

In the Supreme Court of the United States

MICHAEL J. LIBMAN et al.,
Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;
ANTWON JONES et al.,
Real Parties in Interest.

ANTWON JONES,
Plaintiff,
v.
CITY OF LOS ANGELES,
Defendant;
MICHAEL J. LIBMAN et al.,
Petitioners.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO
PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA
COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FIVE**

Application to the Honorable Elena Kagan, as Circuit Justice for the Ninth
Circuit, California

Pursuant to Supreme Court Rule 13.5, Applicant Paule McKenna requests a forty-day extension of time, to and including July 8, 2024,¹ within which to file a petition for a writ of certiorari.

1. The decisions below are *Libman v. Superior Court*, California Court of Appeal case no. B333130 and California Supreme Court No.

¹ The forty-day mark falls on Sunday, July 7; July 8 is the next business day.

S283193, and related case *Jones v. City of Los Angeles*, California Court of Appeal case no. B313095 and California Supreme Court No. S283552. The California Court of Appeal issued its opinions in case nos. B333130 and B313095 on December 15, 2023 (Apps. 1a & 2a) and the California Supreme Court issued its denial of petition for review on February 28, 2024 (Apps. 1b & 2b). Unless extended, Applicant's time to seek certiorari in this Court expires May 28, 2024. Applicant is filing this application at least ten days before that date. S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Applicant was local counsel for the litigation and settlement of a lawsuit against the City of Los Angeles arising from injuries to Los Angeles Department of Water & Power ("LADWP") customers via introduction of a new billing system deployed by PricewaterhouseCoopers, LLC ("PWC"). After initially approving the settlement and applicant's portion of the attorney fees, due to allegations made by PWC in its defense, the local judge on the case appointed counsel to investigate the settlement. As a result, and although applicant continues to fight to clear his name, the judge issued an order disgorging the entirety of his attorney fees despite finding no injury to the clients and without any analysis of applicant's ability to pay, raising Eighth Amendment "excessive fines" issues. Additionally, the judge found applicant in contempt of court based on violation of a newer version of the California Rules of Professional Conduct that was not in effect at the time of the alleged conduct, raising constitutional "ex post facto" issues

3. Good cause exists for a forty-day extension within which to file a petition.

a. This Court has used a proportionality test in analyzing whether a state imposed fine is excessive under the Eighth Amendment and specifically

requiring consideration of (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay. *United States v. Bajakajian* (1998) 524 U.S. 321, 334, 337-338. This case involves application of the Eighth Amendment to disgorgement of attorney fees where there was no harm to the clients or assessment of the attorney's ability to pay and offers this Court the opportunity to clarify for the lower federal and state courts how to apply *Bajakajian* in the fee disgorgement arena.

b. This Court has applied the constitutional prohibition on ex post facto laws in several different contexts. U.S. Const. art. I, § 9, cl. 3; *see, e.g., Weaver v. Graham* (1981) 450 U.S. 24, 101 (state statute revising calculation of conduct credits). This case also involves application of the ex post facto clause to revised rules of professional responsibility and ethics governing attorney conduct and thus affords this Court the opportunity to clarify for the lower federal and state courts the application of the ex post facto clause in the professional responsibility framework.

c. An extension is further warranted because undersigned counsel has only recently been retained to represent Applicant in this matter. Additional time is necessary for counsel to become fully familiar with the issues, the decision below, the record, and the relevant case law.

d. The request is further justified by counsel's press of business on other pending matters. Counsel has a motion for new trial in the Los Angeles Superior Court, and a respondent's opening brief, an appellant's reply brief, and a large record appellant's opening brief, in the California Court of Appeal due before the end of the month, and complex motion briefing and a large record appellant's opening brief due in the Ninth Circuit next month.

The requested 40-day extension would cause no prejudice to Respondent.

Respectfully submitted,

/s/ David Zarmi

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