

SUPREME COURT OF THE STATE OF WASHINGTON

RICHARD LEE,)	
)	
Appellant,	)	APPELLANT
v.	)	RICHARD LEE'S
	)	MOTION FOR
CITY OF SEATTLE,	)	EXTENSION OF TIME,
SEATTLE POLICE	)	AND
DEPARTMENT,)	CERTIFICATE OF
COURTNEY LOVE COBAIN,)	SERVICE
and FRANCES BEAN COBAIN)	
)	
Respondents.)	
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I. IDENTITY OF MOVING PARTY

RICHARD LEE, the named Appellant in this action, seeks the relief requested in Section II.

II. RELIEF SOUGHT

Appellant requests an extension of time for filing Appellant's Omnibus Reply to Answer to Petition for Review from on or about September 4, 2018 to September 24, 2018, the latter date being the actual date that the complete Reply was electronically filed.

III. GROUNDS FOR RELIEF AND ARGUMENT

RAP 1.2 provides that the rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.

RULE 1.2

INTERPRETATION AND WAIVER OF RULES BY COURT

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

And, further in RAP 1.2:

(c) Waiver. The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

RAP 18.8 provides that an appellate court may enlarge the time in which an act must be done in order to serve the ends of justice.

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and particular case in order to serve the ends of justice, subject to the restrictions in sections (b) and (c).

(b) 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.

(c) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may change or modify its decision.

Richard Lee's attached declaration dated today gives an explanation and a thorough timeline for the actions he took in filing the Reply. Lee's central error was misremembering the RAP at issue, substituting in his mind the 30-day schedule under RAP 10.2(d) rather than the appropriate RAP 13.4(d) 15-day schedule. RAP 10.2 reads in part this way:

(d) Reply Brief. A reply brief of an appellant or petitioner should be filed with the appellate court within 30 days after service of the brief of respondent unless the court orders otherwise.

Lee explains that this was an "honest mistake," and states, "It was not my intention to inconvenience the Court or inconvenience or disadvantage any party." Lee concludes his declaration by briefly describing his 24-year quest for justice in this case, stating in part:

I strongly feel that it would be a gross miscarriage of justice in this case that my awkward but understandable error should deprive the Supreme Court of the complete set of filings in this case, as the Reply contains many important issues, responses, citations to the record and applicable law which should greatly enhance the Court's understanding of this case, which frankly, in my long-held analysis, involves gross misconduct of public officials, and can be seen as a case in which it is likely that persons have, to use the colloquial phrase, gotten away with murder. The case also has the potential to have great precedential value in our state's interpretation of its Public Records Act, RCW 42.56.

Helpful in interpreting the application on the RAP here may be the case of *Shumway v. Payne*, in which "Extraordinary circumstances," for purposes of rule limiting extension of time to file notice appeal to those

cases involving extraordinary circumstances and to prevent gross miscarriage of justice, including instances where filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond a party's control. *Shumway v. Payne* (1998) 136 Wash.2d383, 964 P.2d 349.

And also *Scannell v. State*, in which a Pro se litigant's confusion over filing deadline for notice of appeal caused by understandable misinterpretation of recently amended rule constituted an extraordinary circumstance warranting relief from strict application of rule, where litigant's conduct, which would have complied with pre-amended rules, evinced good faith effort to satisfy rules' requirements. *Scannell v. State* (1996) 128 Wash.2d 829, 912 P.2d 489.

IV. CONCLUSION

Appellant Richard Lee respectfully requests extension of time for filing appellant's brief from on or about September 4, 2018 to September 24, 2018, for the Reply brief the Court now has in its possession. The extension appellant requests should not prejudice the adversarial party(s) nor significantly delay the court's consideration of this case.

Respectfully submitted on this 28 day of September, 2018.



RICHARD LEE
Represented pro se

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CERTIFICATE OF SERVICE

I hereby affirm that a copy of this Motion for Extension of Time and today's Declaration of Richard Lee will be sent via email to the usual email accounts for Mr. Michael K. Ryan of the Seattle City Attorney, the Cobains' attorney Mr. Michael Hunsinger, and the WSAMA attorneys at their Auburn, Washington addresses.

Signed this day, 28 of September, 2018.



Richard Lee

SUPREME COURT OF THE STATE OF WASHINGTON

RICHARD LEE,)	
)	
Appellant,	)	APPELLANT
v.	)	RICHARD LEE'S
	)	DECLARATION
CITY OF SEATTLE,	)	SUPPORTING HIS MOTION
SEATTLE POLICE	)	FOR EXTENSION OF TIME
DEPARTMENT,)	FOR FILING REPLY
COURTNEY LOVE COBAIN,)	
and FRANCES BEAN COBAIN)	
)	
Respondents.)	
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I am the Appellant Richard Lee and state that I am over the age of 18 and competent to testify, and hereby make this declaration.

My Omnibus Reply to the Answer to Petition for Review of the opposing parties in this case was filed on Monday, September 24 via the Supreme Court's online filing portal.

I am a pro se litigant and I am generally familiar with the RAP, but as essentially a newcomer to appeals law and not an attorney I am not as well versed as I would wish to be under these circumstances. Relying on a previous perusal of the RAP, I had thought that I had 30 days to provide the Reply, and therefore planned to provide the brief on or around September 17. I had somehow referenced the parameters of RAP 10.2(d) instead of the relevant RAP 13.4(d). This was described in my email to the Court of Thursday, September 13:

The Clerk of the Supreme Court of the State of Washington:

Yesterday while preparing my response(s) to the opposing parties in case Lee v, Seattle Police Department et al., Case Number 96075-5, I had occasion to again look through Rules of Appellate Procedure, only to discover that I had apparently misinterpreted the time allowed for filing a reply, by following RAP 10.2(d) rather than RAP 13.4(d).

The party referred to as “the Cobains” had filed their Answer by attorney Michael D. Hunsinger on August 17, and the City of Seattle had filed theirs on August 20. I had anticipated filing Friday this week or Monday the 17th to conform to a 30-day schedule, which is what I had apparently mistakenly understood as the correct time frame.

I am a pro se litigant, but obviously, this is embarrassing but completely unintentional on my part, and I hope this does not cause the court or the opposing parties any actual inconvenience. I apologize and hope this does not cause any movement toward imposing sanctions.

Please be assured that the reply is being prepared and will arrive electronically on Friday the 14th or at the latest, Monday the 17th.

This email is also presently being sent to:

lise.kim@seattle.gov
michael.ryan@seattle.gov
jessica.nadelman@seattle.gov
mike@hunsingerlawyers.com
janet.francisco@seattle.gov
marisa.johnson@seattle.gov

Richard Lee
September 13, 2018

The following day, Friday, September 14, 2018, I received a one-word response from the Clerk of the Supreme Court, “Received.” This of course gave no indication as to whether RAP 10.2(d) or 13.4(d) was in effect.

The following week, I endeavored to complete the Reply, and in the light of the fact that if considered under RAP 13.4(a) it was late anyway, I decided to allot time that would allow me to complete the brief essentially in a

30-day time frame matching that schedule for the latter of briefs filed, as the City of Seattle had filed its Answer on August the 20th, and this was an omnibus reply to both Answers. This was a difficult week for me with other work demands, an unexpected debilitating computer problem and a fairly severe episode of late-summer ragweed allergy, which resulted in considerable vision impairment, due to swelling of tissues around the eyes. On Friday the 21, I wrote to the Clerk again, offering to send the essentially completed Reply that afternoon if so directed, and/or also seeking information on what was best to do at that point.

To: The Clerk of the Supreme Court of the State of Washington:

This is my second email to you in the last eight days, and again I ask that the Court make a record of this email of my unexpected difficulties in providing the Reply brief in a timely fashion for *Lee v. Seattle Police Department et al.*, Case Number 96075-5,

It is only 1:35 p.m. presently, and the whole document is essentially complete, but nagging doubts about possible imperfections or incompleteness have me pondering the reality that one more business day really will likely cause no practical additional inconvenience to the Court or any party.

So without further elaboration, let me simply apologize and say that he brief will definitely be there on Monday the 24th, unless someone there were to contact me and urge my sending this today to avoid some likely disaster, like harsh sanctions or a dismissal.

Thank you for your cooperation. This email is presently being sent to these parties.

lise.kim@seattle.gov
michael.ryan@seattle.gov
jessica.nadelman@seattle.gov
mike@hunsingerlawyers.com
janet.francisco@seattle.gov
marisa.johnson@seattle.gov

Richard Lee
Friday, September 21, 2018, 1:35 p.m.

I then received the following response from the Clerk's office:

OFFICE RECEPTIONIST, CLERK
Sep 21, 2018, 2:55 PM

Counsel and Mr. Lee:

Pursuant to RAP 13.4(d), a reply to an answer to a petition for review may only be filed if the answering party seeks review of issues not raised in the petition for review. In addition, that rule provides that a reply should be filed within 15 days after the service on the party of the answer. Since any reply filed at this point would be late, a motion for extension of time would also need to be filed explaining why the reply is late.

The email received this afternoon from Mr. Lee, along with this response to the email, will be printed and placed in the file for this case.

Supreme Court Clerk's Office

Obviously at this point it was very clear that we were working with RAP 13.4(d), and that the Reply was non-timely anyway, and that a motion would have to be filed as well, so I delayed in sending the brief for one additional business day, to September 24, using the additional time to do additional proofreading and revisions. Two days later, September 26, the emailed formal letter from the Court directed me, "If the Petitioner wishes to have the reply considered, he would need to serve and file a motion for extension of time explaining why the reply was filed late."

My error in substituting the RAP 10.2(d) 30-day time frame for the RAP 13.4(d) 15-day time frame was purely inadvertent, an honest mistake, and was not the result of any motive at all, simply a misremembering or

misperception of the RAP standard involved. It was not my intention to inconvenience the Court or inconvenience or disadvantage any party.

It is worth adding that my endeavor for justice in this matter has been long and difficult, beginning with my original public records request in April of 1994, in the week following the discovery of the decedent's body. That non-litigation effort eventually resulted in the release of dozens of documents in 1994 which have greatly advanced the public's knowledge of this controversial case of violent death of a much beloved public figure. The litigation which brings this case to the Supreme Court today originated in actions I initiated following the 2014 City of Seattle release of a set of 37 photographs and a report specifically on the Kurt Cobain death, so that I have been laboring on this phase for over four years now. I strongly feel that it would be a gross miscarriage of justice in this case that my awkward but understandable error should deprive the Supreme Court of the complete set of filings in this case, as the Reply contains many important issues, responses, citations to the record and applicable law which should greatly enhance the Court's understanding of this case, which frankly, in my long-held analysis, involves gross misconduct of public officials, and can be seen as a case in which it is likely that persons have, to use the colloquial phrase, gotten away with murder. The case also has the potential to have great precedential value in our state's interpretation of its Public Records Act, RCW 42.56.

I apologize for my error and hope that we can proceed now with the Court having the much more complete view of the case that is provided by including the Reply.

Respectfully submitted this day, 28 of September, 2018.



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RICHARD LEE - FILING PRO SE

September 28, 2018 - 4:40 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96075-5
Appellate Court Case Title: Richard Lee v. City of Seattle, et al.
Superior Court Case Number: 15-2-19452-6

The following documents have been uploaded:

- 960755_Motion_20180928163815SC767642_0395.pdf
This File Contains:
Motion 1 - Extend Time to File
The Original File Name was 2018septt.pdf

A copy of the uploaded files will be sent to:

- jessica.nadelman@seattle.gov
- lise.kim@seattle.gov
- michael.ryan@seattle.gov
- mike@hunsingerlawyers.com

Comments:

Sender Name: RICHARD LEE - Email: richardleeseattle@gmail.com
Address:
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Phone: (206) 650-7694

Note: The Filing Id is 20180928163815SC767642