

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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GREGORY S. HOLLISTER,	:		
	:		
	:	<i>Appellant,</i>	:
vs.	:	Court of Appeal Case No.	09-5080
	:	Consolidating No.	09-5161
BARRY SOETORO, et al.	:		
	:		
	:	<i>Appellees.</i>	:

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**APPELLANT’S EMERGENCY MOTION FOR LEAVE TO FILE HIS  
REPLY BRIEF *NUNC PRO TUNC* AS TIMELY OR IN THE  
ALTERNATIVE, FOR AN EXTENSION OF TIME UNTIL SEPTEMBER  
22, 2009 PURSUANT TO F.R.A.P. 26(b) TO FILE HIS REPLY BRIEF**

Appellant, Gregory S. Hollister, by and through his undersigned Counsel, hereby requests Leave of Court to file his Reply Brief as timely or in the alternative, for an extension of time to September 22, 2009 to ensure Appellant’s Reply Brief is timely filed on the following grounds:

- Appellant, Gregory S. Hollister’s Attorney, Lawrence J. Joyce was recently admitted to practice law before this Honorable Court and had not received his ECF log-in, in order to file electronically;
- The Court Clerk gave misleading information when Counsel inquired into filing Counsel’s Entry of Appearance and Appellant’s Reply Brief;
- Appellees will not suffer any prejudice if relief is granted; and
- Appellant will be severely prejudiced if relief is not granted.

**WHEREFORE**, Appellant, Gregory S. Hollister, respectfully requests this Honorable Court to grant him leave to file his Reply Brief *nunc pro tunc* as timely or in the alternative an extension of time to September 22, 2009 so his Reply is timely.

Respectfully submitted,

Dated: September 22, 2009

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	:	<i>Appellees.</i>	:

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**APPELLANT’S BRIEF IN SUPPORT OF HIS EMERGENCY MOTION  
FOR LEAVE TO FILE HIS REPLY BRIEF AS TIMELY OR IN THE  
ALTERNATIVE, FOR AN EXTENSION OF TIME UNTIL SEPTEMBER  
22, 2009 PURSUANT TO F.R.A.P. 26(b) TO FILE HIS REPLY BRIEF**

**A. OVERVIEW**

The Appeal herein was commenced on March 18, 2009 as Appeal Case No. 09-5080 and John D. Hemenway’s Appeal was commenced on April 30, 2009 as Appeal Case No. 09-5161. Appeal Case No. 09-5161 was consolidated with Appeal Case No. 09-5080 on May 11, 2009.

A scheduling Order was issued, which John D. Hemenway, Esquire never received and he was Attorney of Record for the Appellant, Col. Hollister at that time. On August 5, 2009 Appellant filed a Motion for an Extension of Time to file his Opening Brief as a result of John D. Hemenway, Esquire, Counsel of Record at the time, not receiving the Court’s Briefing schedule. To date, this Motion has not been granted or denied.

In the meantime John D. Hemenway, Esquire filed an opening brief regarding his appeal on the sanction issue and then filed another brief to incorporate Appellant, Col. Hollister's issues into his brief. Unfortunately, some very important factors pertaining to Col. Hollister's appeal were not properly addressed and/or addressed at all for that matter.

Lawrence J. Joyce was admitted to practice before the United States Court of Appeals for the District of Columbia on or about Tuesday, September 15, 2009, at which time Mr. Joyce agreed to take over the representation of Appellant, Col. Hollister.

It was brought to Mr. Joyce's attention that a proper Opening Brief had not been filed on behalf of Col. Hollister nor had the Motion for an Extension of Time been ruled upon. Based on this, Mr. Joyce felt it imperative to file a Reply on behalf of Col. Hollister to the Appellees' Brief. Otherwise, without doing so, Appellant Col. Hollister would be severely prejudiced.

Being that September 18, 2009 was a Friday, and the Court's ECF division is not open over the weekend and the fact that Appellant, Col. Hollister's Reply Brief was due on or before September 18, 2009, Lisa Liberi contacted this Court's Clerk's Office and spoke to Mark to see what the filing options were. Ms. Liberi's concern was the fact the Reply Brief for Hollister was due, Mr. Joyce had just been

admitted and Counsel was without access to the ECF filing system. [Decl. of Lisa Liberi, pp. 1-2, ¶ 3].

Mark explained to Ms. Liberi that since Mr. Joyce is an out-of-state Attorney, recently admitted, Counsel's Entry of Appearance and Appellant's Reply Brief could be filed via email to the ECF division at [ECFHelp@cadc.uscourts.gov](mailto:ECFHelp@cadc.uscourts.gov), due to the time sensitivity, if Counsel and/or his staff were unable to access the ECF filing system or if they had any complications in filing the documents. Mark assured Ms. Liberi that if the documents were filed after hours or before Monday, they would be deemed filed Friday, September 18, 2009 just as if they had been placed in the after hours drop box. [Decl. of Lisa Liberi, p. 2, ¶ 4].

Unfortunately, Counsel and his staff did have difficulties with the ECF filing system and the system would not accept Mr. Joyce's log-in or password. At this time, it was after this Court had closed.

Therefore, as stated that we could do by the Court's Clerk, Mark, Counsel's Entry of Appearance Form and Appellant, Col. Hollister's Reply Brief was emailed for filing to the email address provided by Mark. A confirmation email was received by Ms. Liberi after her submission of the documents to the ECF division.

On Monday, September 21, 2009, Ms. Liberi contacted this Court's Clerk's Office and spoke with a young woman. Ms. Liberi informed the Clerk that

documents had been submitted for filing; however, they did not appear on PACER. The Clerk informed Ms. Liberi that the documents should appear on PACER within two (2) days and they would show being filed Friday, September 18, 2009. [Decl. of Lisa Liberi, p. 3, ¶ 8].

On Tuesday, September 22, 2009, Mr. Joyce and the Office Ms. Liberi works in, received a phone call from Tiara, in the Operations division of the Court stating Appellant must file a Motion for Leave to file Appellant's Reply Brief as timely. Ms. Liberi contacted Tiara back and explained the circumstances regarding Mark's directions for the filing of the documents. Tiara was extremely apologetic for the wrong information provided by Mark in the Clerk's Office and stated Appellant, Col. Hollister brief was not timely filed, which was due to Clerk error. Tiara stated a Motion for Leave to file the Appellant's Reply Brief as timely needed to be filed and all the circumstances regarding the wrong information provided by the Court should be explained.

Due to the fact that an appropriate Brief has not been filed with this Court on behalf of Appellant Col. Hollister and the fact the issues raising the reason for Appeal have not been addressed, it is imperative, that his Reply Brief be allowed to be filed as timely to address his issues on Appeal.

No parties will be prejudiced by the allowance of Appellant, Col. Hollister's Reply Brief to be filed as timely. However, Appellant, Col. Hollister will be severely prejudiced if his request is denied.

For the above aforementioned reasons, Appellant, Col. Hollister respectfully requests this Court to grant him leave to file his Reply Brief as timely or in the alternative an extension of time until September 22, 2009 so the filing of his Reply Brief shows as timely.

**B. GOOD CAUSE EXISTS TO GRANT APPELLANT, COL. HOLLISTER LEAVE TO FILE HIS REPLY BRIEF AS TIMELY OR IN THE ALTERNATIVE TO GRANT HIM AN EXTENSION OF TIME UNTIL SEPTEMBER 22, 2009 SO HIS REPLY BRIEF SHOWS TIMELY FILED:**

Federal Rules of Appellate Procedure, Rule 26(b) states in pertinent part:

“For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after the time expires...”

The mere fact that Counsel for Appellant was misinformed by the Clerk's Office of this Honorable Court is good cause to grant Appellant, Col. Hollister his requested relief.

As this Court is aware, pursuant to F.R.A.P. 26(b), it is always within appellate court's discretion to permit late filing of brief for good cause; exercise of that discretion is especially appropriate where there is no suggestion of prejudice.

*Hutchinson v Pfeil* (2000, CA10 Okla) 211 F3d 515, 54 USPQ2d 1323, 2000-1

CCH Trade Cases P 72878, 2000 Colo J C A R 1858, cert den (2000) 531 US 959, 121 S Ct 384, 148 L Ed 2d 296.

Counsel for Appellant, Col. Hollister was limited on time to file Appellant's Reply Brief due to only being Admitted with this Court three (3) days prior to the deadline date to file Appellant's Reply Brief. Appellant, Col. Hollister's Counsel was diligent in attempting to timely file and ensure Appellant's Reply Brief was received by the Court and timely filed. Appellant, Col. Hollister will be severely prejudiced if he is not granted his requested relief.

**C. CONCLUSION**

For the reasons stated herein and for good cause shown, Appellant, Col. Hollister respectfully requests this Honorable court to grant his Motion for Leave to file his Reply Brief as timely, or in the alternative, for an Extension of Time until September 22, 2009 so Appellant, Col. Hollister's Reply Brief is deemed to have been filed timely.

Respectfully submitted,

Dated: September 22, 2009

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