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SUPREME COURT  
STATE OF WASHINGTON  
Mar 12, 2015, 8:36 am  
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CLERK

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JAMES ENGLE, an individual,  
Plaintiff-Respondent,

v.

JAY DEE MILLER and his separate property  
only,

Defendant-Appellant.

and

JANIS DEE MILLER, as wife and the marital  
community composed thereof,

Defendant.

No. 70609-8-I 91266-1

DECLARATION OF JAMES V. HILL  
IN SUPPORT OF RESPONDENT'S  
ANSWER TO APPELLANT'S  
MOTION FOR EXTENSION OF  
TIME TO FILE PETITION FOR  
REVIEW

I, James V. Hill, declare and state:

1. I am an attorney at the firm of Russell & Hill, PLLC, in Everett, Washington, attorneys of record for Plaintiff- Respondent James Engel in this matter. I have personal knowledge of all matters attested to in this declaration.

2. Attached as EXHIBIT 1 is a true and correct copy of a letter dated December 22, 2015 from the Court of Appeals Division I court administrator/clerk,

DECLARATION OF JAMES V. HILL IN SUPPORT  
OF RESPONDENT'S ANSWER TO APPELLANT'S  
MOTION FOR EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW- 1

RUSSELL & HILL, PLLC  
3811-A BROADWAY  
EVERETT, WA 98201  
PHONE - (425) 212-9165  
FAX - (425) 212-9168



ORIGINAL

1 Richard D. Johnson notifying counsel of the Order Deny Motion for Reconsideration.

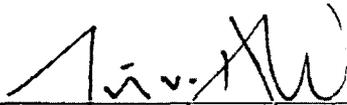
2 3. Attached as EXHIBIT 2 is a true and correct copy of the Order Denying Motion  
3 for Reconsideration dated December 22, 2014.

4 4. Attached as EXHIBIT 3 is a true and correct copy of attorney John R. Muenster's  
5 current profile from the Washington State Bar Association web page, including his email address.

6 5. Attached as EXHIBIT 4 is a true and correct copy of appellant's Motion for  
7 Extension of Time to File Petition for Review. In Section III - Facts in Support of Motion (6),  
8 appellant's attorney attributes computer "malware" as a possible reason for having not received the  
9 December 22, 2014 notice. Appellant's attorney offered no receipt for new anti-malware software  
10 he claimed to have purchased on December 23, 2014. Nor did he file a declaration under penalty of  
11 perjury provided to support his claims. No evidence or sworn testimony whatsoever was offered to  
12 prove the assertion.  
13

14 I declare under penalty of perjury under the laws of the state of Washington that the  
15 foregoing is true and correct to the best of my knowledge.

16 DATED this 11<sup>th</sup> day of March, 2015.

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20 JAMES V. HILL #31654  
21 Attorney for Plaintiff-Respondent  
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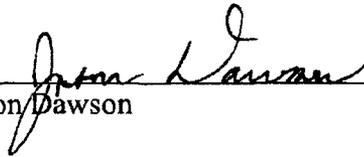
**CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the state of Washington that on the date last shown below, I caused a true and correct copy of the foregoing document to be served in the manner indicated to the parties listed below:

John R. Muenster  
Muenster & Koenig  
1490 Sunrise Drive NE  
Bainbridge Island, WA 98110  
jrmuenster@muensterkoenig.com

- Legal Messenger
- Facsimile
- Email
- First Class Mail, with sufficient postage prepaid

DATED this 11<sup>th</sup> day of March, 2015, at Everett, Washington.

  
\_\_\_\_\_  
Jason Dawson

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

December 22, 2014

James Vincent Hill  
Russell & Hill PLLC  
1732 Broadway  
Everett, WA, 98201-2347  
jim@russellandhill.com

John Roling Muenster  
Muenster & Koenig  
14940 Sunrise Dr NE  
Bainbridge Island, WA, 98110-1113  
jrmuenster@muensterkoenig.com

Brandon K. Batchelor  
Russell & Hill  
3811A Broadway  
Everett, WA, 98201-5031  
brandon@russellandhill.com

CASE #: 70609-8-I  
James Engle, Resp. vs. Jay Dee Miller, App.

Counsel:

Enclosed please find a copy of the Order Denying Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

hek

c: The Hon. Joseph P. Wilson

EXHIBIT 1

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

JAMES ENGLE, an individual,	)	
	)	No. 70609-8-1
Respondent,	)	
	)	ORDER DENYING MOTION
v.	)	FOR RECONSIDERATION
	)	
JAY DEE MILLER, and his separate	)	
property only,	)	
	)	
Appellant,	)	
	)	
and	)	
	)	
JANIS DEE MILLER, as wife and	)	
the marital community composed	)	
thereof,	)	
Defendant.	)	

The appellant, Jay Dee Miller, has filed a motion for reconsideration herein. The court has taken the matter under consideration and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 22<sup>ND</sup> day of December, 2014.

FOR THE COURT:

Trichey, J.

2014 DEC 22 PM 1:45  
COURT OF APPEALS DIV. 1  
STATE OF WASHINGTON



Lawyer Directory » Lawyer Profile

Lawyer  
Directory

### John Roling Muenster

**WSBA Number:** 8237  
**Admit Date:** 11/06/1975  
**Member Status:** Active  
**Public/Mailing Address:** Muenster & Koenig  
 14940 Sunrise Dr NE  
 Bainbridge Island, WA 98110-1113  
 United States  
**Phone:** (206) 501-9585  
**Fax:** (206) 855-1027  
**TDD:**  
**Email:** [jrmuenster@muensterkoenig.com](mailto:jrmuenster@muensterkoenig.com)  
**Website:** [www.muenslerkoenig.com](http://www.muenslerkoenig.com)

#### Practice Information

[Back to top](#)

**Firm or Employer:** Muenster & Koenig  
**Firm Size:** No Response  
**Practice Areas:** Appellate, Civil Litigation, Civil Rights, Criminal  
**Other Languages Spoken:** None Specified

#### Liability Insurance

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**Private Practice:** Yes  
**Has Insurance?** No - [Click for more info](#)  
**Last Updated:** 02/02/2015

#### Committees

[Back to top](#)

**Member of these committees/boards/panels:**  
 None

#### Disciplinary History

No Public Disciplinary History

Only active members of the Washington State Bar Association, and others as authorized by law, may practice law in Washington.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.

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## EXHIBIT 3

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APPELLANT'S MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW  
JAN 28 2015

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

JAMES ENGLE, an individual,  
Plaintiff-Respondent,

v.

JAY DEE MILLER and his separate  
property only,

Defendant-Appellant.

No. 70609-8-1

APPELLANT'S MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW

I. Identity of Moving Party

Appellant Jay Dee Miller asks for the relief set forth below.

II. Statement of Relief Sought

An order extending the time for filing of appellant's petition for review  
until January 28, 2015, the date of filing.

APPELLANT'S MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW- 1

MUENSTER & KOENIG  
14940 SUNRISE DRIVE NE  
BAINBRIDGE ISLAND, WASHINGTON 98110  
(206) 467-7500  
FAX: (206) 855-1027

1        **III. Facts in Support of Motion**

2  
3        (1) On December 1, 2014, undersigned counsel filed a motion for  
4 reconsideration of the panel's decision on appellant's behalf.

5        (2) On January 2, 2015, I filed a supplemental memorandum in support  
6 of our motion for reconsideration.

7        (3) On January 23, 2015, I filed my declaration in support of appellant's  
8 motion for reconsideration.

9        (4) On January 27, 2015, I received a voice mail from the case manager,  
10 Ms. Helen Kistler. I called her back. She advised that the court had received  
11 my supplemental memorandum and declaration, but the panel did not look at  
12 them. She explained that the motion for reconsideration had been denied. This  
13 was the first that I heard of the denial. Ms. Kistler advised that the order had  
14 been entered on December 22, 2014. She advised that notice of the order had  
15 been sent out by email on that date.

16  
17        (5) I looked in my email and backup email folders. I could not find an  
18 email with the denial order. I was unaware of the Court's denial order until  
19 January 27, 2015. Ms. Kistler emailed me a copy.

20        (6) On or about December 22, 2014, I had document problems which  
21 arose from malware that had infected my computer. On December 23<sup>rd</sup>, I  
22 purchased new anti-malware software and ran a scan. The scan found 244  
23 potentially unwanted programs (PUP's) in 53 folders, and quarantined them. I  
24 did not locate any missing emails. It is possible the Court's email on December  
25 22<sup>nd</sup> came into my system while the malware was active.

1 (7) Under the rules, the petition for review would be due by January 21,  
2 2015. I certainly would have filed our petition for review by that date had I  
3 known of the court's order. I also would not have prepared and filed the  
4 supplemental memorandum on January 2<sup>nd</sup> and the declaration with the court on  
5 January 23<sup>rd</sup> had I known of the denial order of December 22<sup>nd</sup>.

6 (8) I believe that these circumstances justify granting a short extension of  
7 time within which to file the petition for review.  
8

9  
10 *IV. Grounds for relief and argument*

11 RAP 18.8(b) authorizes the relief sought. The appellate court can extend  
12 the time within which to file a petition for review in extraordinary  
13 circumstances and to prevent a gross miscarriage of justice. The facts outlined  
14 above are sufficient to meet this standard. Undersigned counsel is not aware of  
15 any prejudice to the respondent if this request is granted.

16 Dated this the 28th day of January, 2015.

17  
18 Respectfully submitted,  
19 MUENSTER AND KOENIG

20 By: S/ John R. Muenster  
21 John R. Muenster  
22 Attorney at Law  
23 WSBA # 6237  
24 Of Attorneys for Defendant-Appellant

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CERTIFICATE OF SERVICE

I certify that on the 28th day of January, 2015, I caused a true and correct copy of this document to be served on counsel of record via email and first class mail.

Dated this the 28th day of January, 2015.

S/ John R. Muenster  
Attorney at Law

APPELLANT'S MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR REVIEW- 4

**MUENSTER & KOENIG**  
14940 SUNRISE DRIVE NE  
BAINBRIDGE ISLAND, WASHINGTON 98110  
(206) 467-7500  
FAX: (206) 855-1027

## OFFICE RECEPTIONIST, CLERK

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**To:** Jessica McClure  
**Subject:** RE: Email Filing of of James V. Hill in Support of Respondent's Answer to Appellant's Motion for Extension of Time. in Engle v. Miller; NO. 70609-8-I

Received 3-12-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Jessica McClure [mailto:jesica@russellandhill.com]  
**Sent:** Thursday, March 12, 2015 8:14 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** RE: Email Filing of of James V. Hill in Support of Respondent's Answer to Appellant's Motion for Extension of Time. in Engle v. Miller; NO. 70609-8-I

Attached is the declaration. Thank you for asking for the missing attachment, and my apologies for not including it.

Jesica McClure

Paralegal



3811-A Broadway

Everett, WA 98201

Phone: (425) 212-9165 ext. 152

Fax: (425) 212-9168

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**From:** OFFICE RECEPTIONIST, CLERK [mailto:SUPREME@COURTS.WA.GOV]  
**Sent:** Thursday, March 12, 2015 8:14 AM  
**To:** Jessica McClure  
**Subject:** RE: Email Filing of of James V. Hill in Support of Respondent's Answer to Appellant's Motion for Extension of Time. in Engle v. Miller; NO. 70609-8-I

This came through our system at 5:01 therefore I am just now opening it. There is nothing attached to this email. Can you please resend?

Thank you,

*Kris Triboulet*

Receptionist/Secretary

Washington State Supreme Court  
[Kristine.triboulet@courts.wa.gov](mailto:Kristine.triboulet@courts.wa.gov)  
360-357-2077

**From:** Jessica McClure [<mailto:jesica@russellandhill.com>]  
**Sent:** Wednesday, March 11, 2015 4:55 PM  
**To:** OFFICE RECEPTIONIST, CLERK; Jessica McClure  
**Subject:** RE: Email Filing of of James V. Hill in Support of Respondent's Answer to Appellant's Motion for Extension of Time. in Engle v. Miller; NO. 70609-8-I

Good Afternoon:

Attached for filing is the Declaration of James V. Hill in Support of Respondent's Answer to Appellant's Motion for Extension of Time.

Case Name: Engle v. Miller  
Case Number: NO. 70609-8-I  
Person filing brief:

JAMES VINCENT HILL #31654  
RUSSELL AND HILL PLLC  
3811-A Broadway  
Everett, Washington 98201  
(425) 212-9165  
[jim@russellandhill.com](mailto:jim@russellandhill.com)  
Attorney for Plaintiff/Respondent

Thank you.

Jessica McClure  
Paralegal



3811-A Broadway  
Everett, WA 98201  
Phone: (425) 212-9165 ext. 152  
Fax: (425) 212-9168

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