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STATE OF WASHINGTON
BY Ca

Court of Appeals No. 41186-5-II

ROBERT TURK and DONNA TURK,
Husband and wife

Appellants

v.

VALERIE KTENAS, an individual

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
HONORABLE KATHERINE M. STOLZ

APPELLANT'S REPLY BRIEF

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Attorney for Appellants

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I. LEGAL ARGUMENT

A. **REVIEW FOR CLAIM OF ERROR NOT RAISED AT TRIAL COURT IS DISCRETIONARY.**

The appeal issues filed by Appellant Mr. Turk are predicated by the fact that a continuance should have been granted in order for his attorney to be present to represent him. The court's decision to proceed to trial, regardless of the fact that Appellant Mr. Turk did not have his attorney present, placed him in a position where he could not have raised material objections and issues at the time of trial. A motion to vacate the judgment was subsequently brought before the trial court and denied. (CP 231). It is important to note that the Motion to Vacate should have sufficiently raised any of the material issues which were re-raised on appeal, regarding whether the trial court should have granted a continuance, as well as other issues previously briefed by Appellant.

Discretion is given to the Appellate Court to review claims of error raised by the Appellant for the first time. Rules of Appellate Procedure §2.5(a) states in pertinent part as follows: "(a) Errors Raised for First Time in Review. The appellate court **may** refuse to review any claim of error which was not raised in the trial court." (emphasis added).

The rules of appellate procedure allowing the appellate court to review any claim of error is written in discretionary, rather than mandatory terms. See Robinson v. Perez, 156 Wn.2d 33, 39 123 P.3d 844 (2005). Here, the very issues that are being raised for the first time on appeal, including evidentiary issues and objections, and claims of error, were due to the fact that Appellant Mr. Turk did

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**COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON**

ROBERT TURK, an individual,

Appellant,

v.

VALERIE KTENAS, an individual,

Respondent.

CAUSE NO. 41186-5

DECLARATION OF SERVICE

I, Rhyll Smith, hereby certify under the penalty of perjury of the laws of the State of Washington declare and state as follows that on June 27, 2011, I served Michael Riggio, attorney for the Respondent, a correct copy of the Reply Brief of the Appellant Robert Turk via U.S. mail.

DATED this 28th day of June, 2011.



Rhyll Smith