinion is the most common decision in Florida intermediate appellate courts, the District Courts of Appeal of Florida.²

Applicant respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the PCA disposition of the Fifth District Court of Appeal of Florida, in this case, on the following grounds:

1. The issues in this case are of great public and constitutional importance and require adequate time for someone in Applicant/Petitioner’s dire financial and extenuating medical situation to have adequate time to research and complete the petition.

2. An extension of time is also necessary because Applicant/Petitioner is a qualified individual with a disability, as defined by the Americans with Disabilities Act (“ADA”) 42 U.S.C. § 12131(2) and Title II,

¹ Any reprimand or disbarment recommended by The Florida Bar is ineffective unless approved and ordered by this Court. Under the majority opinion we have this anomalous situation: All attorneys are under the supervision of this Court (in fact The Florida Bar was created by this Court) and all judges are under the indirect supervision of The Florida Bar. *Florida Bar v. McCain*, 330 So.2d 712, 723 (Fla. 1976), Adkins concur/dissent.

² See Craig E. Leen, *Without Explanation: Judicial Restraint, Per Curiam Affirmances, and the Written Opinion Rule*, 12 FIU L. Rev. 309, 310 n. 7 (2017) (“The affirmation without opinion, better known to appellate practitioners as a PCA, is by far the most prevalent appellate disposition in our district courts of appeal”), citing Ezquiel Lugo, *The Conflict of PCA: When an affirmative Without Opinion Conflicts with a Written Opinion*, FLA. BAR J., April 2011, at 46.

28 CFR § 35.108(a)(1)(iii) which defines a person perceived to be disabled by a public entity, whether or not he/she believes him/herself to be disabled, to be a qualified individual under the ADA. The physical disability impairs her ability to type, use her hand/fingers unrestricted, or to do the level of research required for the issues implicated by the judgment, for which review will be sought.

3. Applicant/Petitioner, a *pro se*, party intends to seek *in forma pauperis* status, as she has not earned an income since April 2015. As a result of the Bar's verifiable unlawful deprivation of the property and liberty interest in an occupational license, she was fired from her job of Staff Counsel, in which she excelled for more than four years. And Applicant/Petitioner intends to seek appointment of counsel because the PCA rendered in this case involves a matter of great public importance, irreparable harm and deprivation of self-executing fundamental rights.

4. It is indisputable, the Complaint's factual allegation, and the record, including content of (i) the Bar, motion to dismiss; (ii) hearing transcript; (iii) lower tribunal Order; and (iv) Answer Brief, document the three-judge panel decided an issue of great public importance that an individual lacks standing to sue to redress her own grievances against the government where that individual is aggrieved by the gravity and resulting immediate or long term collateral effects on one's property and liberty interests in career, professional practice and revenue stream from a professional

disciplinary prosecution instituted without jurisdiction, and for exercising constitutional or statutory rights in petitioning to redress grievances against the government as a (1) statutory party in a criminal matter; (2) a private citizen; and (3) a party to litigation seeking a fair and impartial tribunal in a breach of contract dispute with her mortgagee.

5. In the instant case, the Complaint pleads facts and the Bar filings confirm that Applicant/Petitioner compulsory association with the Florida Bar, to hold a professional occupational license, as a member of the United States third largest mandatory state bar association, directly: (i) resulted in deprivation of constitutionally protected privacies, career, business opportunities, opportunity to earn a living, the deprivation of property and liberty interests in a law license; (ii) denial of the opportunity to practice her chosen profession; and (iii) is regarded as mentally unfit to practice a trade or occupation by a public entity.

6. The intermediate appellate court, as the court of last resort, affirmed the trial court dismissal on lack of standing and absolute immunity grounds based on the Florida Bar pre-answer motion to dismiss that did not raise the affirmative defense “lack of standing” and where the factual allegations plead relief on: (i) First Amendment retaliation; (ii) violation of constitutionally protected privacies; (iii) violation of Title VII and the Americans with Disabilities Act, pursuant to a unanimous three-Commission panel ruling that the Florida Bar is a “governmental entity” subject to the Florida Civil Rights Act (“FCRA”), of 1992 and therefore

prohibited from disciplining the license of an attorney in a discriminatory manner³; as well as the right to sue letters issued by the Equal Employment Opportunity Commission and Florida Commission on Human Relations.

7. The pleading and other filings confirm the Florida Bar's investigation, probable cause determination, formal complaint, prosecution, guilt, and disbarment accrued to Applicant/Petitioner because: (i) she filed Ethics complaints, with the Florida Bar seeking to redress her own personal grievances against the State prosecutor, in a criminal matter, as a statutory party with coextensive legal rights⁴ placed within the jurisdiction of the criminal justice system for the illegal arrest and prosecution of her then 13 year-old daughter for: (a) conduct that is not a crime, and (b) where the law is clearly established, the child's detention and arrest violated her rights secured by the Fourth and Fifth Amendments U.S. Const.; (ii) filing a citizen's complaint seeking an internal investigation of the arresting officers misconduct; (iii) seeking a fair and impartial tribunal in a contractual dispute with Applicant/Petitioner own mortgagee by filing a motion to disqualify the trial judge for perceived prejudice; (iv) criticizing independently unlawful state action, including the prosecution, secured detention of a child for conduct that is not a crime under Florida

³ The FCRA is administered and interpreted in accord with Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act ("ADA").

⁴ F.S. §§ 985.511 - 985.514 (2009), authority of the court over parents or guardians. *J.R. v. State*, 923 So.2d, 1269 (Fla. 1st DCA 2006), (rights accorded to parents and child are coextensive... the child's and parent's interests are the same...Florida thus requires that the parents of the child be summoned along with the child...jurisdiction does not attach until parents and children are both served).

penal code § 845.02 Fla. Stat. and Florida's Attorney General defending an indefensible appeal in the Fifth District Court of Appeal in violation of requisite prosecutorial and constitutional duty and oath of public office; (v) the child and parent retained attorneys, sued the City of Mount Dora and two of its officers, and (vi) the attorneys appealed the January 8, 2015, U.S. District Court Order citing, Heck v. Humphrey, 512 U.S. 477 (1994), as authority that the child could not assert claims under 42 U.S.C. § 1983 if they would imply the invalidity of a conviction that had not previously been reversed, expunged, declared invalid.⁵

8. An extension of time is also necessary because the PCA opinion conflicts with this court's vast jurisprudence on First Amendment, Standing, Due Process, Equal Protection, and Absolute Immunity. Further, the PCA opinion is (i) facially and as applied unconstitutional; (ii) violates the First Amendment petitioning and court access guarantees; and (iii) repudiates this Court's mandate that "*once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.*" *James v. City of Boise*, 136 S.Ct. 685 (2016).

⁵ Attorneys filed the appeal because there was not a single case in Florida applying Heck to the Florida Juvenile Statute and (1) five of the justices who decided Heck would not have applied the bar to a plaintiff ineligible for habeas relief; and (2) the circuit courts of appeal are split on how Heck applies, if at all. Three circuits allow Section 1983 claims by habeas-ineligible plaintiffs, five circuits do not, and three circuits are internally divided. The child's trial attorney, stipulated to a dismissal of remaining claims, pursuant to Fed. Rule. Civ. P. 41(a)(1)(A)(ii).

9. The petition for writ of certiorari will satisfy this Court's criteria for Considerations Governing Review on Writ of Certiorari, as set forth in the Court's Rule 10(b-c). The public's health, safety, morals, the integrity of the courts and violation of the most fundamental constitutional rights are implicated in a PCA opinion affirming a trial court's opinion (i) dismissing Applicant/Petitioner's complaint in its infancy on an unpled affirmative defense, that an individual lacks standing to redress her own grievances against the Florida Bar and (ii) that a governmental entity can use a personal immunity defense to deprive a party of his/her property interest in a cause of action, when such a defense is a legal impossibility. For e.g., this court has repeatedly held that the only immunity a governmental entity is entitled to is that of the sovereign. Absolute immunity, is an immunity defense that is only available for an individual capacity defendant. See *Kentucky v. Graham*, 473 U.S. 159, 166-167 (1985) (The two type of capacities are not interchangeable and the court and all advocates must distinguish them).

10. A PCA opinion cannot be the basis for conflict jurisdiction to the Florida Supreme Court. See *Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980) (determining that the Florida Supreme Court lacks jurisdiction to consider a per curiam affirmance). As such, the extension of time is also needed to address issues of great public importance, in that the State of Florida has a very broad public policy in an anti-SLAPP law, which prohibits any government employee, in any branch of government from bringing legal action against a citizen for exercising the rights of free speech in connection with public issues, peaceful assembly, the right to instruct representatives and petition for redress of

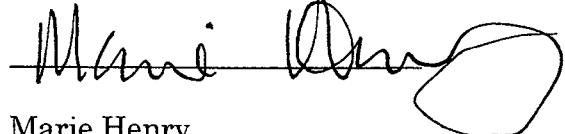
grievances before the various governmental entities of the State as protected by the First Amendment U.S. Const. and art. I § 5 Fla. Const.

11. The PCA opinion, violates the Separation of Power, First, Fourth, Fifth, and Fourteenth Amendments, Title VII and the ADA because a PCA cannot be cited as precedent or authority, except to demonstrate *res judicata*, and thereby cannot be used to resolve a recurring legal issue. See *Dept. of Legal Affairs v. District Court of Appeal, 5th District*, 434 So.2d 310 (Fla. 1983) ("The issue is whether a per curiam appellate court decision with no written opinion has any precedential value. We hold that it does not.") See also *State v. Swartz*, 734 So.2d 448 (Fla. 1st DCA 1999) ("As has been stated countless times before, a per curiam affirmation decision without written opinion has no precedential value and should not be relied on for anything other than res judicata.") (Citation omitted).

CONCLUSION

For the foregoing reasons, Applicant/Petitioner respectfully requests that this Court grant an extension of 60 days, up to and including December 17, 2021, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,



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