

No. H030169

ORIGINAL

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.
FILED
JAN 3 - 2007
MICHAEL LYERLY, Clerk
By _____
DEPUTY

EAGLE BROADBAND, INC.,
Plaintiff and Respondent,

v.

RICHARD WILLIAMS, a/k/a Doe 4,
Defendant and Appellant.

Appeal from Order of the Santa Clara Superior Court
Case No. 105CV050179
The Honorable William J. Elfving

**APPLICATION FOR EXTENSION OF TIME TO FILE ANSWER
TO AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL;
DECLARATION OF PAUL CLIFFORD**

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RICHARD WILLIAMS, a/k/a Doe 4

**APPLICATION FOR EXTENSION OF TIME TO FILE ANSWER
TO AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL**

TO THE PRESIDING JUSTICE OF THE COURT OF APPEAL,
SIXTH APPELLATE DISTRICT:

Pursuant to Rules 45(b) and 45.5 of the California Rules of Court, defendant and appellant Richard Williams, a/k/a Doe 4 (“Appellant”) hereby applies for an 11-day extension of time within which to file his answer in the above-captioned appeal from the current due date of January 5, 2007, to and through Tuesday, January 16, 2007.

Rules 45(b) and 45.5 permit the Court of Appeal, for good cause shown, to grant such an extension of time to file. Good cause exists to grant this application, in that, as set forth in more detail in the accompanying declaration of Paul Clifford:

This is an appeal of the Superior Court’s denial of Appellant’s special motion to strike the complaint as a meritless SLAPP pursuant to C.C.P. section 425.16. The record for this appeal is approximately 636 pages in length.

Appellant’s counsel has had deadlines and time-limited commitments in other cases, including an ex parte proceeding on December 26, 2006, and a filing deadline on January 3, 2007, in a related Superior Court proceeding brought by Respondent Eagle. Additionally, Appellant’s

counsel was out of the state for a pre-planned family visit from December 15, 2006 until December 30, 2006.

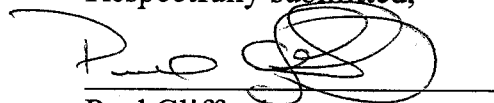
All of the above preclude Appellant's counsel from filing Appellant's Answer to the Amicus Curiae Brief of the Attorney General by the current deadline of January 5, 2007, without impairing its quality.

Appellant supports this application for extension of time. Respondent will not be prejudiced by an extension of time within which Appellant must file his Answer to the Amicus Brief of the Attorney General.

Appellant therefore respectfully requests an extension of 11 days within which Appellant must file his Answer to the Amicus Curiae Brief of the Attorney General, to and through January 16, 2007, a Tuesday.

Dated: January 3, 2007

Respectfully submitted,



Paul Clifford
Counsel for Appellant

By the Court
So ordered
RUSHING
Presiding Justice

DECLARATION OF PAUL CLIFFORD

I, Paul Clifford, declare as follows:

1. I am an attorney at law duly licensed to practice before all California courts and am a counsel of record for defendant/appellant Richard Williams, a/k/a Doe 4 (“Appellant”) in this matter. I have primary responsibility for Appellant’s Answer to the Amicus Curiae Brief filed by the Attorney General in this matter. I was a counsel of record in this case in the trial court.

2. Appellant filed his notice of appeal of the denial of his special motion to strike on March 6, 2006.

3. The record in this appeal was filed on September 5, 2006, and is approximately 636 pages in length.

4. Appellant filed his Opening Brief on September 21, 2006. Respondent filed its Respondent’s Brief on November 7, 2006. Appellant filed his Reply Brief on December 20, 2006. The Office of the Attorney General filed its Amicus Curiae Brief on December 22, 2006.

5. There have been no extensions of time requested with regard to Appellant’s Answer to the Amicus Curiae Brief of the Attorney General.

6. Deadlines and time-limited commitments in other cases and other matters preclude me from filing Appellant’s Answer to the Amicus

Curiae Brief of the Attorney General by the current deadline of January 5, 2007, without impairing its quality, and so that it fully advances Appellant's interests in this appeal in an accurate, clear, concise, and complete manner.

Those other matters and deadlines include:

a. On December 22, 2006, I received notice of an ex parte proceeding by Repondent Eagle Broadband, Inc., which was to (and did) occur on December 26, 2006. I needed to assist our office in preparing for said ex parte proceeding over the holiday weekend;

b. On December 26, 2006, Mark Goldowitz appeared for Eagle's ex parte proceeding and as a result of said proceeding, I am to prepare an opposition to a motion on shortened notice, which opposition must be filed in the Superior Court by noon on January 3, 2007;

c. I have a court appearance related to these proceedings on January 5, 2007.

7. My office is a two-attorney firm. On December 15, 2006, I began a previously planned trip to visit my family out of state. I returned to the state on December 30, 2006. Further, the Attorney General's Amicus Brief was filed on December 22, 2006, just before the Christmas three-day weekend and Appellant's Answer is currently scheduled to be filed on January 5, 2007, just after the New Year's three-day weekend, both of

which were observed by our office staff.

8. This case has not been granted priority on appeal.

9. My office has complied with Rule 45(g) by advising our client of this request for an extension of time and delivering a copy of this application to our client. The client supports this request.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct in this declaration was executed on January 3, 2007, at Berkeley, California.


Paul Clifford

PROOF OF SERVICE

The undersigned hereby states under the penalty of perjury under the laws of the State of California:

I am employed in Alameda County; I am over the age of eighteen and not a party to the within cause; and my business address is 2903 Sacramento Street, Berkeley, CA 94702.

On this day, I caused envelopes to be addressed to:

Karineh Khachatorian
Jeffrey Ratinoff
Buchanan Ingersoll & Rooney LLP ✓
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065-1418


Kathryn Sears
Deputy Attorney General
Office of the Attorney General ✓
455 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

and I enclosed and sealed in said envelopes a copy of the following document:

**APPLICATION FOR EXTENSION OF TIME TO FILE ANSWER
TO AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL;
DECLARATION OF MARK GOLDOWITZ**

and I deposited said envelopes, postage prepaid fully thereon, in a U.S. mail depository, in Berkeley, California; all on this day.

Date: January 3, 2007


Jennie Romer