

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/12/2021 8:00 AM  
BY ERIN L. LENNON  
CLERK

No. 100250-2

Supreme Court of the State of Washington

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Regarding Petition for Review from case #81887-2,  
Court of Appeals, Division 1

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MARK HOFFMAN,

Respondent,

v.

DANIEL LOGAN,

Appellant.

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Respondent's Answer to Appellant's Motion to Enlarge the  
Time to File Petition for Review and to Petition for Review

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Mark Hoffman, Pro Se  
6621 NE Marshall Road  
Bainbridge Island, WA 98110  
Phone: (206) 780-2326

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## **II. IDENTITY OF RESPONDENT**

Mark Hoffman (“Hoffman”), the Respondent, was the Plaintiff in *Hoffman v. Capital Advance Services LLC et al*, an action brought in King County Superior Court under the Telephone Consumer Protection Act, 47 U.S.C. § 227, appealed in Appellate Court Division 1 as case no. 81887-2-1. He asks the court for the relief designated below.

## **III. RELIEF SOUGHT**

Hoffman respectfully asks the Court to deny the MOTION TO ENLARGE THE TIME TO FILE PETITION FOR REVIEW and the PETITION FOR REVIEW filed by Appellant/Petitioner Daniel Logan (“Logan”).

## **IV. RELEVANT FACTS**

On July 26, 2021, the Court of Appeals entered a decision that affirmed the trial court’s denial of a motion to vacate a default judgment against Logan. On August 26, 2021, the Court of Appeals denied Logan’s motion to reconsider and publish its

decision. Logan filed a MOTION TO ENLARGE THE TIME TO FILE PETITION FOR REVIEW on September 27, 2021, 30 days after the Court of Appeals denied his motion to reconsider and to publish. Logan filed a petition for review on October 28, 2021, 60 days after the Court of Appeals denied his motion to reconsider and to publish. Hoffman here answers Logan's motion to enlarge and petition for review. See Appendix A for the text of the relevant RAPs.

## V. ARGUMENT

### A. Motion to Enlarge Time to File Petition for Review

Defendant Logan argues five points in his motion to enlarge time, highlighted in bold quotation marks below.

**“1. Filing a Supreme Court Petition for Review is extremely complex.”** Logan is a CPA who as an MBA. Despite having these credentials, he did not hire an attorney credentialed to practice in Washington state to timely draft and file his petition for review. He could have done so.

RAP 13.4(a) states, “....the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish.” Logan filed his petition for review 60 days after the Court of Appeals denied his motion to reconsider and to publish. RAP 18.8(b) states, “The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file...a petition for review.”

RAP 18.8(b) is an exception to the general rule of liberal construction of the appellate rules under RAP 1.2(a). “RAP 18.8(b), by limiting the extension of time to file a notice of appeal to those cases involving ‘extraordinary circumstances and to prevent a gross miscarriage of justice,’ expresses a public policy preference for the finality of judicial decisions over the competing policy of reaching the merits in every

case.”<sup>1</sup> Washington appellate courts “apply this test rigorously. Consequently, there are very few instances in which Washington appellate courts have found that this test was satisfied.”<sup>2</sup> The motion will be denied if the moving party fails to identify any extraordinary circumstances when seeking an extension.<sup>3</sup> “Applying this stringent standard, ‘extraordinary circumstances’ excuse a late filing only when an untimely filing has occurred due to excusable error or circumstances beyond the party’s control....in those reported appellate decisions that granted extra time to file, the appellant diligently filed a notice of appeal within the 30 day period, but the filing was partially defective.”<sup>4</sup>

No Washington Supreme Court order currently in place suspends the application of RAP 18.8(b). The last such order,

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<sup>1</sup> *Pybas v. Paolino*, 73 Wn. App. 393, 401, 869 P.2d 427 (1994).

<sup>2</sup> *State v. Moon*, 130 Wn. App. 256, 260, 122 P.3d 192 (2005).

<sup>3</sup> *State v. Hand*, 177 Wn.2d 1015, 308 P.3d 588 (2013); *Shumway v. Payne*, 136 Wn.2d 383, 394-97, 964 P.2d 349 (1998)

<sup>4</sup> *Matter of Marriage of Tims*, 10 Wn. App. 2d 1037 (2019).



#25700-B-659, remained in effect until July 31, 2021.<sup>5</sup>

**“2. Logan is not an attorney, and is not a resident of Washington State. These factors dramatically increase the difficulty and expenditure of time.”** Hoffman is also not an attorney but is equally bound to understand and abide by court rules. “[P]ro se litigants are bound by the same procedural rules as attorneys.”<sup>6</sup> “The right of self-representation is not a license to avoid compliance with relevant rules of procedural and substantive law, since the rules apply equally to defendants represented by counsel or appearing pro se.”<sup>7</sup>

**“3. Plaintiff-Respondent Mark Hoffman is in no way prejudiced by this error.”** This argument is false but irrelevant. “RAP 18.8(b), however, does not turn on prejudice to the responding party. If it did, there would rarely be a denial

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<sup>5</sup> <https://www.wdtl.org/files/25700-B-659.pdf>

<sup>6</sup> *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

<sup>7</sup> *State v. Bebb*, 44 Wn. App. 803, 806, 723 P.2d 512 (1986) (citations omitted), *aff'd*, 108 Wn.2d 515 (1987).

of a motion to extend time. n. 2: Most respondents would be hard pressed to show prejudice where the notice of appeal is filed late. Rather, the prejudice of granting such motions would be to the appellate system and to litigants generally, who are entitled to an end to their day in court.”<sup>8</sup>

**“4. The circumstances are extraordinary, and drastic harm will befall Appellant should the extension be denied.”**

If the circumstances are extraordinary and drastic harm is the consequence, Logan should have timely written and filed his petition for review or had an attorney licensed in Washington state timely write and file it for him. Hoffman is equally burdened by the need to comply with court deadlines.

**“5. Logan has produced a Petition for Review, but has additional work to do on citations, format, and tone.”**

Logan had at least 60 days from the date of appellate court’s decision affirming the trial court’s decision during which to

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<sup>8</sup> *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 766, 764 P.2d 653, 654 (1988).

write his petition for review or have someone write it for him.

He failed. Hoffman, also a pro se non-attorney, has not untimely filed any document during this appeal.

### **B. Petition for Review**

Logan does not present any “considerations governing acceptance of review” per RAP 13.4 that should persuade the Supreme Court to review the appellate court’s decision. He presents four issues for review:

1) Inferring that Logan was in control of The Funding Center based on supposition by Respondent Mark Hoffman (Hoffman henceforth), claiming groundlessly that Logan directed automated telephone calls be made to Hoffman.

(2) Disregarding the only prima facie evidence extent: sworn affidavits by Logan,

(3) Disregarding Logan’s testimony and sworn affidavit that his ex-wife did not reside with him, as well as King County Superior Court twice rejecting service as improper

(4) Affirming King County Superior Court’s claims to jurisdiction despite all evidence being to the contrary, and in violation of Logan’s right to due process

Regarding issues 1-3, Logan seems not to understand that a Washington appellate court usually will not consider claims and affidavits that the trial court never saw. He repeatedly made claims and presented affidavits to the appellate court that the trial court never saw. For example, the appellate court noted about his claim that his wife did not reside with him when he was served, “We are unpersuaded by Logan's claim because it appears nowhere in the record and there is no indication that he raised this claim for the superior court to consider.”<sup>9</sup> Logan also seems not to understand that after a default, “the allegations in the plaintiff’s complaint must be taken as correct.”<sup>10</sup>

The appellate court exhaustively analyzed Logan’s claim that the trial court lacked jurisdiction and concluded that

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<sup>9</sup> *Hoffman v. Logan*, 81887-2-I, WL 3144951, at 7 (Wn App. July 26, 2021).

<sup>10</sup> *Walker v. Bonney-Watson Co.*, 64 Wn. App. 27, 33, 823 P.2d 518 (1992) (citing *MBM Fisheries, Inc. v. Bollinger Machine Shop and Shipyard, Inc.*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991)).

it was without merit.<sup>11</sup> Logan’s petition for review claims, “The Court should accept discretionary review of the court of appeals’ decisions under RAP 13.4(b)(2) and (4) because the decisions conflict with this Court of Appeal’s decision in *SeaHAVN, Ltd. v. Glitnir Bank*, 154 Wn. App. 550, 563, 226 P.3d 141 (2010) regarding the duty of the plaintiff—Hoffman, in this case—to prove jurisdiction with at least a prima facie evidence”<sup>12</sup> The appellate court’s decision did not in any way conflict with the *SeaHAVN* decision. The appellate court’s decision quoted from or cited *SeaHAVN* five times. It also didn’t conflict with the many other published decisions that it cited in its analysis of the issue of jurisdiction.

## VI. CONCLUSION

Logan did not timely file a petition for review to this court. He has not shown any extraordinary circumstances that would

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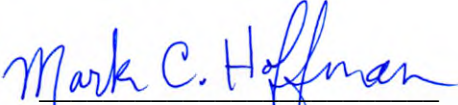
<sup>11</sup> Hoffman v. Logan, 81887-2-I, WL 3144951, 2-6 (Wn. App. July 26, 2021)

<sup>12</sup> Logan’s petition for review at 7.

justify enlarging the time to file a petition for review. He has not presented any issue that should persuade the Washington Supreme Court to review the appellate court's decision.

Hoffman therefore respectfully requests that this court deny Logan's MOTION TO ENLARGE THE TIME TO FILE PETITION FOR REVIEW and his PETITION FOR REVIEW and grant Hoffman and Logan an end to their day in court.

Dated and signed November 10, 2021 at Bainbridge Island, WA. I certify that this answer contains 2,207 words in accordance with RAP 18.17(10).

  
Mark Hoffman, Pro Se

## VII. APPENDIX A

RAP 13.4(a) states in relevant part:

**How to Seek Review.** A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must serve on all other parties and file a petition for review or an answer to the petition that raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review *must be* filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. [Emphasis added.]

RAP 13.4(b) states in relevant part:

**Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 18.8(b) states:

**Restriction on Extension of Time.** The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

RAP 1.2(a) states:

**Interpretation.** These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, *subject to the restrictions in rule 18.8(b).*”  
[Emphasis added.]



**VIII. DECLARATION OF SERVICE**

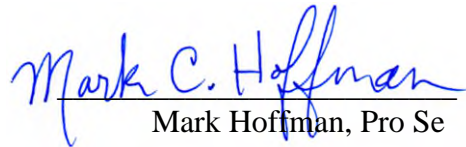
The undersigned certifies under penalty of perjury under the laws of the States of Washington that on the below date he caused to be served in the manner noted below a copy of the foregoing upon the Appellant:

Dan Logan  
550 Cumberland St  
Westfield, NJ 07090  
[dlogan@bgcholdings.co](mailto:dlogan@bgcholdings.co)

- Via U.S. Mail
- Via Email
- Via ECF Filing
- Via Hand Delivery
- Via Messenger

Dated and signed on November 10, 2021 at Bainbridge Island,  
WA.

Respectfully Submitted,



Mark Hoffman, Pro Se  
6621 NE Marshall Road  
Bainbridge Island, WA 98110  
Phone: (206) 780-2326  
Email: [52recondite@gmail.com](mailto:52recondite@gmail.com)

**MARK HOFFMAN - FILING PRO SE**

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