

**FILED**

NOV 07 2016

WASHINGTON STATE  
SUPREME COURT

NO. 93589-1

**IN THE  
STATE OF WASHINGTON SUPREME COURT**

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WARREN E. BOHON,

Petitioner

v.

CITY OF STANWOOD,

Respondent.

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**RESPONDENT CITY OF STANWOOD'S AMENDED ANSWER  
TO APPELLANT'S MOTION FOR EXTENSION OF TIME TO  
FILE PETITION FOR REVIEW**

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Jayne L. Freeman, WSBA #24318  
Keating Bucklin & McCormack, Inc., P.S.  
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Seattle, WA 98104-3189  
(206) 623-8861 Telephone  
(206) 223-9423 Facsimile

Attorney for Respondent City of Stanwood

## I. RELIEF REQUESTED

Respondent City of Stanwood requests the court DENY Petitioner Bohon's request for an extension of time for filing a Petition for Review, due September 12, 2016, and terminate review of this matter.

## II. FACTS RELATED TO THIS MOTION

On June 13, 2016, Division I of the Court of Appeals affirmed the trial court's February 5, 2015 order granting summary judgment dismissal of Plaintiff-Petitioner Bohon's employment claims against the City of Stanwood. *See, Appendix A*. On August 11, 2016, the Court of Appeals denied Petitioner's motion for reconsideration of its order affirming dismissal. *See, Appendix B*. Petitioner had also sought and was granted an extension of time to file his Motion for Reconsideration in the Court of Appeals. *See, Appendix C*.

The deadline for filing a Petition for Review was September 12, 2016. *See, RAP 13.4(a)*. Instead of filing a Petition for Review on that date, Mr. Bohon filed a request for a three-month extension to file a Petition for Review on September 14, 2016.

Petitioner has been litigating this employment claim against the City for nearly ten years, first filing a federal lawsuit in 2007 (CP 174-177), then this lawsuit in state court in 2009 (CP 468-473). While he filed both lawsuits as a pro se plaintiff, he has since had at least four attorneys appear on his behalf, while litigating pro se at various times in between. CP 180-182 (2007-Paultier), CP 664-672, CP 541-543 (2010-2011-Wishko), CP 552-534 (2013-Sullivan), and Michelle Earl-Hubbard in

2016.

Attorney Earl-Hubbard prepared and filed the Brief of Appellant on Mr. Bohon's behalf in the Court of Appeals after numerous extensions of time granted to allow him to retain yet another attorney. Petitioner missed or sought multiple extensions of virtually every deadline in the Court of Appeals, repeatedly delaying the City's ability to obtain a final decision and end the litigation.

In the six additional weeks this Court allowed him to file a Petition for Review (pending the court's decision on this underlying motion to extend the deadline in the first place), and the four months since the Court of Appeals affirmed dismissal of his lawsuit, Mr. Bohon has not retained new counsel. He filed a Petition for Review on October 27, 2016 as a pro se, abandoning any suggestion that a fifth attorney would make a difference in preparing it. *See, Petition For Review, p. 3 (October 27, 2016)*. Rather, he merely states his unilateral belief another attorney may help him get money from the City via settlement. *Id.*

### III. ARGUMENT

Petitioner now cites "car repair costs" as the basis for seeking a three-month extension of time to file a Petition for Review. After ten years in litigation, during which he has been represented by at least four different attorneys, he once again uses the excuse of needing to obtain yet another attorney to prolong this matter.

Pursuant to RAP 18.8:

(b) 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...a petition for review... 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.

In contrast to the liberal application generally given the Rules of Appellate Procedure (RAP), RAP 18.8 expressly requires a narrow application. *Beckman ex rel. Beckman v. State, Dep't of Soc. & Health Servs.*, 102 Wash. App. 687, 693, 11 P.3d 313, 316 (2000). The phrase 'extraordinary circumstances' was defined in *Reichelt v. Raymark Indus., Inc.*, 52 Wash.App. 763, 765, 764 P.2d 653 (1988). *Id.* (rejecting 10-day late notice of appeal where party's attorney had left the firm following entry of judgment); *see also Shumway v. Payne*, 136 Wash.2d 383, 394–97, 964 P.2d 349 (1998) (reiterating and reemphasizing stringent standard of RAP 18.8(b)); *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wash.2d 366, 849 P.2d 1225 (1993); *Pybas v. Paolino*, 73 Wash.App. 393, 401, 869 P.2d 427 (1994)(limiting extension of time to seek further review “expresses a public policy preference for the finality of judicial decisions over the competing policy of reaching the merits in every case.”).

“Extraordinary circumstances” include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. *Shumway*, at 395, *citing*,

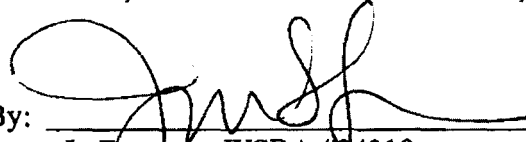
*Hoirup v. Empire Airways, Inc.*, 69 Wash.App. 479, 482, 848 P.2d 1337 (1993). The standard set forth in the rule is rarely satisfied. *Id.* (denying extension for seeking discretionary review where pro se litigant mistakenly thought discretionary review was not necessary to preserve her personal restraint claims for federal court).

Mr. Bohon's request for further extension should be denied. Car repairs and other instances of daily life do not constitute "extraordinary circumstances" warranting further prolonging of this lawsuit. He failed to timely file a Petition for Review in compliance with RAP 13.4, and he has failed to state any basis sufficient to warrant further extension of time to file such a Petition, or sufficient grounds for Supreme Court review of the Court of Appeals' Order and, thus, this matter should be terminated.

#### IV. CONCLUSION

The Court should deny Appellant's request for an extension of time for filing a Petition for Review and terminate review of this matter.

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By:   
Jayne L. Freeman, WSBA #24318  
800 Fifth Avenue, Suite 4141  
Seattle, WA 98104-3175  
Phone: (206) 623-8861  
Fax: (206) 223-9423  
Email: [jfreeman@kbmlawyers.com](mailto:jfreeman@kbmlawyers.com)  
Attorney for Defendant City of Stanwood

**DECLARATION OF SERVICE**

I, Shelly Ossinger, being of lawful age, declare under penalty of perjury that on November 7, 2016, I sent out for filing with the Clerk of the State of Washington Supreme Court and for service on counsel of record, via U.S. first class mail <sup>and email</sup> in the above-entitled case. Envelopes were plainly addressed to the following:

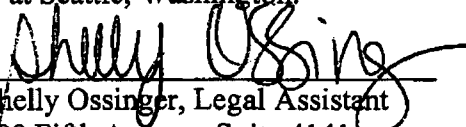
**Attorneys for Pro se Appellant**

Warren Bohon  
881 East Port Susan Terrace Rd  
Camano Island, WA 98292  
Email: teresab1567@yahoo.com

E-mail     United States Mail     Legal Messenger

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2016 at Seattle, Washington.

  
\_\_\_\_\_  
Shelly Ossinger, Legal Assistant  
800 Fifth Avenue, Suite 4141  
Seattle, WA 98104-3175  
Phone: (206) 623-8861  
Fax: (206) 223-9423  
Email: sossinger@kbmlawyers.com

## *Appendix A*

**Jayne L. Freeman**

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**From:** Sanders, Laurie <Laurie.Sanders@courts.wa.gov>  
**Sent:** Tuesday, September 13, 2016 2:59 PM  
**To:** Jayne L. Freeman  
**Subject:** COURT OF APPEALS 73195-5-I Warren E. Bohon, Appellant v. City of Stanwood, Respondent  
**Attachments:** 73195-5-I letter.pdf  
**Importance:** High

RICHARD D. JOHNSON  
*Court Administrator/Clerk*

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(PDS) 464-7760  
TDD: (206) 464-5567

**The attached letter is being transmitted to counsel electronically. No hard copy will follow.**

**Laurie Sanders  
Court of Appeals, Division I  
600 University Street  
Seattle, WA 98101  
Direct Dial: 206-464-6013**



*The Court of Appeals*  
of the  
*State of Washington*

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

September 13, 2016

Warren E Bohon  
881 Port Susan Terrace  
Camano Island, WA 98282

Jayne Lyn Freeman  
Attorney at Law  
800 5th Ave Ste 4141  
Seattle, WA 98104-3189  
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DIVISION I  
One Union Square  
600 University Street  
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CASE #: 73195-5-1

Warren E. Bohon, Appellant v. City of Stanwood, Respondent

Counsel:

A petition for review has been filed in the above case. It appears from the record that counsel has been served with a copy of the petition for review.

Counsel is advised to review RAP 13.4(d) in regard to the filing of an answer to the petition for review.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

lls

c: The Honorable Susan L. Carlson  
Clerk of the Supreme Court

RICHARD D. JOHNSON, *Court  
Administrator/Clerk*

*The Court of Appeals  
of the  
State of Washington  
Seattle*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

September 13, 2016

The Hon. Susan L. Carlson  
Clerk of the Supreme Court  
Temple of Justice  
Olympia, WA 98504-0511

Dear Ms. Carlson:

Re: 73195-5-1, Bohon v. City of Stanwood

Please acknowledge receipt of the following on the enclosed copy of this letter

Appellate court file  
Trial court file  
Appellant's briefs  
Respondent's briefs  
Reply briefs

This record has been forwarded for the Supreme Court's convenience in making a determination on the petition for review filed in the above appeal.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

lls

Enclosures

## *Appendix B*

**Jayne L. Freeman**

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**From:** Dunnegan, Jocelyn <Jocelyn.Dunnegan@courts.wa.gov>  
**Sent:** Thursday, September 15, 2016 12:24 PM  
**To:** Jayne L. Freeman  
**Cc:** Div-1 Front Desk  
**Subject:** Case # 93589-1 - Warren E. Bohon v. City of Stanwood  
**Attachments:** 93589-1 Letter 08-15-16.pdf; 93589-1 Motion for time.pdf  
  
**Importance:** High

*Clerk and Counsel:*

*Attached is a copy of the letter issued by the Clerk or the Deputy Clerk on this date in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail. When filing documents by email with this Court, please use the main email address at [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)*

Jocelyn Dunnegan  
Petition for Review Docket Clerk  
Supreme Court Clerk's Office

SUSAN L. CARLSON  
SUPREME COURT CLERK

THE SUPREME COURT  
STATE OF WASHINGTON



TEMPLE OF JUSTICE  
P.O. BOX 40828  
OLYMPIA, WA 98504-0828

(360) 357-2077  
e-mail: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
[www.courts.wa.gov](http://www.courts.wa.gov)

September 15, 2016

LETTER SENT BY E-MAIL

Warren Bohon (sent by U.S. mail only)  
881 Port Susan Terrace  
Camano Island, WA 98282

Hon. Richard Johnson, Clerk  
Division I, Court of Appeals  
One Union Square  
600 University Street  
Seattle, WA 98101

Jayne Lyn Freeman  
Attorney at Law  
800 5th Avenue Suite 4141  
Seattle, WA 98104-3189

Re: Supreme Court No. 93589-1 - Warren E. Bohon v. City of Stanwood  
Court of Appeals No. 73195-5-I

Clerk, Counsel and Mr. Bohon:

The Petitioner's "Request for a 90 day extension of time to file a request for review ...", which will be treated as a motion for extension of time to file a petition for review, was received and filed on September 14, 2016. The matter has been assigned the Supreme Court cause number indicated above. **A copy of the motion is enclosed for the Respondent.** It is noted that the \$200 filing fee (check #4770) was received with the motion

The parties are advised that no ruling is being made at this time on the Petitioner's motion for an extension of time to file a petition for review. However, when a ruling is made if the Court does not grant the motion for an extension of time to file, any untimely filed petition for review will not be considered by the Court. Should the Court grant the motion for an extension, then the Court would proceed to consider any untimely filed petition for review.

Accordingly, if the Petitioner wishes to seek review of the Court of Appeal opinion which was filed on June 13, 2016, the Petitioner must file a petition for review in this Court by not later than October 27, 2016, see RAP 13.4. The content and style of the petition should conform with the requirements of RAP 13.4(c). **I have enclosed for Petitioner a copy of Forms 9, 5, 6, and part F of Form 3 from the appendix to the rules.**

The motion and petition for review will be considered by a Department of the Court without oral argument on a yet to be determined date. However, due to the Petitioner's failure to file a timely petition for review, the Court will only consider the petition for review if it first decides to grant the motion for extension of time. **A motion for extension of time to file is normally not granted; see RAP 18.3(b).** If the members of the Department do not unanimously agree on the manner of the disposition, consideration of the matter will be continued for determination by the En Banc Court.



Page 2  
No. 93589-1  
September 15, 2016

The Respondent may serve and file an answer to the motion and file an answer to the petition for review within 30 days after service of a copy of the petition for review upon the Respondent. The petition is considered served whether served by the Court or the petitioner, whichever occurs first.

If the Respondent wants to raise an issue that is not raised in the petition for review, the Respondent must raise the new issue in the answer.

A reply to any answer should be filed within 15 days after service on the Petitioner of such answer and may only be filed if the answer raises a new issue; see RAP 13.4(d).

As to reproduction and service of the petition, answer or reply, the parties should refer to RAP 13.4(g).

It is noted that once the petition for review is received, a date will be established for consideration of the petition and the motion for an extension of time. Failure to file a petition for review by October 27, 2016, may result in dismissal of this matter.

Sincerely,



Erin L. Lennon  
Supreme Court Deputy Clerk

ELL:jd

Separate enclosures as stated

*Appendix C*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

CITY OF STANWOOD,  
Respondent,  
v.  
WARREN E. BOHON,  
Appellant.

No. 73195-5-1

ORDER GRANTING MOTION  
FOR EXTENSION OF TIME  
TO FILE MOTION FOR  
RECONSIDERATION

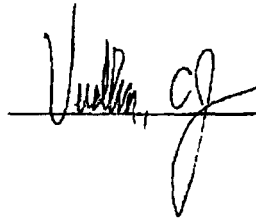
Appellant filed a motion for an extension of time to file a motion for reconsideration of the court's opinion filed June 13, 2016. The court, having considered the motion and respondent's answer thereto, has determined the motion should be granted. Now, therefore, it is hereby

ORDERED that appellant's motion is granted. It is further

ORDERED that appellant's motion for reconsideration is to be filed with the court and served on opposing counsel no later than August 9, 2016. No further continuances will be granted.

Done this 11<sup>th</sup> day of July, 2016.

FOR THE PANEL:



2016 JUL 11 AM 11:49  
COURT OF APPEALS IN  
STATE OF WASHINGTON