

EXTENSION OF TIME REQUEST FOR
A PETITION FOR WRIT OF CERTIORARI
No. _____

In The Supreme Court of The United States Supreme Court

Gregory M. Haynes, Petitioner,

v.

City of Colusa , et, al , Respondent(s).

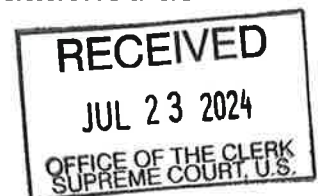
APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

To the Honorable Justice of the Ninth Circuit: Elena Kagan

Petitioner Gregory M. Haynes request 58 days to file a Petition for Writ of Certiorari on Oct 18, 2024. The final judgement in this matter was entered on April 23, 2024 where the Ninth Circuit denied petitioners' petition for rehearing and rehearing en banc of its Feb 6, 2024 decision, affirming in part and dismissing in part the appeal of the district court order of denying a motion to extend time dismissing the case on 6-15-20.

The last day to file a petition for a writ of Certiorari is July 22, 2024. This application for an extension to file a petition is being present on the last day to file a petition. The good cause for the filing of the late extension is that petitioner Gregory M. Haynes was working on a separate but related case.

Attached to the petition is a copy of the Feb 6, 2024 decision affirming in part and dismissing part the appeal in the Ninth Circuit (attached as



page 1 to 5) and the April 23, 2024 motion denying the motion for rehearing and rehearing en banc. (attached as page 6)

This matter concerns the Ninth Circuit's errors in finding that the district court was not disqualified under 28 US 144 and 455, finding that it was not an abuse of discretion for the district court to deny an extension to comply with the court order to amend the first amended complaint and then dismissing the case for failure to prosecute under FRCP 41(b), and failing to consider whether the district court erroneously granted a motion to dismiss with leave to amend when considering the FRCP 41(b) order dismissing the case as required under *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)

The essence of the case is that the Judge Seeborg was disqualified in Haynes v Colusa. The district court was disqualified in Haynes v. Moawad where the matter was assigned to Judge Seeborg in a non-random assignment in violation of local rules. Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987) While Haynes v Moawad was pending, Judge Seeborg was randomly assigned to the current matter, Haynes v Colusa.

Because the issue of the non-random assigned was address in Haynes v Colusa, this case present the fully briefed issue of the unconstitutional non-random assignment of cases in the district court , which evades review, as the issue of the non-random assignment is usually not known or suspected at the time of the assignment.

Further, the delay in filing the motion to request an extension of time to file a petition for writ of certiorari is related to the non-random assignment in Haynes v Moawad. Haynes v Moawad addressed judicial bias and attorney misconduct which arose in Cotterill v CCSF. The misconduct in Cotterill v CCSF was not discovered by petitioner until years after the misconduct. However, 9 years after the final Judgment in Cotterill v CCSF was entered, the defendants therein sought in 2023 to renew the June 18, 2013 judgment in Cotterill v CCSF . As a result, the now discovered misconduct could be argued in a motion to vacate the renewal of the judgment. The Ninth Circuit approved the petitioner's filing of the reply briefs in those appeals on July 16, 2024 and July 15, 2024.

See attached page 7 and 8. Further Cotterill v CCSF is renamed Haynes v CCSF.

As petitioner was working on the Reply Briefs in Haynes v CCSF , he was not able to timely file the motion to extend the time to file the petition for writ of certiorari in this matter. Thus, the delay was related to Haynes working on the issues related to the judicial and attorney misconduct which underlie the basis for Judge Seeborg bias: the judicial and attorney misconduct is related to the reason why Judge Seeborg was non-randomly assigned to Haynes v Moawad and the same bias is involved in Haynes v Colusa.

Accordingly, petitioner Gregory Haynes request that the Court extent the time to file the petition for writ of certiorari to September 18, 2024

DATED: July 20, 2024

Respectfully Submitted



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IN PRO PER

FILED

FEB 6 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARMEN O. HAYNES; GREGORY
MELVIN HAYNES,

Plaintiffs-Appellants,

v.

CITY OF COLUSA; et al.,

Defendants-Appellees.

No. 20-16420

D.C. No. 3:19-cv-01002-RS

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Richard Seeborg, Chief District Judge, Presiding

Submitted February 6, 2024 **

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

Carmen Haynes and Gregory Haynes (mother and son) (collectively
Plaintiffs) appeal pro se the district court's dismissal of their action under Federal
Rule of Civil Procedure 41(b). Plaintiffs also appeal the district court's denial of a

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

motion to disqualify Judge Seeborg and the judges in the Northern District of California. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not abuse its discretion in dismissing the case under Rule 41(b). *See Briseno v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021). “[W]e will overturn a dismissal sanction only if we have a definite and firm conviction that it was clearly outside the acceptable range of sanctions.” *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006). Here, the district court applied the correct legal standard, and expressly considered the required five factors for dismissals for failure to prosecute under Rule 41(b), *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (outlining factors to consider in determining whether to dismiss under Rule 41(b)).

The district court’s conclusion that the five factors favored dismissal was not “(1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record.” *United States v. Hinkson*, 585 F.3d 1247 (9th Cir. 2009) (en banc). Notably, the district court provided Plaintiffs five extensions of time to amend their complaint over an eight-month period. Plaintiffs’ motions were filed on or after the set deadlines. Plaintiffs’ excuses ranged from computer difficulties to medical issues to the pandemic. In the last two extensions of time the district court made it clear that the action would be dismissed if Plaintiffs did not

comply with the order. Yet, Plaintiffs failed to file an amended complaint.

Accordingly, the district court did not abuse its discretion in finding the factors weighed in Defendants' favor. *See Yourish v. Calif. Amplifier*, 191 F.3d 983, 990–92 (9th Cir. 1999).

2. Judge Seeborg did not abuse his discretion under 28 U.S.C. §§ 144, 455 in denying the motion to disqualify himself and the other judges in the Northern District of California. Gregory's¹ allegations of bias, based upon prior court rulings related to Gregory's disbarment in the Northern District, are insufficient by themselves to establish bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) (“[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.”). Moreover, Gregory did not establish how Judge Seeborg's outside activities or friendship with Chief Judge Hamilton established bias against Gregory beyond the judicial rulings related to Gregory's disbarment case. Because Gregory failed to present a “sufficient affidavit” establishing bias, Judge Seeborg properly

¹ Carmen did not join in the motion to disqualify.

denied the motion without having to refer the matter to another judge. *See* 28 U.S.C. § 144.

Gregory also asserts that Judge Seeborg was not randomly assigned. However, the record demonstrates that Judge Seeborg was assigned to this case “using a proportionate, random and blind system pursuant to General Order No. 44.” Gregory has not presented anything beyond speculation that Judge Seeborg was not randomly selected. Nevertheless, even if Judge Seeborg were not randomly selected, Gregory did not establish that Judge Seeborg was biased against him.²

Because we conclude that Gregory failed to establish that Judge Seeborg abused his discretion in denying the motion to disqualify, we need not address Gregory’s arguments related to the recusal of the other judges in the Northern District.

3. We lack jurisdiction to review the district court’s dismissal under Federal Rule of Civil Procedure 12(b)(6). When a court issues an order granting a motion to dismiss without prejudice and with leave to amend, it is not a final appealable order. *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997)

² Judge Seeborg’s suggestion to allow Plaintiffs to move this case to the Eastern District (where all of the events underlying his complaint occurred) demonstrates there was no bias.

(en banc). Plaintiffs chose to attempt to amend their complaint rather than appeal the dismissal. Thus, we lack jurisdiction to consider the Rule 12(b)(6) motion and can only consider the dismissal under Rule 41(b). *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004) (outlining difference between Rule 12(b)(6) and Rule 41(b)).

AFFIRMED in part, DISMISSED in part.

FILED

UNITED STATES COURT OF APPEALS

APR 23 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARMEN O. HAYNES; GREGORY
MELVIN HAYNES,

Plaintiffs-Appellants,

v.

CITY OF COLUSA; et al.,

Defendants-Appellees.

No. 20-16420

D.C. No. 3:19-cv-01002-RS
Northern District of California,
San Francisco

ORDER

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

The panel denies the petition for panel rehearing and recommends denial of the petition for rehearing en banc. The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are DENIED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 16 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHERYL COTTERILL,

Plaintiff,

GREGORY MELVIN HAYNES,

Appellant,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant - Appellee,

and

MATHEW MASON; et al.,

Defendants.

No. 23-3327

D.C. No. 4:08-cv-02295-JSW
Northern District of California,
Oakland

ORDER

The appellant's motion (Docket Entry No. 26) to file a substitute reply brief is granted. The Clerk will strike the reply brief submitted at Docket Entry No. 23 and file the substitute reply brief submitted at Docket Entry No. 25.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 15 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GREGORY MELVIN HAYNES,

Plaintiff-Appellant,

and

CHERYL JOY COTTERILL,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO; et al.,

Defendants-Appellees.

No. 23-15162

D.C. No. 3:08-cv-02295-JSW
Northern District of California,
San Francisco

ORDER

The appellant's motion (Docket Entry No. 55) for leave to file a replacement reply brief is granted. The Clerk will strike the reply brief submitted at Docket Entry No. 57 and file the reply brief submitted at Docket Entry No. 56.

This order was issued prior to the expiration of time within which a response may be filed. Fed. R. App. P. 27(b).

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

Proof of Service

I declare that I am over age 18 and my business address is in San Francisco. I am not a party to this action.

Proof of Service

I served the following document on the person listed below:

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

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by placing a true copy of the same in a envelop with proper postage address to the above and placing the same in the U.S. mail.

I declare under penalty of perjury that the foregoing is true and correct.
Executed in San Francisco,

DATED: July 20, 2024



Larry Haynes