

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PEARL COTTIER and)	
REBECCA THREE STARS,)	
)	
Plaintiffs-Appellees,)	
)	No. 07-1628
v.)	
)	
CITY OF MARTIN, et al.,)	
)	
Defendants-Appellants.)	

**APPELLEES’ OPPOSITION TO THE APPELLANTS’
MOTION FOR AN EXTENSION**

The Appellees respectfully submit this memorandum in opposition to the Appellants’ Motion to Extend the Deadline for a Petition for Rehearing, filed January 2, 2009.

The Appellants’ motion is governed by Rule 26(b) of the Federal Rules of Appellate Procedure, the relevant part of which provides as follows: “*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 that time expires.” Fed. R. App. P. 26(b) (emphasis added).

As grounds for their motion, the Appellants offer two excuses: (1) that their attorneys mistakenly believed that the mailbox rule, which by its terms applies only to a “brief and appendix,” Fed. R. App. P. 25(a)(2)(B), applied to petitions for rehearings as well; and (2) that their attorneys were “unaware”

that they could file their petition electronically. Neither excuse constitutes good cause.

It is well established that an attorney's calendaring mistake does not constitute "good cause." *See, e.g., Mollura v. Miller*, 621 F.2d 334 (9th Cir. 1980). It is also well established that an attorney's good faith but mistaken view of the law is insufficient to establish "good cause." *Laffey v. Northwest Airlines, Inc.*, 587 F.2d 1223 (D.C. Cir.1978); *Stern v. United States Gypsum Inc.*, 560 F.2d 865 (7th Cir. 1977). If such mistakes were enough to demonstrate good cause, then the exception would quickly swallow the rule.

Moreover, the Appellants' claim that their attorneys were "unaware" that they could file their petition electronically is not credible. The Eighth Circuit's administrative order regarding electronic filing, which has *required* electronic filing of rehearing petitions since May 29, 2007, is easily accessible and posted on the Court's website. The Appellants' attorneys are registered users of the electronic filing system and have filed documents electronically in the past. Their disregard of the Court's administrative order does not establish "good cause" sufficient to warrant an extension.

Accordingly, the Court should deny the Appellants' motion for an extension.

I verify that the original of this pleading has been signed and that I will maintain the pleading in accordance with 8th Circuit R. 25A(a).

Dated: January 2, 2009.

Respectfully submitted,

/s/Bryan Sells

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Bryan Sells