

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

REPLY IN MOTION  
TO ACCEPT FILING  
OF PETITION FOR  
DISCRETIONARY  
REVIEW

I. ARGUMENT

**1. Kienow's lack of access to the portal system should not bar the Petition.**

Lacking the ability to enter documents into the system is an extraordinary circumstance outside of Kienow's control. Although Dittentholer asserts that a lack of access

is not an extraordinary circumstance and the lack of access was within Kienow's control, Dittentholer ignores that Kienow has no control over the portal system.

Kienow took all reasonable steps within his control. He sought a password reset and then an account reset—leading to an extraordinary circumstance that is excusable. Kienow has no control over whether the system responds to a password reset or when it is sent.

Reviewing the Petition on the merits is warranted. Although Dittentholer claims the Court reviewing the merits of the Petition is a “reward<sup>1</sup>,” that claim is provocative rather than persuasive. The Petition was entered 15 minutes after 5:00 p.m. on the day it was due—after waiting for access to the portal system.

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<sup>1</sup> Resp't Answer, p. 3

## **2. Kienow filed the Petition according to the RAPs.**

Kienow’s Petition was entered into the system on June 1, 2023—the day it was due. Although Dittentholer claims “it is uncontested”<sup>2</sup> that the Petition was filed “after the time required by the rules,”<sup>3</sup> Dittentholer did not support the claims, and Dittentholer did not provide a Rule that commands a time deadline.

The rule on timeliness is controlled by RAP 13.4<sup>4</sup>. Although historically the practice is, perhaps, filing by 5:00 p.m., but that is not a rule. RAP 13.4 does not specify a time for entry into the portal system. Therefore, any time on up until 11:59 p.m., of the 30<sup>th</sup> day, adheres to the language of the RAP.

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<sup>2</sup> Resp’t Answer, p. 1

<sup>3</sup> *Id.*

<sup>4</sup> Dittentholer cited rule 13.5.

Additionally, in the age of electronic filing, entering a document into the portal system is possible at any time of day. Thus, without a specified time, it's reasonable that a deadline is indeed 11:59 p.m. on the day it is due.

Nevertheless, RAP 13.4 does not specify a time.

Here, Kienow entered the Petition into the portal system on the day it was due. There is no controlling rule commanding the documents be entered by 5:00 p.m. And Kienow has no control over the filing system nor when that system time stamps the paperwork.

## **II. CONCLUSION**

Because the Petition filing time is excusable and an extraordinary circumstance outside of Kienow's control, or, in the alternative, was timely entered within the language of RAP 13.4, and this appeal regards statutory

interpretation on domestic violence and subject matter jurisdiction, this Court should allow the Petition to be heard on the merits.

This document 444 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 26<sup>th</sup> day of July, 2023.

By

  
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DEVIN C. KIENOW

**DEVIN KIENOW**

**July 26, 2023 - 4:43 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\_Answer\_Reply\_20230726164215SC697005\_9181.pdf  
This File Contains:  
Answer/Reply - Reply to Answer to Motion  
*The Original File Name was Kienow Reply Mot Extend Time 26Jul2023.pdf*

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

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- david@newhouselawpllc.com
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**Comments:**

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