

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2006-3307

CASSANDRA A. AUGUSTINE,

Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

ON MOTION

Before PROST, Circuit Judge.

### ORDER

The Department of Veterans Affairs moves for an additional 32-day extension of time, until April 9, 2007, to file its brief.

We note that counsel filed the extension request on the date that the brief was due. Pursuant to Fed. Cir. R. 26(b)(1), a motion for an extension of time “must be made at least 7 calendar days before the date sought to be extended,” except that in “extraordinary circumstances,” a motion may be filed later if an affidavit or declaration describes the extraordinary circumstances. Here, in a declaration, counsel states “[b]ecause I was out of the office on travel, and because I was only recently informed by agency counsel that she would not be able to send me a report or draft brief until March 30, 2007, I was unable to ascertain the need for an enlargement of time, and the extent of such an enlargement, more than seven days prior to the due date of our response.”

The court does not discern the extraordinary circumstances. The court's rule anticipates that counsel will make attempts to ascertain, at least seven calendar days before a due date, whether counsel will be able to meet the upcoming deadline. The court places counsel on notice that future motions in this or another case that do not comply with this rule may be denied for failure to comply with Fed. Cir. R. 26(b)(1).

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is granted. No further extensions.

March 21, 2007

Date

/s/ Sharon Prost

Sharon Prost  
Circuit Judge

cc: Wild Chang, Esq.  
Michael S. Dufault, Esq.

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