

November 7, 2022

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Dear Mr. Harris,

Petitioner respectfully directs the Clerk of the United States Supreme Court to file the Petitioner's enclosed Writ of Certiorari to Massachusetts Appeals Court as "Out of Time" for the following reasons:

Pursuant to the Court's Rule 13.1, Petitioner Shirley J. Eslinger respectfully had determined the time to file the petition for writ of certiorari in this matter to be November 21, 2022 which is 90 days from August 23, 2022. The United States Court of Appeals for the First Circuit entry of "Judgment" on August 23, 2022 precluded the Court's discretionary review.

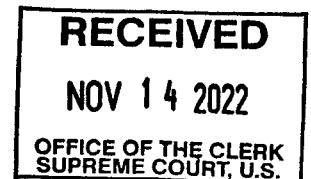
On October 28, 2022, a submittal of a petition for a writ of certiorari was mailed to the United States Supreme Court and was received by the U.S. Supreme Court Clerk on November 1, 2022. On November 5, 2022, the submittal had been returned and was received by Petitioner with a letter stating, "The petition is out of time. . . Rules 13.1, 29.2, and 30.1."

Rule 13.1 states, "A petition for a writ of certiorari seeking review of judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review." This information is unclear as the Petitioner interpreted the "order denying discretionary review" as the Judgment of the United States Court of Appeals for the First Circuit.

Massachusetts Appellate Court was the highest state court to decide case 21-P-653, on May 6, 2022.

A timely petition to the Massachusetts Supreme Court for Further Appellate Review was denied on June 30, 2022. The Court is using this date to calculate 90 days.

The Petitioner followed what she understood to be the "administrative exhaustion" path. On July 15, 2022, a timely petition to the United States Court of Appeals for the First Circuit for review of the case was docketed as "Misc. Case No. 22-8017," and the submitted docketing fee was not returned. On August 8, 2022, Petitioner made a timely response to U.S. Court of Appeals for the First Circuit Clerk's request to "show Cause why appeal should not be dismissed for lack of jurisdiction." The Court dismissed Petitioner's request for lack of jurisdiction, "explaining that the party invoking appellate jurisdictions bears the burden to establish that appellate jurisdiction exists." The Judgment of dismissal on August 23, 2022 therefore denied the Court's discretionary review.



Petitioner had found the Federal Circuit Appellate Courts have nonexclusive miscellaneous jurisdictions involving Constitutional and Federal law violations. Federal Circuit Appellate Courts jurisdictions are allowed by the following:

- Title 5 U.S.C. Chapter 7 Section 702 provides for the Right of Review – To “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”
- Per Title 5 U.S.C. Chapter 1 Section 105, The Equal Employment Opportunity Commission (EEOC) which is an administrative agency, part of the executive branch of the U.S. government would be considered an Executive Agency and their actions would be considered agency action.
- 28 U.S.C. Part IV Chapter 83 Section 1296 states (a) Jurisdiction . . . “the United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under chapter 5 of title 3 of – (1) an appropriate agency as determined section 454 of title 3” which Title 3 U.S.C. Chapter 5 subchapter III Section 454 states “(3) Judicial review – Notwithstanding any other provision of law (including any provision of law reference in Paragraph (1)( or (2)), judicial review of any administrative decision under this subsection shall be by appeal to the U.S. Court of Appeals for the Federal Circuit.”
- Title IV Rule 15 of the United States Court of Appeals for the First Circuit Rulebook – Review or Enforcement of an Order of an Administrative Agency, Board, Commissioner, or Officer sets the rule for the court to review orders of an Administrative Agency.

However, in the Court’s discretion, the Court chose to dismiss the case. The Petitioner understood Rule 13.1 of Rules of the Supreme Court of the United States to require petition for writ of certiorari submittal to the United States Supreme Court to be 90 days from August 23, 2022, which is the entry of the order to dismiss the case, by U.S. Court of Appeals for the First Circuit, which denied further discretionary review similar to Massachusetts Supreme Court ruling “denying Further Appellate Review” without giving a reason.

The Petitioner then prepared and submitted the required 40 copies of booklet format, 8 ½” x 11” copy, certificates of service and compliance, and docketing fee on November 1, 2022, to the United States Supreme Court which was “within 90 days after entry of the order denying discretionary review.” The Petitioner was given no indication that her docketed complaint would be dismissed by the U.S. Court of Appeals for the First Circuit for review until August 23, 2022 which was 54 days past the June 30, 2022 date.

Pro se Petitioner would argue that the 90-day calculation of time is not clearly defined in the Rules of the Supreme Court of the United States. She was not searching for a loop hole to justify a late submission. She is submitting the Petition

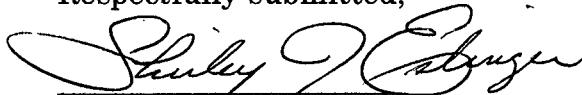
for Writ of Certiorari as "Out of Time Submittal" because that is her only option to possibly persuade the Court to make changes to the legal system which is allowing some employers to undermine discrimination laws.

A submittal to the United States Supreme Court is labor intensive and unique from all other court submittals. 90 days is a fair but not excessive amount of time to prepare a Petition for a Writ of Certiorari.

Pro se Petitioner respectfully directs the Clerk to file the enclosed submittal as "Out of Time" or requests to be allowed the 90 days to submit a petition for writ of certiorari as stated in the Rules of the Supreme Court of the United States and not 36 days which would have been September 28, 2022. 36 days is inadequate for this Pro se Petitioner to prepare a submittal to the United States Supreme Court in the proper format.

For the foregoing reasons, Petitioner respectfully requests permission to return the enclosed previously submitted documents to the United States Supreme Court Clerk's office.

Respectfully submitted,



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