

APP. NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

(Appeal of) MARK BARINHOLTZ, Petitioner,

vs.

HOMEADVISOR, INC., *et al.*,
Respondents.

**MOTION FOR EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)**

To the Honorable Amy Coney Barrett, as Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Petitioner, Mark Barinholtz, pursuant to Rules 13(5), 20, 21 and 23 of the Rules of the Supreme Court, respectfully seeks a sixty (60) day extension of time within which to file Petition for Writ of Certiorari in this Court, to and including September 29, 2023.

This application is submitted more than ten (10) days prior to the scheduled filing date for the Petition for writ of certiorari.

The dates pertinent here are:

- **May 2, 2023** – “Order” granting Appellees’ motion for summary affirmance (CA07 – #22-3137, Cir. Dkt. 23, Appx. “A” hereto), summarily affirming the District Court’s judgment.

and,

- **June 5, 2023** – “Order” confirming the viability of orders imposed as sanctions by the District Court, Hon. Harry D. Leinenweber presiding, requiring payment of roughly \$32,000 in costs and fine (CA07 – #22-3137, Dkt. 25, Appx. “B” hereto.)

and,

- **Also incorporated herein by reference see dates and orders set forth in Movant’s petition filed in this Court under S. Ct. Dkt. #20A400, at p. 2.**

Movant (Respondent *Pro Se* Mark Barinholtz) hereby moves to extend the time in which to file a Petition for Writ of *Certiorari* in the above-captioned case. Movant is currently taking steps to research, update and prepare for filing such a petition for writ of certiorari in this case. Accordingly, and further to the matters stated herein, Movant asks that this Court extend the deadline for filing of a certiorari petition, or filing of a petition for other relief, if any petition is filed, to stay further enforcement of Judge Leinenweber’s and the Seventh Circuit’s rulings until the petition is finally resolved.

Movant believes and herein relies upon the federal statutory provisions which confer jurisdiction on the Supreme Court in these circumstances, namely, 28 U.S.C. § 1254(1). That statute provides that cases decided by any Article III federal court, may be reviewed by the Supreme Court “by writ of certiorari granted upon the petition of any party to any civil ... case, ... after rendition of judgment.”

Movant further believes and herein alternatively relies upon the federal statutory provisions of the all writs Act (28 U.S.C. § 1651(a) “Writs”). That Act also confers jurisdiction on the Supreme Court in such circumstances as those present here. That statute provides that cases decided by any Article III federal court, may

be reviewed by the Supreme Court with respect to “all writs necessary or appropriate in aid of their respective jurisdictions. . . .” (Also see S. Ct. Rule 23 “Extraordinary Writs”).

Here, where the Seventh Circuit and the District Court for the Northern District of Illinois (Eastern Division) have “in tandem” assumed it to be within their respective jurisdictions to mete out certain forms of purported discipline – discipline which usurps or at least prejudicially impinges upon Movant’s Constitutional rights to livelihood and to otherwise not be censored by prior restraint from criticizing professional and/or judicial misconduct. Movant believes certain forms of relief (*e.g.*, mandamus, stay, or holding an aspect of a lower court order in abeyance) may be appropriate to remedy constitutionally protected 14th Amendment due process concerns. In fact, there is no other remedy and no other court which may ameliorate the prohibitions and monetary burdens which the District Court and the Seventh Circuit have imposed on Movant with respect to the main focus of his practice, *i.e.*, federal claims involving intellectual property and related rights in areas of entertainment and other arts-focused subject matters.

Movant is informed and believes that Senior U.S. District Judge Harry D. Leinenweber, whose orders below are being challenged by Movant, is no longer scheduling newly filed motions, and in fact is in the process of winding down his judicial duties. Though it is unclear what impact that may have on these circumstances, it will likely at least cause an additional layer of complexity in remedying this scenario.

Movant further believes both lower courts' references in these contexts to steadfastness in their refusal to review the circumstances leading up to, and inextricably intertwined with this controversy, render further action in the Seventh Circuit, *e.g.*, petition for rehearing and/or rehearing *en banc*, or any further prayer to the District Court, would be futile.

Notwithstanding the referral noted in the Seventh Circuit's Order of June 5, 2023, last par. at p. 3 (Appx. B hereto), as of the filing of this Application, Movant remains in good standing in Illinois, active and authorized to practice law, and registered for the year 2023. As far as the Illinois Supreme Court is concerned, there are no pending disciplinary proceedings against Movant, and the public record of past discipline, if any, is "None."

Good cause exists for granting an extension of time: (1) a reasonable probability of succeeding on the merits (meaning both that the U.S. Supreme Court will grant certiorari and that it will reverse) and (2) irreparable injury absent a stay. *Id.*;" see also *In re A.F. Moore & Assoc., Inc.*, 974 F.3d 836; 2020 WL 5422791, at *3 (7th Cir. 2020) (per curiam) (See also, CA7 Practitioner's Handbook, 2020 ed., p. 215).

Important questions of federal appellate jurisdiction are presented by these circumstances, including: (i) the relative roles and strengths between state and federal supreme courts in situations involving attorney conduct, and (ii) the distinctions between federal time-limitations in statutes versus time-limitations in

claims processing rules, and, all in the context of the jurisdictional concepts of timeliness and finality (Fed. R. App. P. 3, and 4; Fed. R. Civ. P. 59, and 60).

These concepts of important nationwide scope to federal court practice are brought into sharp focus here by this Court's unique and unanimous ability to provide a remedy for the Seventh Circuit's mistakes, including as analyzed in depth in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S.Ct. 13 (2017). Also, see Thomas, J., opinion for a unanimous Court, *U.S. et al., ex rel. Schutte, et al. v. Supervalu, etc.* (Nos. 21-1326 and 22-111) 598 U.S. ____ (2023), decided June 1, 2023.

Movant submits there is an ongoing, irreparable injury incident to the Seventh Circuit's May 2, 2023 and June 5, 2023 Orders, which go beyond the previously appealed April 8, 2020 non-precedential disposition (CA07 #20-3221, Cir. Dkt. 52). It is no small matter that rulings of both the District Court, and the "non-precedential" disposition of the Court of Appeals, both based on misunderstandings of facts and misapplication of laws, leave a defamatory sting in the record.

Appellees, the HomeAdvisor Defendants have demonstrated a clear penchant to flout the spirit, if not the letter, of reform efforts to enforce a sense of proportionality into the Federal Rules of Civil and Appellate Procedure designed to prevent abuse of federal courts for such meretricious purposes.

There will be no prejudice to the HomeAdvisor Defendants-Respondents if the Court allows the 60-day extension. Specifically, Defendants-Appellees HomeAdvisor have taken no self-initiated steps to enforce any relief against

Petitioner. They've only followed the District Court's lead in seeking to hobble Movant, and in their efforts on appeal as well.

There is good cause for the 60-day extension. If the 7th Circuit Court's affirmance of the last orders of the District Court become final, the Supreme Court may be deprived of the opportunity to further review this case at all.

In addition to the foregoing, Movant is otherwise engaged to the best of his ability in litigation, pre-litigation and office transactional obligations for which he alone is professionally responsible at all times relevant. Lastly, Movant has undergone a relocation of his office location since February 2023, which continues to impact Movant's ability to devote sufficient time to the petition for a writ of certiorari.

Movant has caused the foregoing Motion to extend time to be prepared pursuant to applicable Rules of the Supreme Court of the United States, and hereby certifies such Motion is made for reasons above stated, and solely to protect rights of Movant herein.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of *Certiorari* in this matter be extended 60-days up to and including September 29, 2023.

Dated: July 21st, 2023

Respectfully submitted,
MARK BARINHOLTZ, Petitioner*

By /s/ *Mark Barinholtz*
Attorney–Petitioner *Pro Se*
*Counsel of record**

MARK H. BARINHOLTZ, P.C.

1730 N. Clark St. Unit 302

Chicago, IL 60614

(312) 977-0121

mark@mhbpc.com

CERTIFICATE OF SERVICE

The undersigned, attorney-petitioner *pro se* herein, certifies that a true and correct copy of the foregoing Petitioner's Motion to Extend Time to File a Petition for Writ of Certiorari, was served upon the Defendants-Respondents' attorneys of record below, via email and U.S. Mail to their addresses stated below, in accordance with Supreme Court Rules 22.2 and 29.3, at Chicago, Illinois this 21st day of July, 2023:

Attorneys For Defendants-Appellees:

Barry F. Irwin
Irwin IP LLC
150 N. Wacker Drive, Suite 700
Chicago, IL 60606
(312) 667-6081
birwin@irwinip.com

Evan M. Rothstein
Arnold & Porter Kaye Scholer LLP
1144 15th Street, Suite 3100
Denver, CO 80202
(303) 863-1000
evan.rothstein@arnoldporter.com

By /s/ *Mark Barinholtz*
Attorney-Petitioner *pro se*

EXHIBIT A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

May 2, 2023

Before

DIANE S. SYKES, *Chief Judge*
FRANK H. EASTERBROOK, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-3137	RAY A. BOVINETT, Plaintiff v. HOMEADVISOR, INC., et al., Defendants - Appellees APPEAL OF: MARK H. BARINHOLTZ
Originating Case Information:	
District Court No: 1:17-cv-06229 Northern District of Illinois, Eastern Division District Judge Harry D. Leinenweber	

The following are before the court:

- 1. APPELLEES' MOTION FOR SUMMARY AFFIRMANCE AND TO STAY BRIEFING**, filed on April 4, 2023, by counsel for the appellees,
- 2. APPELLEES' SUPPLEMENTAL APPENDIX**, filed on April 4, 2023, by counsel for the appellees,
- 3. RESPONSE OF APPELLANT TO APPELLEES' MOTION FOR SUMMARY AFFIRMANCE**, filed on April 14, 2023, by the pro se appellant.
- 4. APPELLEES' REPLY IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE**, filed on April 21, 2023, by counsel for the appellees,

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This court has carefully reviewed the final order of the district court, the record on appeal, and appellant's brief. Based on this review, the court has determined that any issues that could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. See *Taylor v. City of New Albany*, 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would not assist the court and no member of the panel desires briefing or argument). Summary disposition is appropriate when "the arguments in the opening brief are incomprehensible or completely insubstantial." *United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006). Appellant Mark Barinholtz's opening brief is utterly insubstantial on the only decision that is properly before this court: the contempt ruling. Much of the brief is simply lifted verbatim from his brief in his earlier appeal challenging the underlying sanctions.

Accordingly, **IT IS ORDERED** that the appellees' motion is **GRANTED**, and the judgment of the district court is summarily **AFFIRMED**.

IT IS FURTHER ORDERED that Barinholtz file by May 16, 2023, a brief memorandum to show cause why he should not be suspended from appearing before this court pending compliance with the district court's sanctions imposed on August 14, 2020, and November 8, 2022, as well as why he should not be removed from the roll of attorneys admitted to practice before this court.

EXHIBIT B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

June 5, 2023

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-3137

RAY A. BOVINETT,
Plaintiff,

v.

HOMEADVISOR, INC., et al.,
Defendants-Appellees.

APPEAL OF: MARK H. BARINHOLTZ

Appeal from the
United States District Court for the
Northern District of Illinois,
Eastern Division.

No. 17 C 06229

Harry D. Leinenweber,
Judge.

ORDER

In August 2020 Attorney Mark Barinholtz was sanctioned by the district court for repeatedly asserting baseless claims and disregarding court orders while representing his client Ray Bovinett, the nominal plaintiff here. The district judge ordered Barinholtz to pay the defendants approximately \$17,000 in attorneys' fees and complete 40 hours of continuing legal education.

After an unsuccessful motion to reconsider, Barinholtz appealed. We affirmed. *See Bovinett v. HomeAdvisor, Inc. (Appeal of Barinholtz)*, No. 20-3221, 2022 U.S. App. LEXIS 9469, at *11 (7th Cir. Apr. 8, 2022). Though the appeal was timely only as to the denial of

the motion to reconsider, we held that “the judge reasonably ruled that Barinholtz lacked a good reason for vacating the sanctions.” *Id.* at 9. Rather than explain or apologize for his conduct, Barinholtz had attempted to relitigate frivolous arguments that the judge had previously rejected. *Id.* at 9–10.

Barinholtz did not comply with the sanctions order. After many unsuccessful attempts to induce him to do so, the judge ordered him to show cause why he should not be held in contempt for violating the court’s orders. The judge also ordered him to sit for a deposition regarding his finances. Instead of complying, Barinholtz filed a motion under Rule 60(b) of the Federal Rules of Civil Procedure again seeking to undo the underlying sanctions order. Following a hearing, the judge denied the motion, found Barinholtz in contempt, and imposed an additional \$15,000 fine for his noncompliance.

Barinholtz appealed, but his opening brief simply repeated his attacks on the underlying sanctions order. So on May 2, 2023, we summarily affirmed the district court’s contempt order, explaining that much of Barinholtz’s opening brief was lifted verbatim from his brief in the prior appeal and was otherwise “utterly insubstantial.” *See United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006). We also ordered Barinholtz to show cause why he should not be suspended from this court’s bar pending compliance with the district court’s sanctions order or removed from the roll of attorneys admitted to practice before this court.

Attorneys are subject to discipline in this court for “conduct unbecoming a member of the bar or for failure to comply with any court rule.” FED. R. APP. P. 46(c). “Conduct unbecoming a member of the bar” includes conduct that is “contrary to professional standards [and] shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice.” *United States v. Witkemper*, 27 F.4th 551, 555 (7th Cir. 2022) (quoting *In re Snyder*, 472 U.S. 634, 645 (1985)). Among other sanctions, an attorney who violates this standard may be stricken from the roll of attorneys admitted to practice before this court. 7TH CIR. R. 46(d).

Barinholtz’s response to the order to show cause continues his long-running frivolous attacks on the original sanctions order. He argues that the sanctions “are utterly out of proportion to the facts of this case.” He accuses the judge of ignoring information in the record and defense counsel of seeking to mislead and “gaslight the court.” Like his prior appeal and his opening brief in this one, his response to our order

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to show cause is a litany of frivolous, “already-rejected contentions.” *Bovinett*, 2022 U.S. App. LEXIS 9469, at *10 (citing *Carmody v. Bd. of Trs. of Univ. of Ill.*, 893 F.3d 397, 408 (7th Cir. 2018)). Rather than take responsibility for his failure to comply with court orders and rules or demonstrate his intention to do so in the future, Barinholtz continues to blame opposing counsel and the courts. He appears to think that as long as he keeps filing appeals or motions, he need not comply with the district court’s orders.

This persistent misconduct clearly demonstrates Barinholtz’s unfitness to discharge his obligations to his clients and the courts. Accordingly,

IT IS ORDERED that Attorney Mark Barinholtz is stricken from the roll of attorneys admitted to practice before this court. He may not seek reinstatement until he has paid the full sanctions imposed by the Northern District of Illinois, as well as any other outstanding sanctions and fees, and he must show that he is in good standing in any state bars to which he belongs. We direct the clerk of this court to send a copy of this order to the Attorney Registration and Disciplinary Commission of Illinois for any action it deems appropriate. Barinholtz must notify all other bars to which he belongs of this action.