

THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:
DEVIN C. KIENOW,
Appellant / Petitioner,
v.
TERESA DITTENTHOLER
f/k/a KIENOW,
Respondent.

NO. 102054-6
ANSWER TO
MOTION TO
ACCEPT FILING OF
PETITION FOR
DISCRETIONARY
REVIEW

I. IDENTITY OF RESPONDING PARTY

Respondent Teresa Dittentholer (*f/k/a* “Kienow”) through counsel, David Therrien-Power, provides the following answer in response to the *Motion to Accept Filing of Petition for Discretionary Review*.

II. ANSWER

The Court should deny Petitioner’s *Motion to Accept Filing of Petition for Discretionary Review* as it is uncontested that Petitioner filed his Petition after the time required in the rules and shows no “extraordinary circumstances” pursuant to RAP

18.8(b) to justify an extension of his filing deadline.

Specifically, Petitioner did not act with reasonable diligence nor was the missed deadline due to excusable error or circumstance beyond Petitioner's control. Reichelt v. Raymark Indust., Inc., 52 Wn. App. 763,765,764 P. 2d 653 (1988) ("extraordinary circumstances" means "circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the parties' control") According to Petitioner, the filing was late because he did not have access to his "portal account" as the password had expired. Thus, he needed time to reset that password and gain access to the account as he attempted his filing at the end of the day on the very day the filing was due.

Not maintaining one's password and login information for the online portal, however, does not constitute an extraordinary circumstance sufficient to justify setting aside the mandatory filing deadline in RAP 13.5. Petitioner's *Motion to Accept Filing of Petition for Discretionary Review* completely fails to establish

that Petitioner acted with reasonable diligence and only missed the deadline due to an “extraordinary circumstance.” RAP 18.8(b). It is a party’s responsibility to ensure that they have the time and ability to meet their deadlines for filing with the Court. This was not an accident of chance or circumstance where an outside force interrupted Petitioner such that he could not have filed even if he had taken all steps to ensure timeliness.

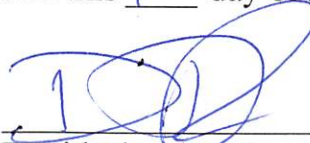
It is clear that the Petitioner did not ensure that his account password was updated and thus missed the mandatory filing deadline. This was not outside the control of the Petitioner. This was in the direct control of Petitioner and could have been prevented if Petitioner had acted with reasonable diligence in maintaining his account and passwords. The Court should not reward the Petitioner’s lack of diligence.

In sum, this is not the kind of “extraordinary circumstance” that is described in RAP 18.8(b) and Petitioner’s motion should be denied by the Court.

This document contains 471 words, excluding the parts of

the document exempted from the word count by RAP 18.17.

Respectfully submitted this 15th day of June 2023.



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Transmittal Information

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The following documents have been uploaded:

- 1020546_Other_20230615084545SC081021_4986.pdf
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Comments:

This is the Response "Answer to Motion to Accept Filing of Petition for Discretionary Review"

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