

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

JOANNE FRATELLO,

Plaintiff-Appellant,

v.

16-1271cv

**ARCHDIOCESE OF NEW YORK,
ST. ANTHONY'S SHRINE CHURCH,
AND ST. ANTHONY'S SCHOOL,**

Defendants-Appellees.

**DECLARATION IN SUPPORT OF MOTION
FOR PERMISSION TO FILE AN UNTIMELY PETITION
FOR REHEARING OR REHEARING *EN BANC***

Michael D. Diederich, Jr. declares under penalty of perjury as follows:

1. I am counsel to Plaintiff-Appellant Joanne Fratello.
2. This case is one of first impression in this Circuit, and was viewed as very important by the panel. The Court issued its decision on July 14th.
3. The Panel's decision was issued during a period when I was enjoying summer vacation. I am a solo practitioner. After resuming work two weeks later I began work on a Petition for Rehearing and Rehearing En Banc, which I attempted to file late last evening, August 10th. I had inadvertently calendared the rehearing deadline as August 14th (which I indicated in my email to the clerk's office a few days ago regarding filing for rehearing in this case—the clerk's office said nothing to me in response above untimeliness and so I continued drafting my client's petition).

4. The clerk informed me today that my rehearing filing is untimely—that under FRAP Rule 40, filing should have been July 28th.

5. Because of the importance of the ministerial immunity nationally, and because the Court has the power to forgive untimeliness under Rule 40, I humbly request that the Court forgive my failure to file on July 28th. Additionally, please note that I am handling this matter *pro bono publico*, and also am waiving all attorney's fees if the Court reconsiders this appeal. I view this matter as a public interest matter. I believe my petition, with its legal analysis, will assist the Court in its legal analysis in not only this, but in other religious liberty/ministerial immunity cases.

6. In sum, I request the Court to direct the Clerk to allow the filing I attempted last night. The Court's consideration is appreciated.

Dated: August 10, 2010
Stony Point, New York

Respectfully submitted,

_____/S/_____
MICHAEL D. DIEDERICH, JR.

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