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United States District Court  
Central District of California

In Re:

GLORIA DEAN WELLS,  
Debtor,Case № 2:16-cv-8003-ODW  
U.S.B.C. Case No.: 2:15-bk-27834  
B.A.P. Case No.: CC-16-1319

**ORDER GRANTING APPELLANT'S  
EX PARTE APPLICATION [10]**

On December 8, 2016, Appellant/Creditor Michael Griffith, appearing pro se, filed an ex parte application seeking to transfer this matter back to the Ninth Circuit's Bankruptcy Appellate Panel. (ECF No. 10.) Griffith's original Notice of Appeal contained the statement, "COME NOW, Michael Griffith; and Appeal to the District Court: from an Order: entered for the Debtor Gloria Dean Wells, and against the Creditor; Michael Griffith . . . ." (ECF No. 1.) A three-judge panel of the BAP construed this as a "timely and effective" election to have the appeal heard by the district court, 28 U.S.C. § 157(c)(1), and *sua sponte* transferred the matter to this Court. (ECF No. 8.) Griffith now argues that his statement "Appeal to the District Court" was in error, and that he actually intended to state that he was appealing "*from*

1 the United States Bankruptcy Court of the California-Central District.” (ECF No. 10  
2 (emphases added).) Griffith gave notice to Appellee/Debtor Gloria Dean Wells of this  
3 application by: (1) informing Wells’ counsel by both phone and through the CM/ECF  
4 System;<sup>1</sup> and (2) serving a copy of the application by overnight mail on Wells’ last  
5 known address. Wells has not submitted a timely opposition to the application.

6 Pursuant to the Local Rules governing bankruptcy appeals, a party may move  
7 “to withdraw the election for the bankruptcy appeal to be heard by the district court  
8 and to refer the matter to the Bankruptcy Appellate Panel.” C.D. Cal. Local Bankr.  
9 Rule 5.2. Neither the Local Rules nor the Federal Rules of Bankruptcy Procedure  
10 appear to state a standard for granting such a motion. Nonetheless, the Court sees no  
11 reason not to grant the motion absent prejudice to the other party or bad faith on the  
12 part of the movant. The Court concludes that nothing on the face of Griffith’s  
13 application shows either prejudice or bad faith. Moreover, any argument Wells may  
14 have that the application either caused her prejudice or was brought in bad faith is  
15 waived by her failure to file a timely opposition. C.D. Cal. L.R. 7-12. Thus, the  
16 Court **GRANTS** Griffith’s Application. (ECF No. 10.) The Clerk shall transfer this  
17 matter to the Ninth Circuit Bankruptcy Appellate Panel, Case No. CC-16-1319, for  
18 further proceedings.

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20 **IT IS SO ORDERED.**

21  
22 December 21, 2016

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25 **OTIS D. WRIGHT, II**  
26 **UNITED STATES DISTRICT JUDGE**

27 <sup>1</sup> Debtor’s counsel apparently informed Griffith that they were no longer representing Debtor in  
28 this appeal. Nevertheless, they have not withdrawn as counsel of record in this appeal, and thus  
notice and/or service on them is adequate. Fed. R. Bankr. P. 8011(b).