

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Robert S. Bennett, Nachael Foster,
Andrew Bayley and others similarly situated

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION 4:21-cv-2829

Plaintiffs

vs.

State Bar of Texas aka the “Texas Bar”
(and culpable officials within it)

CLASS ACTION COMPLAINT

Defendants

PLAINTIFFS’ MOTION TO EXTEND THE DEADLINE TO FILE A NOTICE OF APPEAL

1. Come now the Plaintiffs through legal counsel Rich Robins.
2. The Plaintiffs ask the Court to extend the time to file a notice of appeal, as authorized by Federal Rule of Appellate Procedure 4(a)(5).

A. INTRODUCTION

3. The Plaintiffs are Robert S. Bennett, Nachael Foster, Andrew Bayley and other Texas Bar members similarly situated. The Defendant is the State Bar of Texas aka the “Texas Bar” (and culpable officials within it).

4. The Plaintiffs sued the Defendant for recoupment of prior dues expenditures and for offsetting against future dues obligations, if any apply. This is pursuant to the July 2021 outcome of successful litigation conducted at the 5th Circuit Court of Federal Appeals against the Texas Bar regarding its unlawful use of (still compulsory) member attorney dues for its own impermissible political activities and

such. *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).

5. The Plaintiffs also sued the Texas Bar for specific, non-monetary relief for predatorily pursuing unsubstantiated claims against scrutinizing attorney members based on vague interpretations of ethics rules which are applied in flagrant violation of U.S. Supreme Court caselaw that is otherwise meant to protect and fortify attorney free speech, due process and other Constitutional rights: *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

6. The Court rendered a dismissal order in favor of the Defendant on August 15th, 2022.

7. The Plaintiffs' notice of appeal is due on September 14th, 2022.

8. The Plaintiffs request an additional 30 days to file the notice of appeal, please.

B. ARGUMENT

9. A court may extend the time to file the notice of appeal if (1) a party files a motion to extend time within 30 days after the original deadline to appeal expires and (2) the party shows good cause or excusable neglect. *See* 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(1)(A), (5)(A).

10. The Court should grant the extension in this case on the grounds of good cause. One reason for the Plaintiffs' delay in filing the notice of appeal is a desire for conducting still more rigorous research regarding the Plaintiffs' appellate prospects. The Plaintiffs want to be sufficiently sure that their prospects of success sufficiently resemble the successful appellate accomplishments previously achieved by the rather similarly situated Plaintiffs in *McDonald v. Longley*, cited above. Filing a notice of appeal consumes scarce government resources and we truly want to avoid doing so unless and until we are more certain that our optimism is sufficiently warranted. Otherwise our filing a "false start" notice of appeal would be wasteful and even inconsiderate. We aspire to be better than that.

11. The Plaintiffs similarly want to continue evaluating whether our resources might be more efficiently spent pursuing these goals politically. During the aftermath of the Texas Bar's having filed a motion to dismiss in this case earlier this year, two of the three leading state political parties here in Texas took notice and adopted platform planks supporting the notion of making membership in the Texas Bar merely *voluntary*. For more details:

<http://www.TexasBarSunset.com/platforms>

12. The Court should please grant the extension in this case because granting an extension will not prejudice the Defendant. *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004); *Zipperer v. Sch. Bd. of Seminole Cnty.*, 111 F.3d 847, 849–50 (11th Cir. 1997); see *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). Indeed, an extension gives the Texas Bar that much more time to invest the allegedly ill-gotten dues before we further demand their return to (still compulsory) members.

13. The length of the delay in filing the notice of appeal will not adversely affect these proceedings. *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004); *Zipperer v. Sch. Bd. of Seminole Cnty.*, 111 F.3d 847, 849–50 (11th Cir. 1997); see *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). Around 80% of the Texas Bar’s compulsory membership does not even bother to vote in the annual, month-long, internet-enabled Texas Bar elections. See generally <http://www.TexasBarSunset.com/voter-abstention>. It is not as if (still compulsory) members are at all eager to be (implicitly threateningly) bragged to by the Texas Bar that this class action has failed.

C. CONCLUSION & PRAYER

14. For these reasons, the Plaintiffs ask the Court to please extend the time to file a notice of appeal for 30 days, until October 14th, 2022.

DATED: September 14th, 2022

Respectfully submitted,

Rich Robins
Robins Legal Services, PLLC
Federal registration #: 00789589
Texas state bar #: 00789589
2450 Louisiana St. #400-155
Houston, TX 77006
(832) 350-1030 Tel.
Rich@TexasBarSunset.com
www.TexasBarSunset.com

By: 

Rich Robins
Attorney-In-Charge

CERTIFICATE OF SERVICE

I, Rich Robins, do hereby certify that on September 14th, 2022 we served opposing counsel through the CM/ECF/PACER system a true and correct copy of the above and foregoing Plaintiffs' Motion for an Extension to File a Notice of Appeal. Assuming our e-filing attempt and related steps are successful, the Clerk will presumably send notification of such filing to the Defendant State Bar of Texas aka the "Texas Bar" at:

State Bar of Texas aka the "Texas Bar"

Texas Law Center
1414 Colorado Street
Austin, Texas 78701

via their remaining two assigned legal counsel:

Thomas S. Leatherbury
2001 Ross Ave.
Suite 3900
Dallas, TX 75201
tleatherbury@velaw.com
Tel. 214-220-7792

&

Patrick Mizell
1001 Fannin St # 2300
Houston, TX 77002
pmizell@velaw.com
Tel. 713-758-2932

By:



Rich Robins
Attorney In Charge