

IN THE SUPRME COURT OF THE STATE OF WASHINGTON

SEIU HEALTHCARE NW TRAINING
PARTNERSHIP,

Respondent,

v.

EVERGREEN FREEDOM FOUNDATION,

Appellant.

No. 96560-9

**MOTION FOR EXTENSION OF
TIME TO FILE PETITION FOR
REVIEW**

AND CERTIFICATE OF SERVICE

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SEIU HEALTHCARE NW TRAINING
PARTNERSHIP,

Respondent,

v.

EVERGREEN FREEDOM FOUNDATION,

Appellant.

No. 76220-6-I

**MOTION FOR EXTENSION OF
TIME TO FILE PETITION FOR
REVIEW**

AND CERTIFICATE OF SERVICE

I. IDENTIFY OF MOVING PARTY

Appellant the Freedom Foundation seeks the relief requested in Part II.

II. RELIEF REQUESTED

Appellant seeks a 1-day extension of time to file its Petition for Review. The extended due date would be November 29, 2018.

1 **III.FACTS RELEVANT TO MOTION**

2 The Opinion in this matter was issued on October 1, 2018. Appellant/Movant timely
3 filed a Motion for Reconsideration.

4 On October 25, 2018, the father of Appellant’s sole attorney in this matter Michele
5 Earl-Hubbard suffered a stroke in California necessitating Ms. Earl-Hubbard to fly to his
6 bedside by October 26, 2018. Counsel’s father died in California on October 29, 2018, and
7 counsel remained in California through November 2, 2018 making funeral arrangements,
8 returning to California to assist her family from November 8, 2018 to November 18, 2018.

9 Division One issued its Order denying the Motion for Reconsideration on October 29,
10 2018, the day Ms. Earl-Hubbard’s father died. It was served solely by email at 4:57 pm on
11 October 29th, three minutes before the court closed for the day. The email was not seen by
12 counsel for several days after its issuance. In the fog of the death of her father, counsel
13 initially erred in calculating the due date for the Petition for Review, failing to account for the
14 fact that there were 31 days in October, and incorrectly determined the due date for the
15 Petition for Review as November 29, 2018, instead of November 28, 2018. Counsel realized
16 this mid day on November 28, 2018, and attempted to file this Motion as well as to complete
17 and also file the Petition before court closed today in the abundance of caution. According to
18 an error message on the e-filing portal when the filing of the original version of this motion
19 was attempted, the e-filing service is currently having problems from at least noon to 5 pm
20 today. Counsel then called both the Division One Clerk’s Office and the Supreme Court
21 Clerk’s Office about the e-filing issue. A message has been left for the Supreme Court Clerk
22 and the call has not been returned. A clerk at the Court of Appeals answered counsel’s call
23 and stated the court was unaware of the e-filing disfunction and suggested that a messenger be
24 obtained to attempt the filing in the next two and a half hours before the Division One office

1 closed for the day. As counsel is working from home in Shoreline, an hour's drive from the
2 courthouse, messenger delivery service is not possible before the courthouse closes today at 5
3 p.m.

4 **IV. GROUNDS FOR RELIEF**

5 Repondent will not suffer any prejudice from this request for extension. Respondent's
6 due date for any Answer to the Petition for Review shall not begin until the Petition for
7 Review has been filed. The order denying the motion for reconsideration was sent by email at
8 4:57 p.m. – three minutes before the court closed for the day. Had the email been sent 4
9 minutes later, the due date would have been November 29, 2018. So the extension being
10 sought is more akin to an extension of 4 minutes, rather than a full 24 hours.

11 RAP 1.2(c) states: "The appellate court may waive or alter the provisions of any of
12 these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and
13 (c)." RAP 18.8(b) states "The appellate court will only in extraordinary circumstances and to
14 prevent a gross miscarriage of justice extend the time within which a party must file a notice
15 of appeal, a notice for discretionary review, a motion for discretionary review of a decision of
16 the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate
17 court will ordinarily hold that the desirability of finality of decisions outweighs the privilege
18 of a litigant to obtain an extension of time under this section. The motion to extend time is
19 determined by the appellate court to which the untimely notice, motion or petition is
20 directed." RAP 18.8(c) does not apply to this matter.

21 The Court should exercise its power to extend the due date for the filing of the
22 Petition for Review in this matter due to the extraordinary circumstances presented here and
23 to prevent a gross miscarriage of justice. The order denying the motion for reconsideration
24 was served three minutes before the court closed and was served solely by email to a sole

1 practitioner who was out of state with a dying parent. It was emailed on the very day
2 counsel's father died. She was out of state for several weeks following the order arranging a
3 funeral and assisting a mother who had just lost her spouse of 60 years with wrapping up
4 numerous tasks associated with a sudden death. Had the order been served four minutes later,
5 the due date would have been November 29, 2018. Furthermore, the e-filing system has been
6 having problems from noon to 5 p.m. today making e-filing impossible, and messenger
7 service on such short notice, and due to the distance to the courthouses, was not possible
8 before the courts closed at 5 p.m. today. The Petition will be filed as soon as possible, but
9 likely after 5 p.m. today. The Petition to be filed deals with a direct conflict and disagreement
10 between two Divisions of the Courts of Appeals and a decision by Division One in this case
11 that places it at odds with the majority of courts in this nation on a highly important issue of
12 preemption and the Washington State Uniform Trade Secrets Act. It is an important case that
13 needs the guidance of the Washington State Supreme Court, and such a case may not reach
14 such Court again for years to come if this opportunity is not taken. In light of all of the
15 circumstances, an extension of less than a day – treating the order denying reconsideration as
16 if served just four minutes later – a filing after 5 p.m. today should not bar this party from
17 having its Petition heard.

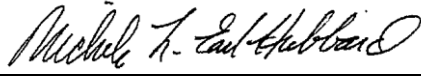
18 For the foregoing reasons, the Appellant/Movant asks the Court to grant its motion.
19 RAP 1.2(c) and RAP 18.8(c) authorize such relief. The Petition for Review shall be
20 completed by the requested date of November 29, 2018.

1 **V. CONCLUSION**

2 For the foregoing reasons, Appellant’s request for a one-day extension until November
3 29, 2018, to file the Petition for Review should be granted.

4 Respectfully submitted this 28th day of November, 2018.

5 ALLIED LAW GROUP, LLC
6 Attorneys for Appellant Freedom Foundation


7 By 
8 Michele Earl-Hubbard, WSBA # 26454
9 P.O. Box 33744, Seattle, WA 98133
(206) 801-7510
michele@alliedlawgroup.com

10 **CERTIFICATE OF SERVICE**

11 I certify under penalty of perjury under the laws of the State of Washington that on
12 November 28, 2018, I delivered a copy of the foregoing Motion for Extension of Time to File
13 Petition for Review and Certificate of Service by email pursuant to agreement to the
14 following:

15 Richard E. Spoonemore (WSBA #21833) and Eleanor Hamburger (WSBA #26478)
16 SIRIANNI YOUTZ SPOONEMORE HAMBURGER, 999 Third Avenue, Suite 3650
17 Seattle, Washington 98104
r Spoonemore@sylaw.com; ehamburger@sylaw.com
Attorneys for Respondent

18 Dated this 28th day of November, 2018.

19 
20 Michele Earl-Hubbard

ALLIED LAW GROUP LLC

November 28, 2018 - 5:57 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Seiu Healthcare NW Training Partnership, Respondent v. Evergreen Freedom Foundation, Petitioner (762206)

The following documents have been uploaded:

- PRV_Petition_for_Review_Plus_20181128175429SC732969_4646.pdf
This File Contains:
Motion 1 - Extend Time to File
Petition for Review
The Original File Name was 2018-11-28 Motion for Extension of Time to File Petition for Review.pdf

A copy of the uploaded files will be sent to:

- JAbernathy@FreedomFoundation.com
- ehamburger@sylaw.com
- matt@sylaw.com
- rspoonemore@sylaw.com

Comments:

The attached is a motion for extension of time to file the Petition for Review. it was filed before 5 pm with the Division One Court of Appeals.

Sender Name: Michele Earl-Hubbard - Email: michele@alliedlawgroup.com

Address:

PO BOX 33744

SEATTLE, WA, 98133-0744

Phone: 206-443-0200

Note: The Filing Id is 20181128175429SC732969