S. Ct. No. 91039-1

IN THE SUPREME COURT – STATE OF WASHINGTON

WILLIAM HOUK, et ux.,

Petitioners.

v.

BEST DEVELOPMENT & CONSTRUCTION COMPANY., INC., et al,

Defendants

NICHOLS & SHAHAN DEVELOMENT, LLC, a Washington Limited Liability Company, and JOSEPH NICHOLS, an individual,

Respondents.

ANSWER TO PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW AND REQUEST FOR DISMISSAL

ROSS P. WHITE, WSBA # 12136
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I. IDENTITY OF ANSWERING PARTIES

The answering parties are Respondents Joseph Nichols and Nichols and Shahan Development, LLC ("NSD"), petitioners in the Court of Appeals and defendants in the Superior Court.

This answer is based in part on the Declaration of Ross P. White in Opposition to Petitioner's Motion for Extension of Time to File Petition for Review ("White Decl.") and the Exhibits attached thereto.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to RAP 18.8(b), Washington courts routinely hold that the desirability of finality of decisions outweighs the privilege of a litigant to extend the deadline for seeking appellate review. As such, the Court ordinarily denies requests, under circumstances much more compelling than those presented here, to extend deadlines for litigants who attempt to seek review mere days after a deadline has passed.

The would-be petitioners in this case, William[1] and Janice Houk (the "Houks"), ask the Court to permit the filing of a petition for review more than seven months late. The Houks have provided no reasonable excuse for their failure to seek timely review the Court of Appeals' March 13, 2014 decision and there are no extraordinary circumstances to compel an exceptionally long extension of time in this case.

[1] Mr. Houk passed away shortly after the commencement of this lawsuit. (CP 87).

The excuses proffered by the Houks are that their appellate attorney, Mr. Leonard Flanagan, failed to understand clear Rules of Appellate Procedure, disregarded correspondence from the Court of Appeals informing him of deadlines, and/or failed to comply with office protocol to ensure that his filing deadlines were calendared.

Mr. Flanagan excuses his conduct by stating that appeals work is a "small" portion of his practice and that he does not possess "great expertise" regarding appellate procedures and practice. However, Mr. Flanagan advertises himself online as having an "extensive record of appellate advocacy", has handled numerous appeals, and was retained by the Houks only after the case was on appeal. (*See* White Decl., Ex. A). Given this experience, and the fact that two attorneys at his firm were given notice of deadlines in the same manner as all prior notices, there is no basis to grant a dispensation from the Court's longstanding rule that mistakes of counsel do not constitute "extraordinary circumstances" under RAP 18.8(b).

The Court should also deny the Houks' untimely alternative request to use the Court of Appeals' November 4, 2014 order to appeal the March 13, 2014 decision through the backdoor. The November order merely corrected clerical mistakes in the commissioner's fee determination (wrong parties were named) and adjusted the amount of fees. The Houks

did not timely appeal those issues and profess no interest in doing so now.

Until recently, the objective evidence suggested that the Houks' failure to timely petition this Court was intentional and signaled their decision to abandon further review. Indeed, after the Court of Appeals' decision, Mrs. Houk sold the home that is the subject of her claims in this lawsuit for $305,000. Under the circumstances, it is fair to conclude that the sole purpose of the instant motion is to further delay entry of a judgment in the Superior Court so that Mrs. Houk can continue disposing of assets that might be used to satisfy a judgment.[2]

Particularly in a case that has been dismissed for failure to meet a deadline for filing suit, it is incumbent upon counsel to diligently comply with all court deadlines. Counsel's admitted mistakes do not constitute extraordinary circumstances outside of their control. The Respondents respectfully request that the Court deny the motion, dismiss this untimely attempt to appeal pursuant to RAP 18.9, and award Mr. Nichols and NSD attorney fees and costs pursuant to RAP 18.1.

III. FACTS RELEVANT TO THE MOTION

1. On December 16, 2010, the Houks filed suit against more than a dozen parties, including Mr. Nichols and NSD, alleging defects in a

[2] After the Court of Appeals' decision, Mrs. Houk listed at least three valuable properties for sale in Spokane. (White Decl., ¶¶ 21-23, Exs. H, J).

home the Houks purchased from NSD in October 2004.[3] (CP 3-14).

2. On August 28, 2012, the trial court entered an order denying the Respondents' motions for summary judgment, finding that 2010 revisions to RCW 25.15.303 revived the Houks' time-barred claims against Mr. Nichols and NSD. (CP 308-309).

3. On November 15, 2012, the Court of Appeals granted discretionary review of the trial court's ruling.

4. On June 19, 2013, Mr. Flanagan entered a Notice of Appearance in the Court of Appeals. (White Decl., ¶ 5).

5. On March 13, 2014, the Court of Appeals issued a unanimous decision, granting the motions for summary judgment dismissal and awarding Mr. Nichols and NSD attorney fees. (White Decl., ¶8, Ex. B). The decision was sent to all counsel (including two attorneys at Mr. Flanagan's firm) via email only. *Id.* An accompanying letter from the clerk stated, in part:

> Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. . . If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission).

Id. Thus, the Houks initially had until April 2, 2014 to seek

[3] The Complaint initially alleged damages of $167,781.03, but the Houks' expert (Mrs. Houk's son) estimated damages of **$338,978.59** and her trial counsel claimed damages of **$1,000,000**. (White Decl., ¶ 21, Ex. I).

reconsideration and until April 14, 2014 to file a petition for review.

6. Shortly thereafter, counsel began corresponding via email, regarding the possibility of resolving this matter. (White Decl., ¶ 9).

7. On March 26, 2014, Mr. Flanagan emailed Respondents' counsel, acknowledging the short deadline for filing a petition for review:

> However, I do have a substantial amount of work to do in short order to prepare a response to your fee petition, and a petition for review. This means that if there is a chance of resolving this matter it would be best to do so before many more days pass.

(White Decl., ¶10, Ex. C)(emphasis added).

8. Later that day, Mr. Flanagan sent a confusing email to Respondents' counsel, suggesting that he might be able to extend the deadline for filing a petition for review:

> Assuming Stark is still a party, we can wait and get kicked back to the trial court with the mandate, then resolve the claims against Stark, and then seek discretionary review under RAP 13.4. That takes some of the pressure of [sic] me to get a petition for review filed, which could be helpful to any negotiations between our clients.

(White Decl., ¶11, Ex. D).

9. The next day, Mr. Flanagan explained that his current instructions were to seek discretionary review by the Supreme Court:

> In any case, you need to understand that my instructions at this point – after conveying on your last email - are that short of a walk-away I am to oppose your fee petition, and seek review by the Supreme Court.

(White Decl., ¶12, Ex. E)(emphasis added).

10. The Houks timely filed a motion for reconsideration on the date it was due, April 2, 2014. (White Decl., ¶ 13). The motion extended the Houks' deadline to file a petition for review. *Id.*

11. On April 3, 2014, the Houks filed an objection to Respondents' fee affidavit, accusing counsel of incompetence, lack of diligence, and even (ironically) spending too much time researching the Rules of Appellate Procedure. The objection also suggested that the Court of Appeals deliberately committed clear error:

> [T]he Court unaccountably went on to award NSD, LLC its fees. Perhaps this is an oversight; a Motion for Reconsideration on the point has been filed. Perhaps the Court is deliberately inviting Supreme Court review by committing such a clear error.

(White Decl., ¶ 14)(emphasis added).

12. Based on the totality of the circumstances and statements described above, the Respondents' counsel was convinced that the Houks were then preparing to file a petition for review. (White Decl., ¶ 15).

13. On April 17, 2014, the Court of Appeals issued an Order Denying Motion for Reconsideration. (White Decl., ¶ 16, Ex. F). As it had done with respect to the March 13, 2014 decision, the order was sent to the parties (including two attorneys at Mr. Flanagan's firm) via email

only. *Id.* Another letter from the clerk accompanied the emailed order and stated:

> A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a Petition for Review, an original and a copy of the Petition for Review in this Court within 30 days after the Order Denying Motion for Reconsideration is filed (may be filed by electronic facsimile transmission). RAP 13.4(a). The Petition for Review will then be forwarded to the Supreme Court.

Id.(emphasis added). As a result, the Houks' final deadline for filing a petition for review was May 19, 2014.

14. The Houks did not file a petition for review on or before May 19, 2014, but continued to vigorously oppose the Respondents' fee affidavit over the course of many months. (White Decl., ¶ 17).

15. On July 25, 2014, a Court of Appeals commissioner issued a ruling on attorneys' fees and costs (the "Commissioner's Ruling"). (White Decl., ¶ 18, Ex. G). The Commissioner's Ruling was sent to the parties (including two attorneys at Mr. Flanagan's firm) via email only with a cover letter and the Mandate. *Id.*

16. The Commissioner's Ruling erroneously awarded fees and costs to Best Development & Construction Co., Inc. ("Best Development"), an entity that did not participate in the appeal, and appeared to miscalculate Mr. Nichols' and NSD's fee award. (White Decl.,

¶ 19). To correct these errors, the Respondents filed a motion to modify the Commissioner's Ruling on August 13, 2014. The Respondents' motion stated:

> On April 17, 2014, the Court denied the Houks' motion for reconsideration of the March 13, 2014 published opinion and informed the parties that, pursuant to RAP 13, a Petition for Review by the Supreme Court must be filed within 30 days of the Order Denying Reconsideration. The Houks did not file a Petition for Review and the Court's March 13, 2014 opinion is now a verity that is not subject to further appellate review.

Id. The Houks did not challenge this assertion in their response brief, nor did they seek additional time to file a petition. (White Decl., ¶ 20).

17. Two months later, on October 27, 2014, the Houks filed a "Notice of Appeal" in the Superior Court and Court of Appeals, seeking review of the Court of Appeals' March 13, 2014 decision. (White Decl., ¶ 25, Ex. K).

18. On November 4, 2014, the Court of Appeals issued an order granting the Respondents' motion to modify the Commissioner's Ruling and recalling the Mandate to correct the limited errors identified above. (White Decl., ¶ 27, Ex. L). The order did not revisit Mr. Nichols' or NSD's underlying entitlement to attorney fees, which was decided in March 2014. The order was sent to the parties (including two attorneys at Mr. Flanagan's firm) with a cover letter and via email only. *Id.* The letter

states, in part:

> A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.5(a). A party seeking discretionary review must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after this Court's Order Withdrawing Mandate and Granting in Part Motion to Modify.

Id. (emphasis added). Thus, the Houks' deadline for seeking review of the November 4, 2014 order was December 4, 2014. The Houks have never sought review of the issues decided in that order. (White Decl., ¶ 28).

19. On November 18, 2014, the Houks filed another "Notice of Appeal" in the Superior Court and Court of Appeals, again seeking review of only the March 13, 2014 decision. (White Decl., ¶ 29, Ex. M).

III. ARGUMENT

A. The Proposed Petition for Review is Untimely.

The Petitioner's attempt to seek review of the Court of Appeals' March 13, 2014 decision is extremely late and should be denied on that basis alone. The Court should also reject the Houks' untimely alternative request to use the Court of Appeals' November 4, 2014 order as a basis for appealing the entirety of the earlier decision through a backdoor.

RAP 13.4 provides the only basis for seeking review of a Court of Appeals' decision terminating review. Where, as here, a motion for reconsideration is timely filed, the party seeking review by the Supreme

Court must file a petition for review within 30 days of an order denying the motion for reconsideration. *Id.*

The Houk's motion for reconsideration was denied on April 17, 2014. As a result, RAP 13.4 required that the Houks file a petition for review no later than May 19, 2014 – more than two months after the Court of Appeals' decision. The letter accompanying the order denying reconsideration informed the Houks' counsel of that deadline.

Nevertheless, the Houks failed to timely file a petition for review. Indeed, the Houks did not even attempt to file a procedurally improper "notice of appeal" until October 27, 2014 and November 18, 2014 – five and six months after their deadline had passed.

In *Schaefco, Inc. v. Columbia River Gorge Com'n*, 121 Wn.2d 366, 368 (1993), this Court stated that an appeal due on August 1 and filed on September 9 was "well outside the 30-day limit" and, despite the fact that "many important issues" were raised, "it would be improper to consider these questions given the procedural failures of this case." In *Reichelt v. Raymark Indus., Inc.*, 52 Wn.App. 763, 764 (1988), the court refused to review a case in which a notice of appeal was filed only 10 days late. Likewise, in *Beckman v. State Dep't of Social & Health Servs.*, 102 Wn.App. 687 (2000), the court refused to give the State of Washington an extension of time to file a notice of appeal – also 10 days late – from what

was then the largest civil jury verdict against the state ($17.76 million).

The Houks now seek permission to file a petition for review more than seven months after the Court of Appeals denied their timely motion for reconsideration, which is well outside the 30-day limit. Based upon the Respondents' review of reported case law, this case would present the largest extension of time ever granted by the Supreme Court under some of the least deserving circumstances it has considered.

The Houks also failed to timely appeal the Court of Appeals' November 4, 2014 order, which merely corrected mistakes in a commissioner's ruling on attorney fees. The letter accompanying that order correctly informed the Houks that their appellate rights were governed by RAP 13.5(a), which required the filing of a motion for discretionary review within 30 days of the court's order.

To date, the Houks have never challenged anything decided in the November 4, 2014 order and any attempt to do so now is untimely. The "notice of appeal" filed by the Houks only requests review of the March 13, 2014 decision and Mrs. Houk now avers that she "does not and would not assign error" to the only two issues decided in the November 4, 2014 order – the identity of the parties receiving the award and a slight adjustment to the amount of the award. (Petitioner's Motion at pg. 16).

Even if the Court were to grant the Houks an extension of time to

appeal the November 4, 2014 order, the petition should be limited to the issues decided in that order. Should the Court permit parties to appeal the underlying basis for an award of fees after the amount of fees has been decided, the 30-day limit imposed by RAP 13.4 will be rendered obsolete in every case where fees are awarded. Here, the parties spent about seven months debating the amount of the Respondents' fee award – a tremendous waste of time and court resources if the Houks are permitted to sidestep the Rules of Appellate Procedure.

B. There are No Extraordinary Circumstances to Excuse the Houks' Untimely Attempt to Appeal the Court of Appeals' March 13, 2014 Opinion.

The Houks correctly note that RAP 1.2(a) generally calls for the liberal interpretation of the Rules of Appellate Procedure. However, the leniency afforded by RAP 1.2(a) is explicitly "subject to the restrictions in rule 18.8(b)." RAP 18.8(b) is a restrictive rule, which provides:

> **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.

Id. (underling added). Thus, "RAP 18.8(b) is a specific exception to the rule of liberality" espoused in RAP 1.2(a). *Shumway v. Payne*, 136 Wn.2d 383, 394 (1998).

The rigorous test employed by RAP 18.8(b) has rarely been satisfied in reported case law and usually only in circumstances where a *timely* filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. *Reichelt*, 52 Wn.App. at 765. In *Reichelt*, the court refused to review an appeal that was filed late due to the substitution of counsel. *Id.* at 764. In *Beckman*, 102 Wn.App. at 687 (2000), the court refused to grant an extension on the grounds that the state was unaware that a judgment had been entered against it.

The excuses offered by the Houks are even less compelling than those at issue in *Reichelt* and *Beckman.* In summary, the Houks contend that their delay in filing a petition for review is the result of counsel's misunderstanding of clear procedural rules, conscious disregard of the Court of Appeals' notification of deadlines, and/or failure to comply with office protocols that would ensure deadlines were calendared. Each of these causes were entirely within the Houks' control, demonstrate a complete lack of diligence, and should not be excused by the Court. [4]

[4] The Houks argue that granting their motion will not result in any prejudice to Respondents. "RAP 18.8(b), however, does not turn on prejudice to the responding party. If it did, there would rarely be a denial of a motion to extend time." *Reichelt*, 52 Wn.App.

1. Mistakes of counsel do not constitute exceptional circumstances justifying an extension of time.

Washington courts uniformly hold that the erroneous legal advice and mistakes of counsel[5] do not constitute extraordinary circumstances to justify an extension under RAP 18.8(b). *Shumway*, 136 Wn.2d at 396 (1998); *Reichelt*, 52 Wn.App. at 766.

The Houks state that their attorney made a mistake by failing to understand the applicable rules for timely seeking appellate review.[6] Mr. Flanagan seeks leniency from the Court due to his lack of "great expertise" regarding appellate procedures and practice. However, Mr. Flanagan's assertions are contradicted by the attorney bio appearing on his firm webpage, wherein Mr. Flanagan highlights his "extensive record of appellate advocacy". That characterization is supported by Mr. Flanagan's claim that he has practiced law for more than two decades and has handled up to fifteen Court of Appeals cases and five Supreme Court appeals.

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at 766. Mrs. Houk may be affected by her counsel's mistakes, but that may be resolved in a different proceeding. It does not constitute a gross miscarriage of justice in this case, nor justify upsetting the finality of decisions.

[5] *Scannell v. State*, 128 Wn.2d 829 (1996), cited by the Houks for the proposition that "understandable misinterpretations of a recently amended rule" constitute excusable error, is clearly distinguishable. Scannell was a *pro se* defendant who filed a late appeal based upon misleading references in recently amended rules. The Houks are represented by experienced appellate counsel and the clear rules at issue were not recently modified.

[6] The Houks' failure to timely appeal the Court's November 4, 2014 order was also caused by counsel's admitted mistakes. Had Mr. Flanagan filed a timely petition, the Houks would not have been distracted and delayed by the resolution of resulting conflicts of interest with their attorneys.

Based upon Mr. Flanagan's appellate experience, there is no reason in this case for the Court to shift course and determine that mistakes of counsel may excuse a late filing under RAP 18.8(b). That is particularly so where, as here, an attorney chooses to ignore notification of deadlines.

2. The Houks' counsel consciously disregarded the Court of Appeals' notice of deadlines.

In his declaration, Mr. Flanagan states that he read the letter from the clerk of the Court of Appeals, which informed him of the 30-day deadline for filing a petition for review. However, Mr. Flanagan admits that he "believed that the clerk had not taken into account the fact that other defendants remained in the action, such that the Order was not adequately finalized to seek Supreme Court review." (Flanagan Decl. at ¶ 16). If true, the prudent course of action would have been to review the Rules of Appellate Procedure and/or make an immediate inquiry with the clerk's office.[7] Mr. Flanagan compounded his initial error by assuming that the clerk of the Court of Appeals misapprehended that this was a decision terminating review, governed by RAP 13.4.

In addition to the clerk's letters, the Houks' counsel had other reasons to believe that the court's decision was not interlocutory. First, the Houks were invited to file a motion for reconsideration. As explained in

[7] This is particularly so, because a prior letter attached to the Court of Appeals' March 13, 2014 decision also stated that the Houks had 30 days to file a petition for review if a motion for reconsideration was not filed.

RAP 12.4(a), "[a] party may file a motion for reconsideration only of a decision by the judges (1) terminating review, or (2) granting or denying a personal restraint petition on the merits." Reconsideration of an interlocutory order is not permitted.

Second, the Court of Appeals issued a mandate after the Commissioner's Ruling on attorney fees. RAP 12.5 provides:

> A "mandate" is the written notification by the clerk of the appellate court to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision of the appellate court.

At the very latest, the Houks' counsel should have been aware of his error when the July 25, 2014 mandate was issued. This is particularly true, because the Supreme Court loses the power to modify a Court of Appeals decision after issuance of the mandate. RAP 12.7(b).

The failure to inquire into these various warning signs, particularly the letters from the Court of Appeals, demonstrates a complete lack of diligence in attempting to perfect this appeal. The Court should not reward the Houks' lack of diligence by granting an extension of time to file a petition for review seven months after it was due.

3. The Houks' counsel failed to follow office protocols for calendaring deadlines.

The Houks also attempt to excuse their late filing by shifting blame to the Court of Appeals for its alleged failure to mail a second copy of the

April 17, 2014 letter.[8] Although Mr. Flanagan's office protocol for calendaring deadlines does not appear to be particularly reliable, it would have worked in this case if Mr. Flanagan had simply forwarded the Court of Appeals' letter to his assistant when he knew (or should have known) that it would only be delivered electronically.

The instant motion glosses over several important facts that demonstrate a failure to comply with office protocol. First, it fails to mention that two of the Houks' attorneys (Mr. Flanagan and Mr. Kenneth W. Strauss) received all correspondence from the Court of Appeals, including the April 17, 2014 letter explaining the deadline to file a petition for review. It therefore appears that two attorneys at Mr. Flanagan's firm failed to ensure that their deadlines were appropriately calendared.

Second, the motion fails to acknowledge that the Court of Appeals' correspondence includes not just physical addresses, but also the email addresses of all attorneys in ***bold and italics***, reflecting the fact that the letters were sent via email.

Most importantly, the motion fails to candidly explain that all prior correspondence from the Court of Appeals was sent only via email in this case. In this context, it was entirely unreasonable for Mr. Flanagan to

[8] Given Mr. Flanagan's disagreement with the deadlines articulated in the clerk's letter, it does not appear that receiving a follow-up hard copy of the clerk's letter for calendaring would have caused him to file a timely petition for review.

assume that a hard copy of the April 17, 2014 letter would be mailed when no other correspondence had been. Notably, the Court of Appeals' March 13, 2014 decision and its accompanying letter were also sent only via email. In that instance, the electronic transmission was more than sufficient to inform the Houks' counsel of their deadlines, resulting in the timely filing of a motion for reconsideration on the date it was due.

In the final analysis, Mr. Flanagan should have known that he would not receive a hard copy of the April 17, 2014 letter. Had he followed corresponding office protocols by forwarding that letter to his assistant, all deadlines could have been appropriately calendared.

C. The Houks Appeared to Abandon the Appeal.

Although it is true that Mr. Flanagan sent one confusing email, suggesting that he might be able to extend the deadline for filing a petition for review, other correspondence suggested that he understood the short deadline and announced his client's current instructions to seek Supreme Court review in March 2014.

The Houks then filed for reconsideration, buying an extra month that the Respondents assumed would be used to draft a petition for review. This was particularly so, given the Houks' shockingly inappropriate suggestion, in a pleading filed April 3, 2014, that the Court of Appeals deliberately committed error to invite Supreme Court review.

Based on the foregoing, Respondents were convinced that the Houks would timely file a petition for review in May 2014. When no appeal was filed within the 30 days provided by RAP 13.4 and the Court of Appeals' letter, the Respondents rightfully felt a sense of finality with respect to the claims and issues decided in the March 13, 2014 decision.

The Houks later seemed to confirm this finality by vigorously opposing the Respondents' fee affidavit over a period of several months and by selling the house that is the subject of this lawsuit for $305,000. (White Decl., ¶ 24). Advertisements and a seller's disclosure statement recently signed by Mrs. Houk claimed that the true alleged defects totaled a mere **$30,000,** even though the Houks and their counsel sought construction defect damages totaling between **$338,978.59** and **$1,000,000** in this lawsuit. (White Decl., ¶¶ 21, Exs. H, I).

When a party has failed to timely appeal and takes subsequent action suggesting that they have abandoned the claims formerly asserted in a lawsuit, it is particularly imperative that the Court abide by the preference for finality espoused in RAP 18.8.

D. Attorney fees.

When a contract or agreement provides for recovery of attorney fees, the prevailing party is also entitled to its reasonable fees and costs incurred on appeal. RAP 18.1(a). In addition, RAP 18.1(j) provides that

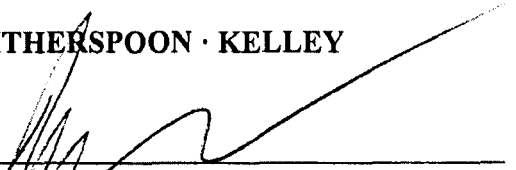
if a party is awarded fees in the Court of Appeals and successfully opposes a petition for review to the Supreme Court, fees may be awarded for opposing the petition. Mr. Nichols and NSD respectfully request that the Court award reasonable attorney fees and costs for opposing this motion and responding to the Houks' petition for review.

IV. CONCLUSION

Almost a year has passed since the Court of Appeals issued its unanimous decision in this case. The Court ordinarily denies motions seeking an extension of time to file a petition for review and the Houks have not shown that their delay was the result of extraordinary circumstances outside of their control. The Respondents respectfully request that the Court affirm the finality of the Court of Appeals' decision by denying the motion to extend time and dismissing this appeal.

RESPECTFULLY SUBMITTED, this 23rd day of January 2015.

WITHERSPOON · KELLEY



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Counsel for Joseph Nichols and Nichols & Shahan Developments, LLC

PROOF OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on January 23, 2015, the foregoing was filed with the Washington State Supreme Court, and delivered to the following persons in manner indicated:

Leonard D. Flanagan
Kenneth W. Strauss
Justin D. Sudweeks
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- ☐ Hand Delivery
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile Transmission
- ☒ Via Electronic Mail

Alicia Asplint
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OFFICE RECEPTIONIST, CLERK

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Subject: RE: Supreme Court No: 91039-1 ~ William Houk, et ux. v. Nichols & Shahan Development, LLC, et al.

Received 1-23-15

The Exhibit attachment is too many pages to file by e-mail. Please send those by regular mail.

Thank you

From: Alicia Asplint [mailto:AliciaA@witherspoonkelley.com]
Sent: Friday, January 23, 2015 12:31 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Ross P. White; Michael J. Kapaun; Alicia Asplint; DHouser@condodefects.com; justin@condodefects.com; ken@condodefects.com; leonard@condodefects.com; JStein@condodefects.com; mariah@condodefects.com
Subject: Supreme Court No: 91039-1 ~ William Houk, et ux. v. Nichols & Shahan Development, LLC, et al.

William Houk, et ux. v. Nichols & Shahan Development, LLC, et al.
Supreme Court No: 91039-1
Filer: Ross P. White, WSBA #12136 ~ rpw@witherspoonkelley.com
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Attached please find following for filing:

1. Answer to Petitioner's Motion for Extension of Time to File Petition for Review and Request for Dismissal;
2. Declaration of Ross P. White in Opposition to Petitioner's Motion for Extension of Time to File Petition for Review with Exhibits; and
3. Answer to Proposed Petition for Review.

I would ask that you please file the above documents and email back conformed copies of front pages only of each document to me at your convenience. Thank you.

Alicia Asplint | Witherspoon • Kelley
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