

THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

DEVIN C. KIENOW,

Appellant / Petitioner,

v.

TERESA DITTENTHOLER

f/k/a KIENOW,

Respondent.

NO. 102054-6

MOTION TO
ACCEPT FILING OF
PETITION FOR
DISCRETIONARY
REVIEW

I. IDENTITY OF MOVING PARTY

Appellant/Petitioner Devin C. Kienow (“Kienow”)

seeks the relief described in Section II below.

II. RELIEF REQUESTED

Kienow asks the Court to enter an order accepting the filing of Kienow's Petition for Discretionary Review ("Petition").

III. STATEMENT OF MATERIAL FACTS

The material facts supporting this motion are set forth below in the subjoined Declaration of Devin C. Kienow.

IV. DECLARATION OF DEVIN C. KIENOW

1. I am the Appellant / Petitioner in this matter and am over the age of 18 years, have personal knowledge of, and am otherwise competent to testify to, the matters set forth in this affidavit.

2. **Summary.** The Petition has already been filed. It was entered into the system on June 1, 2023—the due date. But, because I had to reset my portal account, the Petition was filed 15 minutes after 5:00 p.m. Thus, the

Petition was not admitted as filed until the next morning.

I list the events of that filing day below.

3. **The filing day.** I left work early on June 1, 2023, to convert my Petition into PDF format and file it into the system.

4. **Courts' filing system rejected my sign-in.** I attempted, on June 1, 2023, to file the Petition. But my sign-in was rejected. Consequently, my attempt to file the Petition was stalled.

5. **Requesting reset of my account.** I was using my current name and password. But after numerous attempts entering my current username and password, and a bit of failed troubleshooting, I requested to reset my account.

I had to initiate the reset twice. The first attempt, to reset via the link, was to no avail, for I did not receive a

return email. I requested again. But, again, no response.

Consequently, I began the steps to create a new account.

6. Email received from ePortal system. In the middle of setting up a new account, however, I finally received a response from “donotrespond@courts.wa.gov.” Ex. 1. The email sent a link to complete several steps to reset my account. I did so as quickly as I could.

7. The Petition was entered on June 1, 2023. Once the account was reset, I immediately filed the Petition. The Petition was entered into the system 15 minutes after 5:00 p.m. Ex. 2.

8. Service was achieved on June 1, 2023. The Petition was simultaneously served to opposing counsel at “david@yakima.law,” via the electronic portal. *Id.*

9. Filing fee. I have paid the filing fee. Ex. 3.

10. **This pleading.** Subsequently, the Supreme Court sent me a letter with instructions for this motion.

Exhibits

Attached are true and correct copies of documents obtained in the usual course of business.

1. Email, courts.wa.gov to dkienow@hotmail.com, June 1, 2023;
2. Transmittal Information, Court of Appeals Division III, June 1, 2023; and
3. Receipt Re: Filing fee, The Supreme Court of Washington, June 5, 2023.

I swear the foregoing to be true under penalty of perjury under the laws of the State of Washington.

Executed at Yakima, Washington, this 9th day of June, 2023.



Devin C. Kienow

IV. ARGUMENT

1. Circumstances necessitate allowing the Petition to prevent injustice.

Kienow's Petition should be accepted. Although the courts have reasoned that time extensions are not the norm because litigants generally are entitled to an end to their day in court¹, the court can grant extensions of time when circumstances necessitate it and to uphold justice.²

Indeed, both reasons occur here.

Here, the stalled e-filing issue created an extraordinary circumstance, for which Kienow had no reasonable control over. Indeed, the Petition was ready to be filed on the date it was due. But the process of filing was stalled

¹ See *Reichelt v. Raymark Indus.*, 52 Wn. App. 763, 766, n. 2, 764 P.2d 653, 654, n. 2 (1988).

² See RAP 18.8(b).

because of sign-in issues with the system.

Further, the Petition was not filed ten, five, or *any* remarkable number of days late. Kienow filed the Petition on the same day it was due, however, it was 15 minutes after 5:00 p.m.

Here, denying the Petition upends justice. Kienow brings an appeal regarding statutory interpretation of domestic violence and statutory interpretation of the fundamental principle of subject matter jurisdiction.

Therefore, dismissing Kienow's Petition, to review domestic violence and jurisdiction, for being entered 15 minutes after 5:00 p.m. will present a gross miscarriage of justice.

IN THE ALTERNATIVE,

2. The Petition was timely filed according to Washington's Rules of Appellate Procedure.

The Petition was timely filed according to the appellate rules. Although there may be a preference or a *status quo* regarding a specific time of day, the rules do not express a time-marker cutoff.

The RAPs state the Petition must be filed 30 days after entry of the order.³ But there is no time-marker listed within the four corners of the pages of RAP 13.4. In other words, it isn't clear. In fact, examining other possible rules regarding a time, the rule titled: "Computation of Time," does not indicate any time-markers at all.⁴

Indeed, other courts are specific and clear. For example, in federal rules, titled: "Computing and Extending Time," it specifies that the cutoff for electronic

³ RAP 13.4(a)

⁴ RAP 18.6

filing is at 11:59 p.m. on the filing day.⁵

Here, the RAPs state the petitioner has 30 days after the order to file a petition. The order was filed May 2, 2023. Thirty days after May 2, 2023 was June 1, 2023. The RAPs do not specify a time-marker cutoff.

Kienow complied with the rules as they read—he electronically filed the Petition into the court’s system on the day it was due—June 1, 2023.


V. CONCLUSION

Because an injustice will occur if the Petition is barred, or, alternatively, because the Petition was timely filed on June 1, 2023, this Court should enter an order accepting the filed Petition for Discretionary Review.

⁵ See Fed. R. Civ. P. 6(a)(4)(A) (“[F]or electronic filing, [the cutoff is] at midnight in the court’s time zone”).

This document 995 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 9th day of June, 2023.

By 

DEVIN C. KIENOW

Ex. 1

Cover Sheet

dkienow@hotmail.com

From: doNotRespond@courts.wa.gov
Sent: Thursday, June 1, 2023 5:06 PM
To: dkienow@hotmail.com
Subject: Washington State Courts' Secure Access

* This is a system generated message, please DO NOT reply to this email.

A request was received to reset your account.

If you initiated the request, please click the link below to begin the process of resetting your account.

<https://ac.courts.wa.gov/index.cfm?fa=reg.reqReset&c=0538909448274>

If you did not request a reset of your account, you may want to update your profile.
To do so, please visit <https://ac.courts.wa.gov/index.cfm?fa=profile.manageAcct>

If you have questions about using the Washington State Appellate Courts' Portal, or you need to contact Customer Support, please visit <https://ac.courts.wa.gov/index.cfm?fa=home.showPage&page=needAssistance>.

Ex. 2

Cover Sheet

DEVIN KIENOW

June 01, 2023 - 5:15 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 38319-9
Appellate Court Case Title: In re the Marriage of: Devin C. Kienow and Teresa A. D. Kienow
Superior Court Case Number: 18-3-00711-1

The following documents have been uploaded:

- 383199_Petition_for_Review_20230601171448D3659323_8660.pdf
This File Contains:
Petition for Review
The Original File Name was Kienow Notice Discretionary Review 01 Jun2023.pdf

A copy of the uploaded files will be sent to:

- Matt@Kaminski.law
- brooke@yakima.law
- david@yakima.law
- info@yakima.law
- kimmy@pnwfamilylaw.com

Comments:

Sender Name: Devin Kienow - Email: dkienow@hotmail.com
Address:
5115 Lyons Loop
Yakima, WA, 98903
Phone: (360) 910-7522

Note: The Filing Id is 20230601171448D3659323

EXHIBIT 2

Ex. 3

Cover Sheet

SUPREME COURT
415 12TH AVENUE
OLYMPIA, WA 98501

06/05/2023 09:47:57
MID: XXXXXXXXXXXX562 TID: XXXX324

CREDIT CARD
VISA SALE

Card # XXXXXXXXXXXX9843
SEQ #: 3
Batch #: 271
INVOICE 3
Approval Code: 064712
Entry Method: Manual
Mode: Online

SALE AMOUNT \$200.00

I agree to pay above total amount
according to card issuer agreement.
(Merchant agreement if Credit Voucher)

X _____

MERCHANT COPY

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on June 9, 2023, the foregoing document was electronically served to the below party and attorney.

Via Washington State Appellate Court's Portal to:

Teresa Dittentholer, Respondent
c/o David Therrien-Power, Attorney
Yakima Law, PLLC
212 N Naches Ave
Yakima, WA 98901
509-903-9500
david@yakima.law

DATED in Yakima, this 9th day of JUNE, 2023



Devin Kienow, Petitioner

DEVIN KIENOW

June 09, 2023 - 4:22 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,054-6
Appellate Court Case Title: In re the Marriage of Devin Christopher Kienow and Teresa A. Dittenthaler Kienow
Superior Court Case Number: 18-3-00711-1

The following documents have been uploaded:

- 1020546_Other_20230609155919SC883926_5642.pdf
This File Contains:
Other - Motion to Accept Filing of Petition
The Original File Name was Kienow Mot Accept Petition 09Jun2023.pdf

A copy of the uploaded files will be sent to:

- Matt@Kaminski.law
- brooke@yakima.law
- david@yakima.law
- info@yakima.law
- kimmy@pnwfamilylaw.com

Comments:

Sender Name: Devin Kienow - Email: dkienow@hotmail.com
Address:
5115 Lyons Loop
Yakima, WA, 98903
Phone: (360) 910-7522

Note: The Filing Id is 20230609155919SC883926