

IN THE SUPREME COURT,  
STATE OF WASHINGTON

STEPHEN EARL WHITTED,  <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> LORI JONES JORDAN,  <p style="text-align: right;">Respondent.</p>		SUPREME COURT NO. 97200-1  (Court of Appeals No. 77967-2-I)  RESPONSE TO PETITIONER'S MOTION TO ENLARGE TIME TO FILE PETITION FOR REVIEW
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1. Identity of Responding Party.

Lori Jones Jordan (Ms. Jordan), Respondent in the above-captioned matter, hereby submits her Response to Petitioner's Motion to Enlarge Time to File Petition for Review and asks for the relief designated in Part 2 below.

2. Statement of Relief Sought

Ms. Jordan requests that the Court deny Petitioner's Motion to Enlarge Time to File Petition for Review, and that the Court dismiss the Petition for Review as untimely.

3. Facts Relevant to Motion

Petitioner Stephen Earl Whitted ("Mr. Whitted") is an experienced attorney, and this case is the second one he has litigated through the Washington State Court of Appeals in the last 18 months.<sup>1</sup> Nonetheless,

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<sup>1</sup> See *Jordan v. Whitted*, 76168-4-I, 2018 WL 824556 (Wash. Ct. App. Feb. 12, 2018), and *Whitted v. Jordan*, 77967-2-I, 2019 WL 1785618 (Wash. Ct. App. Apr. 22, 2019) (the case proposed for review). Ms. Jordan submits that this Court may take judicial notice of the information concerning Mr. Whitted's bar memberships contained in the following

after the Court of Appeals issued its opinion in this case on April 22, 2019, Mr. Whitted sought Supreme Court review by filing a two-sentence “Notice of Appeal” on May 1, 2019.

On May 15, 2019, the Deputy Clerk of this Court informed Mr. Whitted by letter that his Notice of Appeal was ineffective to seek review, pointed Mr. Whitted to RAP 13.4, and provided Mr. Whitted with copies of appropriate forms from the Appendix of Forms to the RAP.<sup>2</sup> The Deputy Clerk’s letter emphasized that a proper petition for review “is due by not later than May 22, 2019.”

By letter dated May 28, 2019, the Supreme Court Clerk notified the parties that the Supreme Court had received a Petition for Discretionary Review from Mr. Whitted on May 23, 2019, which was one day after the 30-day deadline set by RAP 13.4(a).<sup>3</sup> The Court Clerk’s letter authorized Mr. Whitted to file a motion for extension of time, and pointed out that RAP 18.8(b) sets “the standards for granting an extension

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public web sites: (Maryland Courts) <https://mdcourts.gov/cgi-bin/cstf.pl?inputname=whitted&firstname=stephen&submit=Submit>, and (Georgia State Bar) <https://www.gabar.org/MemberSearchDetail.cfm?ID=NzU2Nzk2>, and (DC Bar) [https://join.dcbars.org/eweb/DynamicPage.aspx?Site=dcbars&webcode=fin\\_dmember](https://join.dcbars.org/eweb/DynamicPage.aspx?Site=dcbars&webcode=fin_dmember) (on this site, one has to search for Whitted, Stephen). The Court may also be able to take judicial notice of the information contained in the hyperlink Westlaw provides for Mr. Whitted just below the caption in its online version of the case proposed for review, *Whitted v. Jordan*, 2019 WL 1785618.

<sup>2</sup> See Letter dated May 15, 2019 from Erin L. Lennon, Supreme Court Deputy Clerk, to Mr. Whitted and Ms. Jordan.

<sup>3</sup> See Letter dated May 28, 2019 from Susan L. Clarkson, Supreme Court Clerk, to Mr. Whitted and Ms. Jordan.

of time to file a petition for review.”<sup>4</sup>.

4. Argument

Under RAP 18.8(b), this Court will grant an extension of time in which to file a petition for review “only in extraordinary circumstances and to prevent a gross miscarriage of justice.” This Court will “ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time.”<sup>5</sup> Here, Mr. Whitted does not show either that his delay in filing his Petition for Review is excused by “extraordinary circumstances,” or that giving precedence to the interest of finality would result in a “gross miscarriage of justice.” Accordingly, this Court should deny Mr. Whitted’s Motion for Enlarge Time and dismiss his Petition for Review as time-barred.

Despite being an experienced attorney who has previously litigated at least one other case in Washington’s appellate courts, Mr. Whitted failed to acquaint himself with Title 13 of the RAPs before submitting his two-sentence “Notice of Appeal” in this matter on May 1, 2019. This Court then specifically directed Mr. Whitted to both RAP 13.4, and to the need to submit a Petition for Review by “not later than May 22, 2019.”<sup>6</sup> Even so, Mr. Whitted failed to deliver his Petition for Review to the Court on time.

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<sup>4</sup> *Id.*

<sup>5</sup> RAP 18.8(b). *See also State v. Hand*, 177 Wn.2d 1015, 308 P.3d 588, 589 (2013).

<sup>6</sup> *See* Letter dated May 15, 2019 from Erin L. Lennon, Supreme Court Deputy Clerk, to Mr. Whitted and Ms. Jordan.

Nothing in Mr. Whitted's Motion to Enlarge Time demonstrates the sort of "extraordinary circumstances" that could excuse the untimeliness of his Petition. Mr. Whitted offers no explanation whatever for waiting until the day before the deadline to finalize his Petition for Review for filing. He asserts that he attempted to file the Petition electronically on May 21<sup>st</sup>, but was unable to do so.<sup>7</sup> However, he does not describe the nature of the alleged difficulty with electronic filing, nor does he indicate that he attempted to contact the Court's support staff for help with the filing process.<sup>8</sup>

Moreover, when Mr. Whitted turned to the Post Office and purchased express mail service on the morning of May 21 for delivery on May 22, 2019, he was also provided a tracking number.<sup>9</sup> Mr. Whitted evidently did not use this tracking number to monitor the delivery progress of the Petition. If he had done so at any time during the day on the 22<sup>nd</sup>, he would have seen that the document was still in transit (it did not arrive in Seattle until 9:55 p.m. on the 22<sup>nd</sup>).<sup>10</sup> At any time prior to 5:00 pm on

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<sup>7</sup> See Motion to Enlarge Time, at p. 2. The Petition for Review actually bears a signature date of May 22, 2019. See Petition for Review, at p. 17 (stating "Date: May 22, 2019").

<sup>8</sup> See Motion to Enlarge Time, at p. 2.

<sup>9</sup> See Motion to Enlarge Time, at Ex. A (showing a tracking number under the bar code of EL756169593US) and Ex. D. None of the facts about mailing asserted by Mr. Whitted in his Motion, and none of his Exhibits, are supported by a proper declaration, but the Court may have its own evidence of the tracking number as provided on the envelope which it apparently received from Mr. Whitted on May 23, 2019. See Letter dated May 28, 2019 from Susan L. Clarkson, Supreme Court Clerk, to Mr. Whitted and Ms. Jordan.

<sup>10</sup> The Court may take judicial notice of the tracking information available for USPS tracking number EL756169593US at the USPS web tracking

the 22<sup>nd</sup>, Mr. Whitted could have made a new attempt to file electronically, and could have called the Court for technical help if he had once again been unable to complete an electronic filing. However, Mr. Whitted says nothing about trying to do so.

Because Mr. Whitted’s own choices and lack of diligence—particularly his apparent failure to follow-up with the Court about electronic filing—play an important role in the late delivery of his Petition, he does not show the extraordinary circumstances necessary to justify an extension of time. “Negligence, or lack of reasonable diligence, does not amount to ‘extraordinary circumstances’ for the purposes of RAP 18.8(b).”<sup>11</sup>

Moreover, Mr. Whitted cannot show that denial of his Petition for Review as untimely will result in any “gross miscarriage of justice.”<sup>12</sup> Although the issue posed by a motion to enlarge time to file a petition for review is conceptually distinct from the merits of the petition for review as judged against the criteria of RAP 13.4(b), the Court may nonetheless take note that sole issue raised by Mr. Whitted in his belated Petition for

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web site: scroll to “Tracking History” at the link <https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&tex t28777=&tLabels=e1756169593us%2C>. A screen shot of this page, taken on June 10, is attached to this Response as Appendix A.

<sup>11</sup> *State v. Hand*, 177 Wn.2d 1015, 308 P.3d 588, 589 (2013) (internal quotation marks and citations omitted). *See also Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349, 354–55 (1998) (noting that “[e]xtraordinary circumstances’ include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control”).

<sup>12</sup> RAP 18.8(b)

Review is the alleged impropriety of setting off one judgment against another.<sup>13</sup> Because the judgment in favor of Ms. Jordan, and against Mr. Whitted, which Mr. Whitted does not wish to have set-off is now indisputably final (because Mr. Whitted did not seek review in this Court of the Court of Appeals decision in *Jordan v. Whitted*, 76168-4-I, 2018 WL 824556 (Wash. Ct. App. Feb. 12, 2018)), Mr. Whitted's only argument against allowing a set-off is moot. Thus, there is no risk of any miscarriage of justice in denying Mr. Whitted's Petition for Review as untimely. Indeed, Mr. Whitted's continued pursuit of this matter serves only to cause unnecessary expense and to waste the time of the parties and the Court.

5. Conclusion

For the reasons set forth above, the Court should deny Mr. Whitted's Motion for Enlargement of Time and dismiss his Petition for Review as untimely filed.

DATED this 10<sup>th</sup> day of June 2019.

Lori Jones Jordan

By:   
Lori Jordan, Respondent *pro se*

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<sup>13</sup> See Petition for Review, at pp. 5-6.

CERTIFICATE OF SERVICE

I certify that on June 13, 2019 I sent a copy of the attached Response to Petitioner's Motion to Enlarge Time via email PDF attachment to Petitioner Stephen E. Whitted at his email address of attyswhitted@yahoo.com. Mr. Whitted has previously agreed to accept service of pleadings in this matter by email.

Dated this 10<sup>th</sup> day of June 2019.

By:   
Lori Jordan, Respondent *pro se*

## APPENDIX A



# USPS Tracking® FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

**Track Another Package +**

**Tracking Number:** EL756169593US

Remove X

**Expected Delivery on**

**THURSDAY**

**23** MAY 2019 **by 8:00pm**

Feedback

 **Delivered**

May 23, 2019 at 6:32 am  
Delivered  
OLYMPIA, WA 98501

**Get Updates** v

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**Text & Email Updates** v

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**Proof of Delivery** v

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**Tracking History** ^

May 23, 2019, 6:32 am  
Delivered  
OLYMPIA, WA 98501

Your item was delivered at 6:32 am on May 23, 2019 in OLYMPIA, WA 98501 to CMS. The item was signed for by T LASKO.

**May 23, 2019, 5:49 am**  
Arrived at Post Office  
OLYMPIA, WA 98501

**May 22, 2019, 9:55 pm**  
Arrived at USPS Regional Facility  
SEATTLE WA NETWORK DISTRIBUTION CENTER

**May 22, 2019**  
In Transit to Next Facility

**May 21, 2019, 11:21 pm**  
Departed USPS Regional Facility  
SOUTHERN MD DISTRIBUTION CENTER ANNEX

**May 21, 2019, 9:49 pm**  
Arrived at USPS Regional Facility  
SOUTHERN MD DISTRIBUTION CENTER ANNEX

Feedback

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**Product Information**



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**See Less** ^

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs** (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

**LORI JORDAN - FILING PRO SE**

**June 10, 2019 - 5:33 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97200-1  
**Appellate Court Case Title:** Stephen Earl Whitted v. Lori Jones Jordan  
**Superior Court Case Number:** 16-2-18167-8

**The following documents have been uploaded:**

- 972001\_Answer\_Reply\_20190610172741SC004044\_3796.pdf  
This File Contains:  
Answer/Reply - Answer to Motion  
*The Original File Name was Jordan Response to Whitted Motion for Extension of Time wAppendix.pdf*

**A copy of the uploaded files will be sent to:**

- attyswhitted@yahoo.com

**Comments:**

Response to Petitioner's Motion to Enlarge Time to File Petition for Review

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Sender Name: Lori Jordan - Email: lorijordan@outlook.com  
Address:  
15600 NE 8th Street  
Bldg B-1 #381  
Bellevue, WA, 98008  
Phone: (770) 363-2464

**Note: The Filing Id is 20190610172741SC004044**