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May 30 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Hon. William P. Keesley, Circuit Court Judge

Appellate Case No. 2022-001749

James John Todd Kincannon,

Appellant,

v.

Ashely Suzanne Griffith,

Respondent.

**APPELLANT'S FINAL REQUEST FOR EXTENSION TO FILE INITIAL
BRIEF PURSUANT TO THE AMERICANS WITH DISABILITIES ACT
AND REQUEST FOR EXTENSION TO FILE REPLY BRIEF**

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Appellant Pro Se

**APPELLANT’S FINAL REQUEST FOR EXTENSION TO FILE INITIAL
BRIEF PURSUANT TO THE AMERICANS WITH DISABILITIES ACT
AND REQUEST FOR EXTENSION TO FILE REPLY BRIEF**

INTRODUCTION

Appellant James John Todd Kincannon respectfully withdraws the filing entitled “Appellant’s Second Request for Extension to File Initial Brief Pursuant to the Americans with Disabilities Act” filed by mail on May 22, 2023 and received by the Court on May 25, 2023, which has not yet been ruled upon by the Court. Appellant respectfully submits this filing in its place.

FINAL REQUEST FOR EXTENSION TO FILE INITIAL BRIEF

In the Second Request for Extension filing, Appellant asked for an eight-day extension to file the initial brief in this matter from May 22, 2023 to May 30, 2023. That has proven to be an insufficient amount of time, despite Appellant working as diligently as possible on the brief during that time frame. Appellant withdraws that request and now requests a fifteen day extension, from May 22, 2023 to June 6, 2023. Appellant is now 95% finished with the brief but has simply been unable to finish due to Appellant’s bipolar disorder, which has been *extremely* problematic recently.

Specifically, Appellant has suffered through two extreme depressive phases of bipolar disorder recently, one of which took place during the week of May 7th and other which began on May 23rd and is now ending. Appellant’s depressive phases, at this point, last approximately a week and are not predictable. If they were predictable, Appellant would have asked for a fifteen day extension in the Second Request for Extension filing rather than only eight days. Appellant did not anticipate a severe depressive phase beginning literally the next day.

Appellant is fully aware that the Court’s prior extension order indicated that additional
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extensions would only be available in an exceptional situation. Appellant respectfully submits that his bipolar disorder's unpredictable depressive phases, which render Appellant entirely incapable of doing things like drafting complex legal documents, constitute an exceptional situation justifying an additional extension of fifteen days. That would be a total extension of sixty days to prepare and file the initial brief, which, while admittedly lengthy, is certainly not unprecedented and arises entirely due to Appellant's disability status and not due to any other reason.

Appellant is not a lawyer who has taken on too many cases, nor is Appellant lazy or lacking in diligence. Appellant is doing the best he possibly can given his limitations, and, as demonstrated by Appellant's previous filings in Kincannon v. Griffith, Appellate Case No. 2019-001501, Appellant often needs extensions but, when given extensions, Appellant *always* completes all necessary filings in a diligent and proper fashion.

Appellant *greatly* appreciates this Court's previous grace regarding his psychiatric disabilities and need for extensions, in this case and in Kincannon v. Griffith, Appellate Case No. 2019-001501. Appellant would not request these extensions if it were possible for him to complete the necessary filings in the ordinary time period. Appellant also fully understands the Court's need to process its docket in a timely fashion, and Appellant will not ask for any further extensions of time to file the initial brief in this matter beyond June 6th.

REQUEST FOR EXTENSION TO FILE REPLY BRIEF

Appellant also requests an extension of time to file the initial reply brief in this matter, for the same reasons as Appellant's other extension requests: his psychiatric disabilities, in particular his bipolar disorder and attention deficit disorder. Reply briefs are ordinarily due ten days after service of the Respondent's initial brief. Appellant requests this be extended in this

matter to twenty days.

Reply briefs are somewhat easier for Appellant to prepare because they respond to arguments made by a respondent and do not require the same type of original drafting as an appellant's initial brief. Appellant is much more capable of timely preparing responsive filings than "initiative" filings such as an appellant's initial brief. Accordingly, Appellant requests only a ten day extension with respect to the reply brief, making the total time Appellant has to prepare, serve, and file the reply brief twenty days.

FEE ISSUE

Appellant would also respectfully ask the Court to relieve him of the filing fee for this filing and for Appellant's previous ADA extension request in this case (which would necessitate a refund from the clerk). The Court has the authority to do this per Rule 240(d), SCACR, which permits fee relief in extraordinary cases. Appellant respectfully submits that his psychiatric disability status, which often requires him to make multiple extension requests in litigation, is a proper extraordinary case justifying fee relief.

Appellant respectfully submits that the South Carolina Constitution does not permit the charging of fees for litigants seeking disability accommodations, as doing so is inherently discriminatory towards such litigants, and such discrimination is obviously unconstitutional. Appellant also believes, but does not ask the Court to adjudicate, that the Americans with Disabilities Act does not permit entities to charge fees for filing accommodation requests.

Appellant does not challenge the general idea of charging fees for motions, but a disability accommodation request is not a motion in the traditional sense. Appellant is not asking the Court to make some sort of ruling in the litigation. Appellant is just asking for the ordinary deadline rules to be altered to accommodate his psychiatric disability. Appellant believes that

such a request is inherently extraordinary and justifies exemption from filing fees, and Appellant also believes that such an outcome is mandated by the state constitution and the ADA. Beyond the ordinary legal issues, Appellant respectfully submits that it is fundamentally unjust to require participants in litigation who have disabilities to pay more filing fees in order to litigate a case than participants who do not have disabilities.

This Court may also wish to be aware that Appellant recently sought and obtained an extension of time relating to a petition for writ of certiorari in Kincannon v. Griffith, Appellate Case No. 2019-001501 (which was given a new case number by the Supreme Court: Appellate Case No. 2023-000607). This was an ADA accommodation request based on Appellant's psychiatric disabilities functionally identical to the request made here. The Supreme Court granted Appellant's request and did *not* charge Appellant a filing fee.

Despite the foregoing, Appellant will certainly submit a filing fee if the Court requires it.

CONCLUSION

Appellant greatly appreciates the Court's attention to this matter. It is extremely embarrassing for this pro se Appellant to make such filings regarding Appellant's psychiatric disabilities. It is *especially* embarrassing to have to make multiple requests, but Appellant's bipolar disorder and ADD leave Appellant with absolutely no other choice. If disability accommodations are not made, Appellant simply cannot litigate this case. Appellant would not trouble the Court with these requests if it were at all possible for Appellant to complete his filings in the ordinary time-frame.

Respectfully submitted,

May 30, 2023

s/James John Todd Kincannon
James John Todd Kincannon
Appellant Pro Se

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CERTIFICATE OF SERVICE

The undersigned Appellant hereby certifies that he has, on the date below, properly served the foregoing on opposing counsel.

May 30, 2023

s/James John Todd Kincannon

James John Todd Kincannon

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Simpsonville, SC 29681
ToddKincannon@gmail.com

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SC Court of Appeals

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By email only to ctappfilings@sccourts.org

Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: James Kincannon v. Ashely Griffith, Appellate Case No. 2022-001749
ADA Final Extension Request / Withdrawal of Second Extension Request

Ms. Kitchings:

This letter relates to my filing today captioned “Appellant’s Final Request for Extension to File Initial Brief Pursuant to the Americans with Disabilities Act and Request for Extension to File Reply Brief.” It is a bit complicated so I am sending this letter to explain to you everything that is going on.

First, I am withdrawing my previously submitted filing captioned “Appellant’s Second Request for Extension to File Initial Brief Pursuant to the Americans with Disabilities Act.” That filing was made by mail on May 22, 2023 and received by the Court on May 25, 2023. I am withdrawing that filing because the filing I am making today replaces it. As you know, the Court has not yet ruled on it.

In my filing today, the “Final Request for Extension,” I am seeking a fifteen day extension of time to file my initial brief in addition to the extension already granted, which would make my initial brief due June 6, 2023. The reason for this is my psychiatric disability, which is explained in my filing.

I am also asking the Court to grant an extension with respect to the reply brief deadline. Instead of the usual ten days, I am asking for twenty days, also due to my psychiatric disability. This is to save the need to file an additional motion later when it comes time for me to file my reply brief. I do not believe any other extensions will be necessary, since the remaining tasks relating to perfecting an appeal are basically secretarial in nature, and tasks like that are substantially easier for me to complete.

I am also asking the Court to relieve me of the filing fee for this filing and also with respect to my previous extension filing, which if granted would necessitate a refund of \$50. If it is not granted, then I would owe you \$50 and will immediately submit it if that is the Court’s ruling.

Finally, I want to thank you and your office for dealing with my extension requests in this case and in the other Kincannon v. Griffith appeal. I know your office has quite a lot of work to do, and I regret that I am often placed in the position of asking for extensions and taking up your time. I assure you I would not do it if it was at all avoidable. My psychiatric disabilities are quite severe, and it is simply not possible for me to complete the legal work necessary to fully litigate an appeal in the ordinary time frames. I truly wish it was.

Thank you so much for your time and effort dealing with these matters.

With kindest personal regards, I am,

Very truly yours,
s/James John Todd Kincannon
James John Todd Kincannon

cc: Ward Bradley (opposing counsel)