

In the Supreme Court of the United States

MICHAEL COLLINS, on behalf of himself and all others similarly situated,
Petitioner,

vs.

VILLAGE OF PALATINE, ILLINOIS, a municipal corporation,
Respondent.

On Application for an Extension of Time to File a Petition for a Writ of Certiorari to
the United States Court of Appeals for the Seventh Circuit

**RESPONDENT’S OPPOSITION TO PETITIONER’S APPLICATION TO
EXTEND TIME TO FILE A PETITION FOR WRIT OF CERTIORARI**

To the Honorable Elana Kagan, as Circuit Justice for the United States Court of
Appeals for the Seventh Circuit.

INTRODUCTION

Petitioner’s application for an extension of time lacks merit. The application fails to set forth the requisite “good cause” for issuance of an extension. Indeed, Petitioner has already had four months frame the issues for his petition.

Buried at the end of Petitioner’s application lies the true two sentence justification for why Petitioner seeks an extension of time—his counsel, who has been litigating this and related cases since 2010—has started talking with another (unnamed) attorney to get his help framing the issues and narrowing the

arguments for this Court. But Petitioner does not even state when he began consulting with this attorney, who evidently is not substituting as counsel of record.

There is only one issue in this case—and it is a pure issue of law. Every Circuit to consider the issue has uniformly held that class action tolling under *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) stops (and the limitations period resumes) when a putative class action is dismissed *without* prejudice. The Seventh Circuit merely held that it did not matter for tolling purposes whether the dismissal was *with* or *without* prejudice.

Petitioner has known from the outset that the statute of limitations would be not just “an” issue—but “the” issue. He filed this lawsuit (concerning a \$20 parking ticket) on March 29, 2016—nine years after he received that ticket in 2007. Palatine even advised Petitioner that there was an obvious statute of limitation problem before he filed his lawsuit. Thus, from the outset, Petitioner knew there was a single question of law he had to answer—whether the statute of limitations continued to be tolled even after a prior class action filed had been dismissed.

On November 16, 2017, the question was answered by the Seventh Circuit, whose ruling hardly blazed a new path. The Seventh Circuit held that it made no difference for tolling purposes whether the dismissal was *with* or *without* prejudice—either one resumed the statute of limitations. On December 13, 2017, the Seventh Circuit denied Petitioner’s motion for rehearing *en banc*.

Petitioner has had sufficient time to frame the sole issue in this case. He has not demonstrated good cause to extend the filing of his petition for writ of certiorari.

ARGUMENT

Petitioner's burden in making this application is heavy. "An application to extend time to file a petition for a writ of certiorari is not favored," and may only be granted for "good cause." S.Ct. R. 13.5.

Over the past two years, the Petitioner has been aggressively represented by the same counsel, who filed, litigated, and obtained an *en banc* reversal of the original class action, *Senne v. Village of Palatine*, which dated back to 2010. Petitioner's counsel previously, and without an extension of time filed a Petition for Writ of Certiorari in the *Senne* case after the Seventh Circuit affirmed summary judgment for Palatine. *See Senne v. Village of Palatine*, 15-333 (S. Ct.).

Petitioner now claims that additional time is required because his "counsel has been working with outside counsel ... to assist in this case." Application, p. 4, ¶5. Without naming who the outside counsel is or identifying when he or she began consulting with existing counsel, Petitioner says that additional time is needed for the outside consulting counsel to become familiar with the record and to help "frame the issues" in order to "narrow arguments." Application, p.4, ¶5. Petitioner never sought an agreement from Respondent.

The bare desire to consult with a new attorney—even one who holds himself out as having Supreme Court expertise—simply does not constitute "good cause" for extending the period for filing a Petition for Certiorari. Parties routinely consult new or additional counsel in seeking further appellate review.

The Application is silent as to when Petitioner began consulting with this new, unnamed attorney. The Seventh Circuit affirmed the dismissal on November 16, 2017, which should have alerted Petitioner of the potential need to begin consulting outside counsel with Supreme Court expertise, even before the Petition for Rehearing *En Banc* was denied.

If simply consulting a new attorney (who might not even be counsel of record) is sufficient cause to extend the deadline, then virtually all Petitioners would have grounds for such a motion. “Counsel who urged the point below is counsel here; the addition of another counsel hardly affords grounds for the desired extension.” *Carter v. United States*, 75 S. Ct. 911, 911 (1955) (opinion in chambers).

The record below is hardly complicated. Respondent filed a motion to dismiss, which was granted by the District Court and affirmed by the Seventh Circuit, which denied a petition for *en banc* rehearing. The dismissal was based on pure procedural issues—i.e., the date on which the prior *Senne v. Palatine* case was dismissed. Thus, the only record needed for framing issues is the dates that specific rulings were made in the underlying *Senne v. Palatine*. That is a straightforward matter. In order to file a Petition for Certiorari, there is no need to understand the testimony of witnesses (who only testified in the *Senne* matter, and not in this case, which was dismissed under Fed. R. Civ. P. 12(b)(6)).

Petitioner’s claim that they need extra time to draft a “carefully prepared Petition” because “[t]his case presents extraordinarily important issues,”

Application, p. 4 ¶1, confuses the distinction between petitions for certiorari and briefs on the merits. As explained by Justice Frankfurter:

Too frequent is the suggestion of counsel asking for extension that more time is required to ‘research’ on the questions to be presented by the petition for certiorari. I cannot emphasize too strongly that petitions for certiorari all too frequently misconceive the true nature of such petitions—the considerations governing review on certiorari—and the manner of presenting them. It does not require heavy research to charge the understanding of this Court adequately on the gravity of the issue on which review is sought and to prove to the Court the appropriateness of granting a petition for a writ of certiorari.

Brody v. United States, 77 S.Ct. 910, 911 (1957). When the issue upon review has received extensive consideration in the courts below, the difficulty of properly preparing a certiorari petition is lower still. *Id.*

“[C]ounsel may be appropriately reminded that the requirements of the Rules of this Court regarding the contents of a petition for certiorari seldom call for the kind of research which may be demanded for a brief on the merits.” *Carter*, 75 S. Ct. at 911. Under some circumstances, an adequate petition for certiorari “ought not to take more than a day or two on the part of competent counsel, particularly one previously responsible for the cause.” *Id.*

Petitioner’s counsel has been involved in this litigation from the beginning and is well versed in the underlying facts and procedural history. He has already framed arguments on the exact same issue of law before the District Court, and twice before the Seventh Circuit—as he filed a motion for rehearing *en banc*. In fact, because of the motion for rehearing, Petitioner and his attorneys have actually already had four months to study the Seventh Circuit’s opinion and formulate the

petition for certiorari. *Penry v. Texas*, 515 U.S. 1304, 1306 (1995) (“Moreover, counsel sought rehearing below, and thus have had six months to review the opinion of the Court of Criminal Appeals”). In the instant case, Petitioner’s motion for rehearing gave four months to review the opinion, which is not different in kind. *Cf.*, *United States ex rel. Cerullo v. Follette*, 396 U.S. 1232 (1969) (opinion in chambers) (denying application for extension of time when two and a half months provided sufficient time to prepare petition for certiorari).

CONCLUSION

The Petitioner and his attorney have long known the sole issue in this case. Practically speaking, there can be no “narrowing” of issues, when the sole issue on appeal is a pure question of procedural law. Petitioner has not satisfied his obligation to demonstrate good cause to extend the deadline for filing a petition for certiorari. This Court should deny the application.

Dated: March 2, 2018

BY: /s/ Paul Allen Rettberg
One of the Attorneys for the Respondent

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that he served the foregoing document by sending a true and correct .pdf version of the same to the following attorneys before the hour of 5:00 pm on March 2, 2018, and by depositing a copy of the same in U.S. Post Box located at 175 W. Jackson, Blvd, Chicago, IL 60604 by or before the hour of 5:00 pm on March 2, 2018.

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