

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/16/2019 3:17 PM  
BY SUSAN L. CARLSON  
CLERK

97539-6

CASE # 35572-1-III

IN THE COURT OF APPEALS, DIVISION 3, STATE OF WASHINGTON

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REBEL CREEK TACKLE INC., Petitioner

v.

SETH BURRILL PRODUCTIONS INC. Respondent

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MOTION FOR EXTENSION FOR FILING APPEAL

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Floyd E. Ivey, WSBA #6888  
IVEY Law Offices, P.S. Corp  
7233 W. Deschutes Ave.  
Ste. C, Box #3  
Kennewick, WA 99336  
509 735 6622

Attorneys for Petitioner

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MOTION FOR EXTENSION OF TIME TO FILE APPEAL.

Petitioner Rebel Creek Tackle Inc Moves for an Extension of Time for the filing of the Appeal of CASE # 35572-1-III. RAP 13.4(a) requires filing an appeal within 30 days of the decision terminating review. Court of Appeals Division III decision terminating review in CASE # 35572-1-III was issues July 11, 2019. The 30th day fell on Sunday. Petitioner attempted filing on the next court day, Monday, August 12. Issues relating to eFile interfered with and prevented filing until after 5pm on August 12, 2019 with filing completed after 5pm at 5:29 pm as addressed in the Declaration of attorney Floyd E. Ivey, WSBA #6888.

RAP 18.8 addresses extension of time in filing in subparts (a) and (b). Subpart (a) provides filing for an extension to serve the ends of justice. Subpart (b) addresses the filing of an appeal and requires extraordinary circumstances for filing an appeal.

Your Petitioner filed an appeal from Division III in June, 2019 with no obstacle related to accessing and filing via eFile. That June 2019 filing was the ordinary expected process. Attorney Floyd E. Ivey addresses the circumstances resulting in the filing of the Petition for Review in this matter on August 12, with this filing occurring 29 minutes following 5pm on August 12, 2019, contends that the circumstances were not ordinary but were extraordinary and contends that the Respondent can show no prejudice in the filing occurring 29 minutes late.

The filing fee of \$200.00 was mailed on 8/14.

Your petitioner relies on the Declaration of Floyd E. Ivey.

Respectfully submitted this 16<sup>th</sup> day of August, 2019.

A handwritten signature in black ink, appearing to read "Floyd E. Ivey". The signature is fluid and cursive, with the first name "Floyd" being the most prominent.

Floyd E. Ivey, #6888  
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## DECLARATION OF FLOYD E. IVEY

Floyd E. Ivey, attorney WSBA #6888 now declares on oath subject to perjury the this Declaration is correct and true and that he represents Rebel Creek Tackle Inc in the matter of CASE # 35572-1-III and the Decision rendered on July 11, 2019. Shortly after receipt of the Decision I commenced research and expended numerous hours regarding issues deemed existing in the Decision. Drafting the Petition for Review commenced on August 5, 2019 with the time of August 5 through 12, including much of Saturday and Sunday, dedicated for a total of 34 hours.

My last filing with the courts was on or about mid-June for the appeal of a related case from the Spokane County Superior Court. There was no issue with that June filing.

Filing in this matter was expected for Monday, August 12, 2019 and was commenced at approximately 3pm. When accessing eFile the filing was rejected re: either a username or password issue with this occurring two times. I then called the courts for assistance. I was initially directed at least twice to customer services. Finally I was directed to a person who first told me to not make further attempts to login lest my account be locked.

With continued discussion I attempted to change my password. The letter from the Supreme Court Deputy Clerk Erin Lennon, advising that a Motion for Extension was required, also stated that "it is noted that counsel for the Petitioner indicated to a Supreme Court staff member that he may have had technical difficulties filing via the appellate web portal. Indeed I did speak at length with a staff member who was very helpful in overcoming the difficulty. There may have been two staff members assisting. One of these individuals did assist and was successful in her assistance. I was given a temporary password by email and used that password

to access eFile. The person assisting had asked if the time for filing was on August 12, 2019 and with advice that it was, she stayed in contact until the issue seemed to be resolved. By the time I was able to log in it was approximately 4:30 pm.

After logging in I attempted multiple times to download 5 files with the loading demonstrated but with the message received that the download to the court had not occurred. After multiple attempts I concluded that attempting to send one file at a time might avoid the error. However by that time it was 5pm. Thereafter I was able to transmit one file at a time indicating that the 5 files had been received.

The 5 files were then filed with the court at 5:29 and were transmitted via the eFile process to all counsel of record. Hence, opposing counsel received the Petition for Review and associated pleadings and decision within 29 minutes of the usual 5pm cutoff. With receipt within minutes of the 5pm cutoff opposing counsel will not have been prejudiced. The difficulty in filing was, in my experience, not ordinary but was extraordinary. Granting the Extension under these circumstances is in the interest of justice.

Your petitioner asks the Court to grant the extension and to allow the Petition for review to be considered in the normal course.

The foregoing is a true and correct statement made on oath and is respectfully submitted this 16<sup>th</sup> day of August, 2019.

IVEY Law Offices, P.S. Corp.



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AFFIDAVIT OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on ,  
August 16, 2019 I made service of the foregoing pleading or notice on the party/ies listed below  
in the manner indicated:

Christopher Lynch  
Sarah Elsden  
LEE & HAYES, PLLC  
601 W. Riverside Ave., Suite 1400  
Spokane, WA 99201  
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Spokane County Superior Court  
1116 W. Broadway Ave.  
Spokane WA 99260  
Court of Appeals Division III  
Clerk's Office Fax: 509-456-4288  
Supreme Court

US MAIL  
 EMAIL(Judge Assistant - )  
 HAND DELIVERY  
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**IVEY LAW OFFICES**

**August 16, 2019 - 3:17 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97539-6  
**Appellate Court Case Title:** Seth Burrill Productions, Inc. v. Rebel Creek Tackle, Inc.  
**Superior Court Case Number:** 13-2-01982-0

**The following documents have been uploaded:**

- 975396\_Motion\_20190816151425SC272883\_0034.pdf  
This File Contains:  
Motion 1 - Extend Time to File  
*The Original File Name was C4MotionExtensionFilePetForReview190816.pdf*

**A copy of the uploaded files will be sent to:**

- Litigation@leehayes.com
- chris@leehayes.com
- sarah.elsden@leehayes.com

**Comments:**

Motion and Declaration for Extension of time to file Appeal in one file.

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Sender Name: Floyd Ivey - Email: feivey@3-cities.com  
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7233 W DESCHUTES AVE STE C  
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**Note: The Filing Id is 20190816151425SC272883**