

reply, she nevertheless filed a motion on September 4, 2018 seeking to extend the time to file a reply. MERS opposes Bain's motion.

IV. GROUNDS FOR RELIEF AND ARGUMENT

The Court should deny Bain's motion for the following reasons:

First, Bain has no right to file a reply. Under RAP 13.4(d), "[a] party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer."

Bain does not and cannot allege that MERS's answer sought this Court's review of any issues, much less issues that Bain did not herself raise. Instead, MERS's answer explained why this Court should *not* accept review on any issue. Bain has no reason, and no right, to file a reply. *See Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 261 n.17 (2008) ("The answer does not raise any new issues and a reply is therefore not authorized by the rules of appellate procedure").

The drafter's comments to the 1990 amendments to RAP 13.4 confirm that replies are limited to new issues. 3 Karl B. Tegland, Wash. Prac.: Rules Prac., RAP 13.4, author's cmt. 10, Drafters' Comment, 1990 Amendment (8th ed. 2018). The comments to the 2006 amendments note that replies are disfavored, and the changes to the rules were designed to address the "abuse by petitioning parties who attempt to cast as 'new issues' an answering party's arguments in response to a petition for review", so as to "reargue issues raised in the petition." *Id.*, Drafters' Comment, 2006 Amendment.

Second, Bain’s request is untimely. “A reply to an answer should be filed within 15 days after the service on the party of the answer.” RAP 13.4(d). MERS filed its answer to Bain’s petition on August 7, 2018. As Bain acknowledges, her reply was due on August 22, 2018. She missed the deadline to file a reply by almost two weeks. The Court should enforce its procedural deadlines. *See Chelan Cty. v. Nykreim*, 146 Wn.2d 904, 933 (2002) (enforcing strict statutory deadline for raising statutory challenge).

Third, Bain fails to explain why she belatedly moved for an extension two weeks after her (improper) reply was due. She essentially seeks an order granting nunc pro tunc relief to remedy her missed deadline. She cannot do so. *See State v. Luvene*, 127 Wn.2d 690, 715-16 (1995) (A nunc pro tunc order “cannot be used to remedy the failure to take an action at that earlier time”).

Even if Bain could obtain a nunc pro tunc order—and she cannot—she fails to show good cause for such an order. While she explains that her counsel was on a pre-planned vacation and encountered several problems hindering her filing, she provides no dates or reasons explaining why she could not have moved for an extension between August 7 and August 22, 2018. Indeed, her counsel admits her August 2018 vacation was pre-planned, and she knew that MERS’s answer was due on August 8. Ms. Huelsman could have filed this motion (assuming it were proper, which it is not) shortly thereafter—not two weeks after the deadline. Bain fails to provide any reason showing good cause why she should receive special treatment to extend her deadline retroactively.

V. CONCLUSION

For the reasons stated above, the Court should deny Bain's Motion.

RESPECTFULLY SUBMITTED this 5th day of September, 2018.

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Certificate of Service

I certify, under penalty of perjury pursuant to the laws of the State of Washington, that on September 5, 2018, a true copy of the foregoing *Answer of Mortgage Electronic Registration Systems, Inc. to Kristin Bain's Motion to Extend Deadline for Filing Reply to Answer to Petition for Review* was served by email upon all counsel of record, as follows:

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