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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 95346-5

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DEIODE LEA CUNNINGHAM,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

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**RESPONSE TO APPELLANT'S EMERGENCY MOTIONS**

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## **I. INTRODUCTION**

This is a response to Ms. Cunningham's Motion to Supplement Paragraph 6 Discovery Evidence and Motion for Exhaustion of Administrative Remedies. Both motions should be denied because neither is appropriate under RAP 9.10 or 9.11 or RCW 34.05.562 as a basis to supplement the record with additional evidence. Further, Ms. Cunningham has not complied with RAP 17.4(b) for filing an emergency motion and has not shown that the criteria in that rule are met to have these motions decided on an emergent basis. The Court should deny her motions.

## **II. IDENTITY OF RESPONDENT**

The Respondent is the Washington State Department of Social and Health Services.

## **III. COURT OF APPEALS DECISION**

The Unpublished Opinion of the Court of Appeals is attached to Ms. Cunningham's "Petition for Review" and the Department has separately filed its response to that Petition.

## **IV. COUNTERSTATEMENT OF ISSUE ON REVIEW**

Whether the Court should grant Ms. Cunningham's motions to supplement the record on appeal with new evidence and regarding "exhaustion of administrative remedies" on an emergent basis pursuant to RAP 17.4(b).

## V. ARGUMENT WHY MOTIONS SHOULD BE DENIED

This Court should deny Ms. Cunningham's motions to supplement the record with new evidence and to relieve her of the requirement to exhaust administrative remedies. The criteria for reviewing an emergency motion pursuant to RAP 17.4(b) are not met in this case. Furthermore, her request to supplement the record is not proper pursuant to RAP 9.10 or 9.11, or RCW 34.05.562, when this case has not yet been accepted for review by this Court.

RAP 17.4(b) permits the consideration of an emergency motion if (1) adequate relief cannot be given if the motion is considered in the normal course, and (2) the movant has taken reasonable steps under the circumstances to give notice to persons who would be affected by the ruling sought. As to the notice requirement, the undersigned counsel received Ms. Cunningham's motion by Federal Express delivery on February 28, 2018, and no other notice has been provided, nor has this motion been noted for oral argument. As to the relief requirement, Ms. Cunningham alleges that she has filed this emergency motion "because the court is due to review these issues on 4/3/2018 and it needs to review this new evidence RCW 34.05.562(1) – (d) before proceeding because the court may avoid wasting Deoide's time and also the time of the good Clerks and Justices." Motion at 1. Thus the only looming deadline is this Court's review of her

Petition for Discretionary Review. The proposed additional evidence goes to the merits of her appeal, not to whether this Court will accept her Petition for Discretionary Review.

Furthermore, RAP 9.10 and 9.11 govern when this Court will supplement the record on review with additional evidence. Because this case is an appeal of a decision of an administrative agency pursuant to RCW 34.05.570, the Administrative Procedure Act governs what constitutes the agency record on review. *See* RCW 34.05.562. At this time, however, only Ms. Cunningham's Petition for Discretionary Review is pending before this Court, which review is based upon consideration of the factors set out in RAP 13.4(b). If this Court accepts review, then her motion to supplement the record with new evidence can be heard in the normal course. There is no need to hear this motion on an emergency basis.

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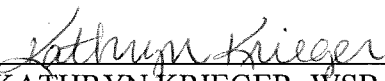
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**VI. CONCLUSION**

Ms. Cunningham has not shown that there is a need to hear her motions on an emergent basis pursuant to RAP 17.4(b). Furthermore, her motion to supplement the record is not proper at this time when this Court has not yet granted her Petition for Discretionary Review. This Court should deny her motions.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of March, 2018.

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**CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- Federal Express, 2-Day Delivery
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by \_\_\_\_\_

TO:  
Deiode Cunningham, Appellant  
Karl I. Olson, Appellant's Representative  
2714 "J" Ave  
Anacortes, WA 98221

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 5<sup>th</sup> day of March, 2018 at Tumwater, Washington.

  
\_\_\_\_\_  
CONNIE WALL, Legal Assistant



**OFFICE OF THE ATTORNEY GENERAL**

**March 05, 2018 - 3:50 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95346-5  
**Appellate Court Case Title:** Deoid'e Lea Cunningham v. State of Washington, Department of Social & Health Services  
**Superior Court Case Number:** 14-2-02007-7

**The following documents have been uploaded:**

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