

No. 12-17803

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESPANOLA JACKSON, et al.,

Plaintiffs-Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV-09-2143-RS)

**APPELLANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE PETITION FOR REHEARING OR REHEARING EN BANC;
DECLARATION OF ANNA M. BARVIR**

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REQUEST FOR EXTENSION OF TIME

Pursuant to Federal Rules of Appellate Procedure 40(a)(1) and 26(b) and Ninth Circuit Rule 31-2.2(b), Appellants respectfully submit this unopposed motion for a 45-day extension, through and including June 23, 2014, to file a petition for rehearing or rehearing en banc.

Under Federal Rules of Appellate Procedure Rule 40(a)(1), any petition for panel rehearing must be filed within 14 days after entry of judgment, unless that time is extended. Any petition for rehearing or rehearing en banc must be filed “within the time prescribed by Rule 40 for filing a petition for rehearing.” Fed. R. Civ. Proc. 35(c). For good cause, the due date for filing the petition for rehearing or rehearing en banc may be extended. Fed. R. App. P. 26(b); Fed. R. App. P. 40(a)(1).

Appellants’ initially filed a motion for a thirty-day extension to file a petition for rehearing or rehearing en banc, which the Court granted. Decl. of Anna M. Barvir Supp. Mot. Ext. Time (“Barvir Decl.”) ¶ 2. Appellants’ petition for rehearing or rehearing en banc is now scheduled to be filed on or before May 8, 2014. Barvir Decl. ¶ 2. For the reasons summarized below, Appellants have a substantial need for a further extension of that deadline. The City and County of San Francisco, Mayor Edwin M. Lee, and Police Chief Greg Suhr (“the City”)

have indicated that they do not oppose Appellants' request. Barvir Decl. ¶ 3.

Appellants thus request this Court issue an order granting Appellants an extension of 45 days to file their petition for rehearing or rehearing en banc, through and including June 23, 2014.

First, as explained in Appellants' previously filed extension request, Appellants' lead counsel, Clinton B. Monfort, began an indefinite leave of absence on March 17, 2014. Barvir Decl. ¶ 4. His emergency was unforeseeable and unavoidable. Barvir Decl. ¶ 4. Although Mr. Monfort tentatively returned to work on March 31, 2014, he is regularly out of the office to assist with the continued care of an immediate family member. Barvir Decl. ¶ 4. As a result, Ms. Barvir is now the attorney primarily responsible for preparing Appellants' petition for rehearing or rehearing en banc. Barvir Decl. ¶ 4.

For the same reason, Ms. Barvir is primarily responsible for preparing appellants' opening brief in *Fyock v. Sunnyvale*, No. 14-15408, which is due on or before May 16, 2014. Barvir Decl. ¶ 5. Because of the proximity of the deadlines for the opening brief in *Fyock* and for the petition for rehearing or rehearing en banc in this case, Appellants' counsel must work on the filings simultaneously. Barvir Decl. ¶ 6.

Unfortunately, on April 9, 2014, Ms. Barvir learned that she would be undergoing a necessary operation on April 25, 2014. Barvir Decl. ¶ 7. In the week leading up to her procedure, she has several pre-surgery appointments that will keep her out of the office. Barvir Decl. ¶ 7. And after the surgery, she will be out of the office for at least three weeks, during which she must remain at home on bed rest and will be largely unable to work. Barvir Decl. ¶ 7. Consequently, Ms. Barvir is on leave from April 17 until May 17, 2014. Barvir Decl. ¶ 7. The scheduling of this procedure during the time in which Ms. Barvir must prepare the petition was unexpected and unavoidable. Barvir Decl. ¶ 7.

Since the Court granted Appellants' first motion for extension of time, Ms. Barvir has been spending the majority of her time diligently preparing the petition for rehearing or rehearing en banc in this case, the opening brief in *Fyock*, a reply brief in *Rando v. Harris*, No. B254060, that was due on April 9, 2014, and an opposition to three motions to intervene in *Peruta v. County of San Diego*, No. 10-56971, that was due on April 2, 2014. Barvir Decl. ¶ 8. Ms. Barvir has spent the remainder of her time performing her duties as a local legislative and policy analyst, specifically researching, drafting, and distributing opposition memorandums to the Pleasant Hill Planning Commission and Los Angeles Public Safety Committee. Barvir Decl. ¶ 9.

The above reasons preclude Appellants' counsel from filing Appellants' petition for rehearing or rehearing en banc by the current deadline of May 8, 2014, without significantly impairing its quality. Barvir Decl. ¶ 11. An extension would provide Appellants with sufficient time to work simultaneously on approaching deadlines. Barvir Decl. ¶ 12. And since Mr. Monfort and Ms. Barvir have the most intimate knowledge of this case since its inception, it would not be in Appellants' best interest to have another attorney prepare the petition for rehearing or rehearing en banc at this stage. Barvir Decl. ¶ 10. Appellants' motion for an extension is made in good faith and not for the purpose of delay. Barvir Decl. ¶ 13. To the best of Appellants' counsel's knowledge, the requested extension will not prejudice any party. Barvir Decl. ¶ 14.

Appellants thus request this Court issue an order granting Appellants an extension of 45 days to file a petition for rehearing or rehearing en banc. If approved by the Court, Appellants' petition shall be due on or before June 23, 2014.

Date: April 21, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*

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 Espanola Jackson, Paul Colvin, Thomas Boyer, Larry Barsetti, David Golden, Noemi Margaret Robinson, National Rifle Association of America, Inc., and San Francisco Veteran Police Officers Association. 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 previously filed a motion for a thirty-day extension to file a petition for rehearing or rehearing en banc on March 27, 2014. The Court granted that motion on March 28, 2014. Now Appellants' petition for rehearing or rehearing en banc is scheduled to be filed on or before May 8, 2014.

3. I contacted Ms. Christine Van Aken, counsel of record for the City, via e-mail on April 21, 2014, asking whether the City had any objection to Appellants' further request for an extension of time to file their petition for rehearing or rehearing en banc. On the same day, Ms. Van Aken responded that the City would not oppose this motion.

4. Due to an unexpected family emergency, Appellants' lead counsel, Clinton B. Monfort, began an indefinite leave of absence on March 17, 2014. His abrupt absence was unforeseeable and unavoidable. Through Mr. Monfort has returned to work, his return is tentative and, as he continues to care for an immediate family member, he is frequently out of the office. As a result, I am now the attorney primarily responsible for preparing Appellants' Opening Brief.

5. For the same reason, I am also now the attorney primarily responsible for drafting the opening brief in *Fyock v. Sunnyvale*, No. 14-15408, due on or before May 16, 2014.

6. Because of the proximity of the deadlines for the petition in this case and the opening brief in *Fyock*, I have been preparing, researching, and drafting these documents simultaneously.

7. I learned on April 9, 2014, that I will be undergoing necessary surgery on April 25, 2014. The week before this procedure, I must attend several pre-surgery appointments that will keep me out of the office. And then I will be out of the office for at least three weeks following the procedure, during which time I will be on bed rest and largely unable to work. As a result, I will be out of the office until May 17. The scheduling of this procedure during the time in which I must prepare Appellants' petition to meet the current May 8 deadline was

unexpected and unavoidable.

8. Since the Court granted Appellants' first motion for extension of time, I have been spending the majority of my time preparing Appellants' petition for rehearing or rehearing en banc, an opening brief in *Fyock*, a reply brief in *Rando v. Harris*, No. B254060, that was due on April 9, 2014, and an opposition to three motions to intervene in *Peruta v. County of San Diego*, No. 10-56971, that was due on April 2, 2014.

9. I have spent the remainder of my time performing my duties as a local legislative and policy analyst, specifically researching, drafting, and distributing opposition memorandums to the Pleasant Hill Planning Commission and Los Angeles Public Safety Committee.

10. Because Mr. Monfort and I are the attorneys with the most intimate knowledge of this case, I do not feel it would be in Appellants' best interest to have another attorney draft the petition for rehearing or rehearing en banc at this stage.

11. The above reasons preclude Appellants' counsel from filing Appellants' petition for rehearing or rehearing en banc by the current deadline of May 8, 2014, without significantly impairing its quality. As such, Appellants respectfully request a 45-day extension of time to file a petition for rehearing or

rehearing en banc.

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 their petition for rehearing or rehearing en banc.

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

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

Executed the 21st day of April, 2014, at Long Beach, California.

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

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2014, an electronic PDF of **APPELLANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING OR REHEARING EN BANC; DECLARATION OF ANNA M. BARVIR** 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: April 21, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*