

Supreme Court No. 92268-3, SAK & Associates v. Ferguson Constr., Inc.  
(From Court of Appeals Div 1, No. 72258-1)

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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SAK & ASSOCIATES, INC., a Washington corporation,

Petitioner-Appellant,

v.

FERGUSON CONSTRUCTION, INC., a Washington corporation,

Respondents.

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**MOTION FOR EXTENSION OF TIME FOR PETITION FOR REVIEW**

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**THE COLLINS LAW GROUP PLLC**  
Jami K. Elison      WSBA #31007  
Sheri Lyons Collins WSBA #21969  
2806 NE Sunset Blvd., Suite A  
Renton, WA 98056  
Telephone:    (425) 271-2575  
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Attorneys for Petitioner

FILED AS  
ATTACHMENT TO EMAIL



**ORIGINAL**

**A. IDENTITY OF MOVING PARTY (PETITIONER)**

Moving party is petitioner, SAK & Associates, Inc. (“SAK”), who was Appellant below and Plaintiff in the initial underlying action.

**B. FACTS**

The Court of Appeals filed a decision terminating review on August 10, 2105. The Petition for Review was due September 9, 2015 on which day Petitioner served its Petition for Review on the Respondent. *See* Ex. A to subjoined Declaration of Jami Elison. The Petition for Review sent by certified mail was received by the Court of Appeals on September 11, 2015.

**C. MOTION**

Under RAP 18.8, Petitioner moves this Court for an extension of time of 2 days in order to consider the timely served Petition for Review to be considered to have been timely filed.

**D. AUTHORITY & GROUNDS FOR MOTION**

It is well established that filing deadlines are not jurisdictional in nature and may be extended. *See U.S. v. Locke*, 471 U.S. 84, 94 n10, 105 S.Ct. 1785 (1985). Consistent with that established rule, our RAPs provide:

The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a

particular case in order to serve the ends of justice, subject to the restrictions in sections (b) and (c).

RAP 18.8(a). Here, the Petition for Review was timely served so no prejudice exists for the Respondent. To the extent that an affected party's knowledge of finality is the purpose of limitation periods, that concern was satisfied and a 2-day extension to match the mail delivery period is warranted. And it is necessary to serve the ends of justice.

Because this is a civil and not criminal matter, it is further noteworthy that this Court has already distinguished between limitation periods for criminal defendants where limited periods create vested rights as opposed to limitation periods for civil defendants where the needs of justice marshal for more latitude. *See 1000 Virginia Limited Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 587 n10, 146 P.3d 423 (2006) (citing caselaw establishing vested rights for criminal defendants related to limitation periods while recognizing for civil defendants that there is "no authority in support of the proposition"). Because this civil defendant/respondent received timely service of the Petition for Review, this Court should grant leave for the 2-day extension necessary to serve the ends of justice.

Moreover, this Court has ruled that is proper to give legal significance to the act of service on the opposing party even when

questions exist about a subsequent filing. *See generally Nearing v. Golden State Foods Corp.*, 114 Wn.2d 817, 792 P.2d 500 (1990). The *Nearing* holding allowing a filing date to be tolled by service on the affected party is completely consistent with the rationale that the purpose of filing deadlines is to prevent prejudice to the affected party and enable the affected party to know whether actions are being pursued.

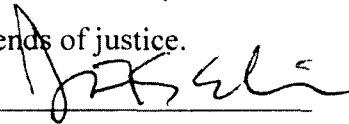
While the rules provide that ordinarily “the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time,” RAP 18.8(b), in this extraordinary circumstance where service on the Respondent was timely and only two days are necessary to allow a review on the merit of the Petition for Review, Petitioner respectfully requests this Court grant leave for an extension.

#### **E. SUBJOINED DECLARATION**

I, Jami K. Elison, am competent to testify and declare truthfully as follows:

Attached as Exhibit 1 to this Motion is a true and correct copy of the email on September 9, 2015 effecting service of the Petition for Review on counsel for Respondent. This was transmitted at 1:36pm on the day service was due for the Petition for Review. I am counsel on this Petition and caught a plane to leave the office on September 9, 2015. The copy sent by certified mail on September 9<sup>th</sup> would have been a duplicate copy if a mix-up had not occurred that resulted in a messenger copy not being delivered. While the rule requires Petitions for Review to be filed on the

day indicated, they are transmitted to the Court of Appeals where ordinary practice recognizes mailing dates for submissions. The letter providing the filing date was from the Court of Appeals and transmission was requested to the Court of Appeals. Ours is a small office and when our office was closed before a messenger arrived, the hard copy was not filed the same day and the certified mail copy was believed to be compliant for the Court of Appeals. On these circumstances, and because service on Respondent was timely made, an extension or waiver of rules is sought to meet the ends of justice.

Signed: 

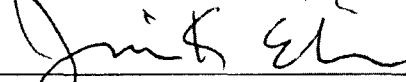
Dated: 10/6/2015 at Renton, WA.

#### F. CONCLUSION

Moving party, Petitioner, respectfully requests this Court either deem the Petition for Review timely filed based on service or to grant its motion to allow leave or extend time for filing the Petition of Review, in order to consider the mailed document received on September 11, 2015 as timely filed and serve the end of justice.

DATED this 6<sup>th</sup> day of October, 2015

**THE COLLINS LAW GROUP, PLLC**

By   
Jan K. Ellison      WSBA # 31007

Attorneys for Petitioner SAK&Associates, Inc.

# Exhibit

1

## Jami Elison

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**From:** Jami Elison  
**Sent:** Wednesday, September 09, 2015 1:36 PM  
**To:** sheri@tclg-law.com; myamada@ac-lawyers.com; droach@ac-lawyers.com  
**Subject:** Petition for Review re 72258-1-I Sak & Associates v. Ferguson Construction, Respondent  
**Attachments:** Petition for Review.pdf

Attached for service is the Petition for Review that has been filed.

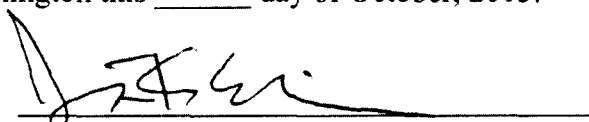
Jami

**PROOF OF SERVICE**

I certify under penalty of perjury that on the 6th day of October, 2015, I caused to be served a copy Petition for Review via email per agreement of the parties on the following:

Douglas R. Roach, Esq.  
Masaki James Yamada, Esq.  
Ahlers & Cressman PLLC  
990 Third Ave., Suite 3800  
Seattle, WA 98104  
droach@ac-lawyers.com  
myamada@ac-lawyers.com  
Attorneys for Respondent

Dated at Renton, Washington this 6<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Jami K. Elison



## OFFICE RECEPTIONIST, CLERK

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**To:** Jami Elison  
**Cc:** droach@ac-lawyers.com; myamada@ac-lawyers.com  
**Subject:** RE: Supreme Court NO 92268-3, SAK & Associates v. Ferguson Constr., Inc., Motion for Extension of Time for Petition for Review

Rec'd 10/6/15

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:** Jami Elison [mailto:jami@tclg-law.com]  
**Sent:** Tuesday, October 06, 2015 1:36 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** droach@ac-lawyers.com; myamada@ac-lawyers.com  
**Subject:** Supreme Court NO 92268-3, SAK & Associates v. Ferguson Constr., Inc., Motion for Extension of Time for Petition for Review

Attached for filing is moving party's Motion for Extension of Time for Petition of Review that was received on September 11, 2011. This filing is sent after receipt of the Court's letter dated September 23, 2015. Hard copies will not be sent separately unless requested.

Very truly yours,  
Jami

Jami K. Elison, Esq.  
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