

EXHIBIT H

FILED

SEP 20 2013

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY

BY Ingrid Stewart

TO: FILE COPY

RE: J. M'Guinness vs S. Johnson, et al
Case Nbr: 1-13-CV-239996

PROOF OF SERVICE

ORDER RE:JOINT MOTION TO DISQUALIFY CASAS, RILEY & SIMONIAN AS
ATTORNEYS FOR DEFENDANT AND CROSS-COMPLAINANT STEVEN JOHNSON

was delivered to the parties listed below in the above entitled case as set
forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Joseph W. Dozier , Dozier & Dozier
180 Second Street, Los Altos, CA 94022
Ned Gelhaar , Enenstein & Ribacoff, APC
233 Wilshire Blvd., Ste 400, Santa Monica, CA 94041
Daniel L. Casas , Casas Riley & Simonian LLP
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Stephen J Rafferty , Law Office Of Stephen J.Rafferty
1775 N. Sycamore Ave, Suite 12, Los Angeles, CA 90028

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on . DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Ingrid C Stewart, Deputy

EXHIBIT I

FILED
SEP 20 2013

TO: FILE COPY

RE: J. M'Guinness vs S. Johnson, et al
Case Nbr: 1-13-CV-239996

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of California County of Santa Clara
BY: *[Signature]* DEPUTY
Ingrid Stewart

PROOF OF SERVICE

CORRECTED PROOF OF SERVICE FOR 9/20/13 (TO INCLUDE MAILING DATE UNDER DECLARATION OF SERVICE BY MAIL) TO REFLECT MAILING OF ORDER RE: JOINT MOTION TO DISQUALIFY, was mailed on Sept. 20, 2013

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

- CC: Joseph W. Dozier , Dozier & Dozier
180 Second Street, Los Altos, CA 94022
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DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 09/20/13. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Ingrid C Stewart, Deputy

EXHIBIT J

Case No. H040614

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

JAMES J. M'GUINNESS, an individual, SCOTT STUART, an individual,
and THINK IT, LOVE IT, CONSTRUCT IT, INC., a California
Corporation,
Plaintiff, Cross-Defendants, Cross-Complainants, and Appellants,

vs.

STEVEN JOHNSON,
Defendant, Cross-Complainant, Cross-Defendant, and Respondent;

From the Superior Court of the State of California
County of Santa Clara, Case No. 1-13-CV-239996
Honorable Peter H. Kirwan, Superior Court Judge

RESPONDENT STEVEN JOHNSON'S OPPOSITION BRIEF

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Attorneys for Respondent
STEVEN JOHNSON

I. INTRODUCTION

This appeal was late filed and should be dismissed.

If the appeal is not dismissed because it is untimely, the Court should uphold the trial court's ruling on the motion to disqualify counsel. California authorities support review of the trial court's ruling with an abuse of discretion standard, making presumptions in favor of the prevailing party. The Superior Court of California, Santa Clara County was presented with and considered more than adequate evidence to support its decision to deny the motion to disqualify defendant Steven Johnson's attorneys of record.

Furthermore, Appellants' delay in bringing this appeal, and in filing the denied motion, underscore that the attempt to disqualify counsel is being used as a sharp litigation tool. Such abuse of the motion to disqualify has been soundly discouraged by California courts

The trial court's order should be affirmed.

II. THE APPEAL IS LATE AND MUST BE DISMISSED

Subject to exceptions that do not apply, a notice of appeal must be filed on or before the earliest of (a) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was served; (b) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or (c) 180 days after entry of judgment. California Rules of Court Rule 8.104(a). As used above, "judgment" includes an appealable order if the appeal is from an appealable order. California Rules of Court Rule

8.104(e). Except by reason of public emergencies that do not apply, no court may extend the time to file a notice of appeal. California Rules of Court Rule 8.104(b). If a notice of appeal is filed late, the reviewing court must dismiss the appeal. *Id.*

The underlying order subject to this appeal was filed on September 20, 2013. See AA Exh. 28 (Order Re: Joint Motion to Disqualify Casas Riley & Simonian as Attorneys for Defendant and Cross-Complainant Steven Johnson). Though no proof of service is included with that exhibit, the clerk of the court served the file-endorsed Order on the parties that same day. The clerk's service of the order opened the 60-day window for Appellants to file this appeal, which was due no later than November 19, 2013. See Rule 8.104(a)(1)(A). The Notice of Appeal was filed with the Superior Court on January 14, 2014, and was not lodged or received by the Court of Appeal until January 29, 2014. See AA Exh. 29. This was long after the 60-day window had closed, and more than three months after Appellants filed a writ petition on the same order in the related case of *M'Guinness, et al. v. Superior Court*, Court of Appeal Case Number H040254.

Appellants' Index of Exhibits includes a file-endorsed copy of the underlying Order at Exhibit 28, omitting the clerk's Proof of Service. Instead, Appellants attached a copy of the clerk's Proof of Service to their February 10, 2014 Civil Case Information Statement filed with this Court. The proof of service shows that the clerk served the file-endorsed order on **September 20, 2013**, the date the order was filed.

This appeal was late and must be dismissed.

EXHIBIT K

Case No. H040614

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

JAMES J. M'GUINNESS, an individual, SCOTT STUART, an individual, and
THINK IT, LOVE IT, CONSTRUCT IT, INC., a California Corporation,
Plaintiff, Cross-Defendants, Cross-Complainants, and Appellants,

vs.

STEVEN JOHNSON,
Defendant, Cross-Complainant, Cross-Defendant, and Respondent;

From the Superior Court For Santa Clara County
Case No. 1-13-CV-239996
Honorable Peter H. Kirwan, Superior Court Judge

APPELLANTS' REPLY BRIEF

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INTRODUCTION

As stated in Appellants' opening brief, the issues in this appeal are the same as those in *M'Guinness v. Superior Court*, Sixth District Court of Appeal Case No. H040254 ("writ proceeding"). Appellants filed their Notice of Appeal and opening brief in this case because the Court had not yet issued its Order to Show Cause in the writ proceeding at the time these filings were due. Appellants have continued their appeal after issuance of the OSC in order to preserve their claim to recover costs on appeal and to protect against any possibility that the writ proceeding might be terminated.

As will be argued in more detail in their soon-to-be-filed reply brief in the writ proceeding, Appellants/Petitioners contend that the issues before the Court should be resolved through the writ proceeding because such resolution is urgently needed to protect the parties and the public, and to preserve the integrity of the judicial process and the standards of professional conduct of the California Bar. If anything, as discussed below, the arguments made in Respondent Steven Johnson's Opposition Brief ("Appeal Opposition") confirm the appropriateness of the writ proceeding.

With two exceptions, Respondent's Appeal Opposition is essentially a reprise of Real Party in Interest Steven Johnson's [Preliminary] Opposition to Petition for Writ of Mandate [etc.] filed in the writ proceeding on October 28, 2013 ("Preliminary Writ Opposition"). Petitioners therefore incorporate by reference their Reply Brief filed on November 6, 2013, in response to the Preliminary Writ Opposition, and address the two additional matters below.

DISCUSSION

A. THE APPEAL IS TIMELY

Respondent contends that the superior court clerk's service of a file-stamped copy of the appealable order and a separate Proof of Service triggered the 60 day period for filing a notice of appeal under California Rules of Court, Rule 8.104(a)(1)(A). Respondent is mistaken. The Supreme Court has ruled that the prior Rule 8.104(a)(1) "require[s] a *single* document—either a 'Notice of Entry' so entitled or a file-stamped copy of the judgment or appealable order—that is *sufficient in itself* to satisfy all of the rule's conditions, including the requirement that *the document itself show the date on which it was mailed.*" *Alan v. American Honda Motor Co.* (2007) 40 Cal. 4th 894, 905 (emphasis added).

The operative Rule 8.104(a)(1)(A) is identical to the prior Rule 8.104(a)(1) except that the word "mailed" was changed to "served on," which does not alter the Court's analysis in *Alan. Id.* at 902-905. Indeed, the Advisory Committee Comment to the revised Rule 8.104(a)(1)(A) confirms that "[u]nder subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment) *must show the date on which the clerk served the document[,]*" with the proof of service establishing the day the 60 day period begins to run. (Emphasis added)

Here, the file-stamped copy of the appealable order does not show the date on which the clerk served the document. (Exh. 28) A separate unattached document titled Proof of Service shows this. (*See* Motion to Augment Record on Appeal, Exh. "1").¹ Thus, no single self-contained document sufficient in itself to satisfy all of Rule 8.104(a)(1)(A)'s conditions

¹ Appellants mistakenly did not include the Proof of Service in their Appendix and are therefore filing herewith a Motion to Augment Record on Appeal.

exists, so the 60 day period in that provision does not apply. *See Alan, supra*, 40 Cal.4th at 902-905; *see also id.* at 902 (“[W]hen courts are called upon to resolve ambiguities in rules that limit the right to appeal, . . . [they] follow the well-established policy . . . of according the right to appeal in doubtful cases when such can be accomplished without doing violence to applicable rules.”)

Since Rule 8.104(a)(1)(A) is inapplicable and Respondent did not serve a notice of entry under Rule 8.104(a)(1)(B), the 180 day period established in Rule 8.104(a)(1)(C) applies and Petitioners’ appeal is timely.²

B. GURKEWITZ DOES NOT SUPPORT RESPONDENT

Respondent cites a single case in his Respondent’s Brief not cited in his Preliminary Writ Opposition, *Gurkewitz v. Haberman* (1982) 137 Cal.App.3d 328. Respondent contends that *Gurkewitz* stands for the proposition that “in the context of transactional matters, an attorney’s duty to advise a corporate client ceases when the matters for which the attorney was retained are settled.” *See* Resp. Brf. at 9, citing *Gurkewitz*, at 333-334. The *Gurkewitz* case is inapposite for at least two reasons.

First, *Gurkewitz* deals with interpretation of Code of Civil Procedure section 340.6, a statute governing the limitations periods on malpractice claims against attorneys--not the law governing the duration of the attorney client relationship for purposes of motions to disqualify. These are entirely different bodies of law with very different purposes: the former protects

² Although Appellants submit that they are correct on this point, the issue is not beyond debate. Respondent’s argument that the appeal is untimely confirms the appropriateness of the writ proceeding since if the appeal were untimely this would stand as an additional reason why the ordinary appellate procedure would be inadequate in this case.

EXHIBIT L

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FILED
Superior Court of California
County of Los Angeles
OCT 03 2019
Sherri A. Carter, Executive Officer/Clerk
By [Signature] Deputy
K. Mason

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DOTCONNECTAFRICA TRUST,
Plaintiff,
v.
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,
et al.,
Defendant.

CASE NO. BC607494
Assigned for all purposes to
Hon. Robert B. Broadbelt III
~~PROPOSED~~ FINAL JUDGMENT
Complaint Filed: January 20, 2016
Bench Trial Date: February 6, 2019