

No. 14-15408 [DC# CV 13-05807-RMW]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEONARD FYOCK, et al.,

Plaintiffs-Appellants,

v.

CITY OF SUNNYVALE, et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**APPELLANTS' MOTION FOR EXTENSION OF TIME
TO FILE OPENING BRIEF; DECLARATION OF ANNA M. BARVIR**

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Counsel for Plaintiffs-Appellants
REQUEST FOR EXTENSION OF TIME

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2(b), Appellants respectfully submit this unopposed motion for a thirty (30) day extension, through and including May 2, 2014, to file their Opening Brief. This request is based on the declaration of Anna M. Barvir attached hereto.

Appellants' Opening Brief is currently scheduled to be filed on or before April 2, 2014. (Barvir Decl., ¶ 2.) For the reasons summarized here and attested to in Ms. Barvir's attached declaration, Appellants have a substantial need for an extension of that deadline. The City of Sunnyvale, Mayor Anthony Spitaleri, and Chief Frank Grgurina ("the City") have indicated that they do not oppose. (Barvir Decl., ¶ 10.) Appellants thus request this Court issue an order granting Appellants an extension of thirty (30) days to file their Opening Brief. If approved by the Court, Appellants' brief shall be due on or before May 2, 2014. First, due to a sudden family emergency, Appellants' lead counsel, Clinton B. Monfort, began an indefinite leave of absence on March 17, 2014. (Barvir Decl., ¶ 3.) His emergency was unforeseeable, unavoidable, and will last for an indeterminate amount of time. (Barvir Decl., ¶ 3.) As his number one priority right now is to honor his family commitments, he is unable to work from home. (Barvir Decl., ¶3.) In Mr. Monfort's absence, Ms. Barvir will be the attorney responsible for continuing

Appellants' appeal. (Barvir Decl., ¶ 3.) She is now the sole attorney responsible for researching and drafting Appellants' Opening Brief in a complex case involving serious constitutional issues—the kind of case that generally requires the efforts of more than one attorney. (Barvir Decl., ¶ 4.)

Second, since the filing of Appellants' Notice of Appeal, Ms. Barvir has been spending the majority of her time researching and drafting emergency motions in this case to the Court of Appeals for the Ninth Circuit and to the United States Supreme Court. (Barvir Decl., ¶ 5.) She has also been working on motions and oppositions in another Ninth Circuit appeal involving complex constitutional challenges with set deadlines for filing. (Barvir Decl., ¶ 6.) Additionally, Ms. Barvir was away from the office for four days while at an out-of-town conference. (Barvir Decl., ¶ 7.)

Third, Ms. Barvir, in her multiple roles as litigator and local legislative and policy analyst, has also been heavily involved in local legislative matters. (Barvir Decl., ¶ 8.) Deadlines in these matters regularly arise with just a moment's notice, and Ms. Barvir anticipates that she will have to devote many hours to such matters in the coming weeks. (Barvir Decl., ¶ 8.) For instance, Pleasant Hill, California, will be considering a zoning ordinance on April 1, 2014. (Barvir Decl., ¶ 8.) Once Ms. Barvir receives a draft of this ordinance, she must immediately prepare and

distribute an opposition memorandum to the Pleasant Hill Planning Commission before the April 1, 2014 hard deadline. (Barvir Decl., ¶ 8.)

The above reasons preclude Appellants' counsel from filing Appellants' Opening Brief by the current deadline of April 2, 2014, without significantly impairing its quality. (Barvir Decl., ¶ 9.) Appellants have not previously asked for any other extension of time to file their Opening Brief. (Barvir Decl., ¶ 11.) Appellants' request for an extension is made in good faith and not for the purpose of delay. (Barvir Decl., ¶ 13.)

Appellants thus request that this Court grant a thirty (30) day extension, through and including May 2, 2014, for Appellants to file their Opening Brief. Alternatively, Appellants request an extension for a period of time the Court deems appropriate.

Date: March 20, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*
Leonard Fyock, Scott Hochstetler,
William Douglas, David Pearson, Brad
Seifers, and Rod Swanson

DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, declare:

1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an attorney at Michel & Associates, P.C., attorneys of record for Plaintiffs-Appellants Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson. I am the attorney primarily responsible for preparing Appellants' Opening Brief in this case. I have personal knowledge of the facts set forth herein and if called as a witness I could and would competently testify thereto.

2. Appellants' Opening Brief is presently due on April 2, 2014.

3. Due to an unexpected family emergency, Appellants' lead counsel, Clinton B. Monfort, began an indefinite leave of absence on March 17, 2014. Mr. Monfort has family obligations and commitments he must honor and is largely unable to work from home. His abrupt absence was unforeseeable, unavoidable, and will last for an indeterminate amount of time. In Mr. Monfort's absence, I am now the attorney responsible for continuing Appellants' appeal and I am the attorney responsible for researching and drafting Appellants' Opening Brief, as well as managing all other matters associated with this litigation.

4. This case raises novel and critically important issues of constitutional law, involving a local government conflict with the Second Amendment to the United States Constitution. Normally, such a case requires more than one attorney to effectively litigate.

5. Since Appellants' filed their Notice of Appeal, I have spent the majority of my time researching and drafting emergency motions in this case to the Court of Appeals for the Ninth Circuit and to the United States Supreme Court.

6. Since Appellants' filed their Notice of Appeal, I have also been substantially and primarily involved in the research and drafting of substantive motions and oppositions under set deadlines in *Peruta v. County. of San Diego*, No. 10-56971 [DC# CV 09-02371-IEG]. This federal case also raises novel and critically important issues of constitutional law, involving a local government conflict with the Second Amendment to the United States Constitution.

7. Since Appellants' filed their Notice of Appeal and prior to Mr. Monfort's leave, I was also away from the office for four days at an out-of-town conference.

8. In addition to my role as a litigator, I am responsible for local legislative and policy analysis and regularly must weigh in on firearms laws pending before various California cities. Deadlines in these matters regularly arise

with just a moment's notice, and I anticipate that I will have to devote many hours to such matters in the coming weeks. For instance, as soon as I receive a draft of a zoning ordinance that Pleasant Hill will be considering on April 1, 2014, I will have to immediately draft an opposition memorandum that must be distributed to the Pleasant Hill Planning Commission before April 1, 2014. This deadline is not flexible.

9. The above reasons preclude Appellants' counsel from filing Appellants' Opening Brief by the current deadline of April 2, 2014, without significantly impairing its quality. As such, Appellants respectfully request a thirty (30) day extension of time from the currently scheduled April 2, 2014, deadline to file their Opening Brief.

10. I contacted counsel of record for defendants on March 19, 2014, regarding any objection to Appellants' request for an extension of time to file their Opening Brief. Defendants' counsel stated they would not oppose this motion.

11. Appellants have not previously asked for any other extension of time to file their Opening Brief.

12. Counsel for Appellants have at all times exercised diligence to provide this Court timely and professional briefing. The requested extension of time will enable counsel to continue to do so, while at the same time fulfilling their

obligations in other courts and other matters.

13. This motion is made in good faith for the reasons of actual need set forth herein and not for the purpose of delay. In fact, it is in Appellants' interest to expedite a resolution of this matter, but not at the expense of the quality of briefing.

14. To my knowledge, the requested extension will not prejudice any party.

15. The court reporter is not in default with regard to any designated transcripts.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed the 20th day of March, 2014, at Long Beach, California.

/s/ Anna M. Barvir
Anna M. Barvir
Attorney for *Plaintiffs-Appellants*

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2014, an electronic PDF of
**APPELLANTS' MOTION FOR EXTENSION OF TIME TO FILE
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was uploaded to the Court's CM/ECF system, which will automatically generate
and send by electronic mail a Notice of Docket Activity to all registered attorneys
participating in the case. Such notice constitutes service on those registered
attorneys.

Date: March 20, 2014

/s/ C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*
Leonard Fyock, Scott Hochstetler,
William Douglas, David Pearson,
Brad Seifers, and Rod Swanson