

No. 96725-3

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

BENJAMIN C. ARP,

Petitioner,

v.

JAMES H. RILEY and “JANE DOE” RILEY, husband and wife and the
marital community composed thereof; and SIERRA CONSTRUCTION
CO. INC., a Washington State Corporation,

Respondents.

MOTION FOR EXTENSION OF TIME TO FILE
A PETITION FOR REVIEW

Benjamin C Arp
Pro se
2315 NE 105th Street
Seattle, WA 98125
(206) 850-6723

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Affidavit of Benjamin C. Arp

A. IDENTITY OF THE PETITIONER

Benjamin C. Arp asks this Court for the relief designated in Part B. It is important to note that Mr. Arp is representing himself Pro se given that his attorneys withdrew from his case effective on Dec 24, 2018 and the time to file a Petition for Review by January 7, 2019 was short.

B. ISSUES PRESENTED AND RELIEF SOUGHT

1. Will the Court grant one additional day beyond 30 days for filing the Petition for Review?
2. Will the Court accept the Petition for Review filed by Benjamin C Arp on January 8, 2019?

C. BACKGROUND AND ARGUMENTS WHY THE FILING OF A PETITION FOR REVIEW SHOULD BE ACCEPTED

The cause of action for the lengthy legal proceedings in this personal injury lawsuit is a traffic accident that occurred on I-405 near Renton on October 5, 2010. In this near fatal car crash, Benjamin Arp was severely injured by the reckless and speeding operation of large vehicle driven by James H. Riley for which Riley was cited by the Washington

State Patrol. CP 35, 180, 486. This accident was not the fault of Benjamin Arp yet resulted in his permanent disabilities and handicaps foremost being Traumatic Brain Injury. CP 36, 181, 486.

These injuries directly resulted in serious reduction in memory and cognitive functions that specifically affects and reduces Mr. Arp's ability to plan and write documents including organizing and composing sentences and paragraphs. As a result, any writing requires a lot of time and much revision and correcting. Many multiple versions are necessary to produce a coherent document. The injuries from the car crash make the composition of any document including Arp's Petition for Review quite difficult and even so for this current motion.

An extensive series of legal actions and documents, at the Trial Court, Appeals Court and Washington State Supreme Court levels are documented in the Clerk's Papers and filed documents. A Court of Appeals Division 1 opinion for case No. 76935-9-I was filed November 5, 2018. That opinion concluded that Arp failed to disclose his personal injury claim, and the trial court did not err in applying judicial estoppel. After that decision, Arp's attorneys prepared a Motion for Reconsideration and the Court of Appeals issued its opinion in an ORDER DENYING MOTION FOR RECONSIDERATION that was filed on December 7, 2018.

Soon after, Arp's attorneys filed A Notice of Intent to Withdraw with the Appeals Court withdrawing as attorneys for the Plaintiff/Appellant effective December 24, 2018. The deadline for filing a Petition for Review was January 7th 2019. As a result of all the court opinions and notice by his then attorneys, little time and resources and options were available to Arp in order to submit a Petition for Review. Nevertheless, Arp proceeded to carry forth as his own legal representative, Pro se, and undertook the daunting task to create a coherent Petition for Review to submit to the Washington State Supreme Court.

Despite the best effort of Arp in writing and producing a Petition for Review, he was not able to finish his Petition by the 5 p.m. cutoff on January 7th, 2019. Arp did finish and filed his petition on January 8th, 2019. As is defined in RAP 18.6(c), petition must be filed with 30 days; Arp took 31 days but had tried very hard to finish in 30 days. As a result, Arp composed this Motion for Extension of Time to File a Petition for Review. Arp has never attended law school and never practiced law. Arp does not have any experience in writing a legal document and the Petition for Review is his first ever. Nevertheless, it is important to understand that the major negative factor affecting Arp's ability, to write any documents including his Petition for Review was the permanent

disabilities of Arp that directly resulted from the car crash on October 5th, 2010.

On January 9th, 2019 Arp sent an email letter to the Clerk of the Supreme Court asking how to ask questions about his case, the method was not obvious to him from examining the Supreme Court website. On January 14th, the clerk's office received the paper copy via US Mail of the same January 9th letter. On January 15th, 2019 the Supreme Court Deputy Clerk Erin L. Lennon replied back via email. Arp paid the filing fee promptly when learning from the Clerk's office how to send it in.

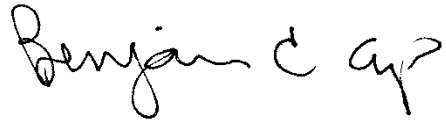
Arp is requesting a 1-day extension for his filing a Petition for Review. He was focused and worked diligently but missed the deadline. He was aware that a motion for extension of time to file is normally not grant per RAP18.8(b) and Erwin L Lennon noted that in the January 15, 2019 email letter. In Arp's instance, there are extraordinary circumstances and there is no gross miscarriage of justice as Arp had considerable difficulties in composing and filing on the 30th day.

D. CONCLUSION

Given the circumstances outlined above and in the fair interest of justice, please grant this request for a one-day extension of time to file.

DATED this 28th day of January, 2019.

Respectfully submitted

A handwritten signature in black ink that reads "Benjamin C. Arp". The signature is written in a cursive style with a large initial 'B' and a distinct 'C' and 'A'.

Benjamin C. Arp

2315 NE 105th Street

Seattle, WA 98125

(206) 850-6723

APPENDIX

SUPREME COURT
STATE OF WASHINGTON

BENJAMIN C. ARP,

Plaintiff.

v.

JAMES H. RILEY and "JANE DOE"
RILEY, husband and wife and the
marital community composed thereof;
and SIERRA CONSTRUCTION CO.
INC, a Washington State Corporation,

Defendants.

Case No. 96725-3

Affidavit of Benjamin C.
Arp

My legal name is Benjamin C Arp, and my current occupation is retired. I am presently 70 years old, and my current address of residence is 2315 NE 105th Street, Seattle, WA 98125.

My personal injury lawsuit follows from a traffic accident that occurred on I-405 near Renton on October 5, 2010. In this near fatal car crash, I was

severely injured which resulted in permanent disabilities. The accident was not of my fault and my vehicle was rear-ended by a vehicle driven by James H. Riley who was cited by the Washington State Patrol for reckless driving and speeding.

On November 5, 2018, the Court of Appeals filed an UNPUBLISHED OPINION for case No. 76935-9-1.

An ORDER DENYING MOTION OF CONSIDERATION for case No. 76935-9-1 was filed December 7, 2018 by the Court of Appeals.

I have never attended law school, never practiced law and am representing myself Pro se. I did not have any past experience in writing a legal document and the Petition for Review was my first ever. It is very important to understand that the major negative factor affecting my ability to write any documents including the Petition for Review is the permanent disabilities and handicaps I have sustained that directly resulted from the car crash on October 5, 2010.

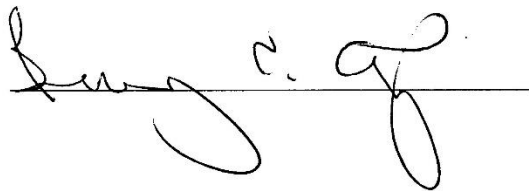
I was not able to finish my Petition for Review by the end of the day on January 7th, 2019. I did finish and filed my petition on January 8th, 2019. As is defined in RAP 13.4(a), a Petition must be filed within 30 days; I

took 31 days and had tried very hard to finish in 30 days. As a result, I have composed a Motion for Extension of Time to File a Petition for Review to which this affidavit is appended.

I am requesting a 1-day extension for filing the Petition for Review; that is filing by January 8, 2019. I was focused and worked diligently but missed the deadline. I was aware that 'a motion for extension of time to file is normally not grant per RAP18.8(b).' as Supreme Court Deputy Clerk Erwin L Lennon noted in the letter of January 15, 2019. In my instance, these are extraordinary circumstances and this is not a gross miscarriage of justice; I had considerable difficulties in composing and filing on the 30th day.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Benjamin C. Arp

A handwritten signature in black ink, appearing to read "Benjamin C. Arp", is written over a horizontal line. The signature is cursive and somewhat stylized.

Date

January 25, 2019

NOTARY ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF KING

On this day personally appeared before me Benjamin C. Arp, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal of office this 25th day of January, 2019.

Bryan Peckham

Notary Public residing at

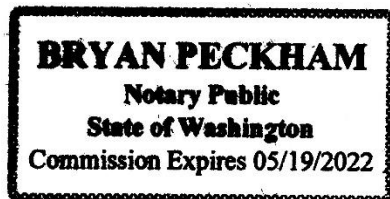
Seattle

Printed Name:

Bryan Peckham

My Commission Expires:

05-19-2022



CERTIFICATE OF SERVICE

I certify that I filed and e-served through the Washington State Appellate Court's Portal to all the undersigned counsel a copy of the foregoing MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR REVIEW including the Affidavit of Benjamin C Arp on this 28th day of January, 2019.

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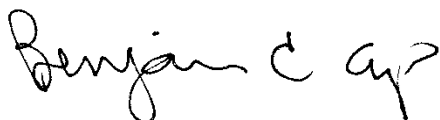
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Benjamin C. Arp Petitioner Pro se

BENJAMIN ARP - FILING PRO SE

January 29, 2019 - 2:35 AM

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