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DIVISION II

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STATE OF WASHINGTON

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION II

NORTH COAST ELECTRIC COMPANY, a
Washington corporation;

Plaintiff,

v.

SIGNAL ELECTRIC, INC., a Washington
corporation; and FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a foreign
corporation;

Defendants.

Trial Court Case No. 14-2-05321-1

Court of Appeals No. 47618-5-II

PLAINTIFF/APPELLANT'S OPENING BRIEF

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INTRODUCTION

This appeal involves the interpretation of CR 54(b)(2) and its interplay with other provisions of that rule and RCW 4.36.240.

ASSIGNMENTS OF ERROR AND ISSUES

This appeal involves two alternative assignments of error:

1. The trial court erred in concluding that Plaintiff (“North Coast”) failed to file its motion for an award of attorney’s fees within the ten-day time period set out in CR 54(d)(2) and, as a result, refusing to award any attorney’s fees; and

2. The trial court erred in concluding that the lack of any prejudice arising from any delay was immaterial and refusing to excuse any delay or grant North Coast’s motion for an extension of time to file its motion.

The first assignment of error presents the following subsidiary questions:

1. Is a motion for an award of attorney’s fees contained in a motion for summary judgment sufficient to satisfy the requirement in CR 54(d)?

2. Was the trial court’s order granting North Coast’s motion for summary judgment a sufficient “judgment” to trigger the running of the ten-day time period in CR 54(d)?

3. Did the court’s entry of a formal judgment after North Coast filed its motion make any earlier delay moot?

The second assignment of error presents the following subsidiary

questions:

1. Is the absence of prejudice a factor the court must consider when deciding whether to excuse any failure to meet the deadline?
2. Does RCW4.36.240 require a court to accept a late filing in the absence of prejudice?
3. Must a party seeking an extension of the time for filing a motion for attorney's fees show "excusable neglect?"
4. Did North Coast show excusable neglect?
5. Did the trial court abuse its discretion in failing to excuse any delay under the circumstances here?

STATEMENT OF THE CASE

Only undisputed background and procedural facts are material to this appeal.

1. North Coast supplied electrical materials to Defendant Signal Electric, Inc. for a public construction project. Defendant Fidelity and Deposit Company of Maryland, as surety, provided a public works bond for the project, and later a retainage bond, pursuant to RCW 39.08.010 and 60.28.030. Signal Electric failed to pay and North Coast filed this action asserting (1) a claim against Signal Electric seeking a declaration that it entered into two contracts with North Coast and owed North Coast a principal amount, plus 18 percent interest; and (2) claims against Fidelity on its public works and retainage bonds for the principal amount, plus only 12 percent interest. North

Coast sought an award of attorney's fees from Signal Electric under its contracts and from Fidelity pursuant to RCW 30.08.010 and 60.28.030. CP 1-9, 26-29, 85-92.

2. This dispute was closely related to an action in Snohomish County in which North Coast earlier prevailed and recovered a substantial award of attorney's fees against Fidelity. CP 86, 92, 179.

3. North Coast moved for summary judgment on its claims against Fidelity, separately seeking partial summary judgment on its *prima facie* claim and on each of Fidelity's affirmative defenses. Its motion also sought an award of "North Coast['s] costs and reasonable attorney's fees incurred in collecting the amount due in an amount to be determined in further proceedings." In support of that motion, North Coast argued:

North Coast's right to recover fees under RCW 39.08.010 and 60.28.030 is indisputable and it will be the ultimate prevailing party even if Fidelity prevails on its partial defense. RCW 39.08.010 and 60.28.030 make an award of fees to a prevailing supplier mandatory. *E.g., Diamaco, Inc. v. Mettler*, 135 Wn. App. 572, 145 P.3d 399, (Div. 1, 2006)(confirming that an award is mandatory, although the amount is discretionary, and affirming an award of \$135,000 in fees against a surety on a claim of \$141,000). (Footnote added to text.)

North Coast also argued that the decision in the related Snohomish County action collaterally estopped Fidelity from objecting to at least North Coast's counsel's rates. CP 11-12, 14-16, 264.

4. Fidelity opposed that motion, primarily arguing that North Coast was entitled to recover only a lesser amount because of

claimed offsets. CP 95-110.

5. The trial court did not issue an opinion. It did, however, issue a document it drafted and entitled “Order Granting Plaintiff’s Motion for Summary Judgment (OR)” on December 9, 2014. The body of that order stated only:

This matter having come before the Court on Plaintiff’s Motion for Summary Judgment, the Court having considered the argument, the records and file;

IT IS HEREBY ORDERED that Plaintiff’s Motion for Summary Judgment is granted. North Coast is awarding (sic) its *prima facie* claim in the principal amount of \$301,851.49, plus interest on that amount at the rate of 12 percent per annum from March 10, 2011 until paid.

That order neither grants nor rejects North Coast’s motion for an award of attorney’s fees and does not resolve any collateral estoppel issue relating to fees. CP 135. The reference to North Coast’s “*prima facie* claim” made that order unclear as to whether the court awarded summary judgment on Fidelity’s affirmative defenses. That order does not mention Signal Electric and does not purport to resolve North Coast’s claim against Signal Electric for 18 percent interest.

6. The clerk did not enter that order as a judgment in the execution docket. The clerk did not award North Coast its costs ten days after that order as required by CR 54(d)(1) and 78(e) if that order was a “judgment.”

7. Fidelity moved for reconsideration. The court denied that motion on January 22, 2015.

8. Promptly after receiving that order, North Coast sent Fidelity a proposed form of judgment and attempted to settle the attorney's fees issue, making an offer to do so. Fidelity promised to, but did not, respond to that offer. CP 264-65, 269-70. When North Coast was unsuccessful in settling, it filed "Plaintiff's Motion for an Award of Costs and Fees" and a supporting declaration on February 9, 2015-18 days after denial of Fidelity's motion for reconsideration. CP 164-211. North Coast tendered its proposed form of judgment with that motion. The hearing on that motion was originally set for March 27, 2015 but was postponed until May 15.

9. Fidelity responded to that motion, arguing that North Coast was not entitled to recover fees because the court's order granting North Coast's motion for summary judgment was a "judgment" triggering the ten-day deadline in CR 54(d)(2) and North Coast filed its second motion 49 days¹ late. CP 212-15, 293-97. Fidelity went on to argue that the court could not excuse that delay because North Coast could not show excusable neglect. CP 314-15, 297; TR 19-20.

10. The court entered a formal "Judgment," on the form North Coast tendered, on April 24, 2015. CP 227-28. That judgment awarded North Coast the principal amount and interest due on its bond claims against Fidelity, but "reserved" the issue of attorney's fees. That

¹ Fidelity claimed that the motion was filed 63 days after December 9, at least implying that it was 53 days late. CP 214. By our count, and after the extra three days allowed because the court served its order by mail, the correct number is 49.

judgment also awarded limited declaratory relief against Signal Electric and dismissed all other claims in the action, including North Coast's claim against Signal Electric for 18 percent interest. CP 227-28.

11. North Coast argued that its motion was timely, primarily because the court's order was not a "final determination" of the case and not a "judgment" within the scope of CR 54(d)(2). Alternatively, North Coast argued that the court should disregard any failure to meet the ten-day deadline because Fidelity did not suffer any prejudice, public policy required an award, and the effect of the court's order was at least unclear. CP 229-42; TR 4-15, 22-26. North Coast also moved for an extension of time or to excuse any delay to the extent one was necessary. CP 291.

12. On May 15, 2015, The trial court rejected North Coast's request for an award of attorney's fees in its entirety, holding that its order was a "judgment" that triggered the ten-day deadline in CR 54(d), North Coast failed to file its second motion within that time, and the lack of any prejudice was immaterial. The court expressly did not find any prejudice beyond the general concept that speedier resolution of disputes is usually a good thing. CP 305-06; TR 23, 26-30.

ARGUMENT

I. The Trial Court Erred in Concluding that North Coast's Motion Was Not Filed Within the ten-Day Period in CR 54(d)(2).

A. Standard of Review.

This court reviews the first assignment of error *de novo* as a

question of law. *E.g.*, *Gourley v. Gourley*, 158 Wn.2d 460, 466, 145 P.3d 1185 (2006)(“Interpretation of a court rule is a question of law, subject to *de novo* review.”); *City of College Place v. Staudenmaier*, 43 P.3d 43, 45, 110 Wn. App. 841 (2002)(“We review the application of court rules *de novo*.”). Courts must interpret statutes and rules to implement the legislature’s intent as shown by the plain language of the statute in the context of related statutes. The court may look to other evidence of the legislature’s intent only if the statute is ambiguous. *E.g.*, *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 432, 275 P.3d 1119, 1122-23 (2012). The court interprets court rules using the same methodology as statutes. *E.g.*, *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993); *Vaughn v. Chung*, 119 Wn.2d 273, 282, 830 P.2d 668 (1992).

B. The Trial Court Incorrectly Interpreted and Applied CR 54(d).

The ultimate issue here is the interpretation of CR 54. In relevant part, it provides as follows:

(a). Definitions.

(1) Judgment. A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58.

(2) Order. Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.

* * *

(d) Costs, Disbursements, Attorney's Fees, and Expenses.

(1) Costs and Disbursements. Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).

(2) Attorney's Fees and Expenses. Claims for attorney's fees and expenses, other than costs and disbursements, shall be made by motion . . . Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

The trial court misinterpreted and misapplied that rule as follows.

1. **North Coast's Motion for Summary Judgment Was Sufficient to Satisfy CR 54(d).**

The trial court's decision was premised on acceptance of Fidelity's argument that North Coast's second motion seeking fees needed to be filed within 10-days of the order in dispute. However, that premise is incorrect. CR 54(d) requires only that "claims for attorney's fees" be "made by motion" filed within ten days. The rule does not require that all information relevant to a request, including the precise amount requested, be provided within ten days. As is described above, North Coast asserted a claim for attorney's fees in its motion for summary judgment. Although that claim needed to be supplemented after completion of the case to set a precise amount, it was a motion claiming fees filed before issuance of the order in dispute. Accordingly, North Coast motion for summary judgment satisfied the plain language

of the rule and the trial court erred in concluding otherwise.

2. **The Trial Court's Order Did Not Trigger the Running of the 10-day Period Because it Was Not a "Judgment."**

The 10-day time period in CR 54(d) begins only on the "entry of judgment." The trial court's decision is based on the premise that its December 9, 2014 order was a "judgment." That premise is also incorrect.

The analysis here must begin with the definition of "judgment" in CR 54(a): "A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies." There are two ways to interpret the "order" part of that definition. The definition may include only orders of dismissal and other "final orders" that end litigation without a judgment. That interpretation is consistent with the "from which an appeal lies" language of the rule and this court's law determining the appealability of orders. RAP 2.2.² It is also consistent with the apparent intent to have attorney's fees and cost issues resolved at the most practical time-after all other issues are resolved, including any disputes about the form of a

² RP 2.2 allows an appeal only from formal judgments, certain limited orders, and any decision that "determines the action and prevents a final judgment or discontinues the action." *E.g., Allyn v. Asher*, 132 Wn. App. 371, 131 P.3d 339, 342 (2006); *In re: Dependency of Chubb*, 112 Wn.2d 719, 722, 773 P.2d 851 (1989) ("Failure to mention a particular proceeding in RAP 2.2(a) indicates this court's intent that the matter be reviewable solely under the discretionary review guidelines of RAP 2.3.") Orders granting motions for summary judgment in claims for money, to be effectuated by entry of a formal judgment, are not appealable under that rule.

final judgment. That interpretation is the proper one.

Fidelity argued that the definition include decisions in the form of orders that, as a practical matter, resolve the merits or primary merits of a dispute even though they do not end the litigation. In other words, Fidelity argued that a decision on the merits was a “judgment” triggering the running of the 10-day period even though that decision left the case open, and the decision subject to revision, until the entry of a formal judgment. The trial court agreed. That interpretation is inconsistent with the appealability requirement in the rule and intent to resolve fee and cost issues after the resolution of all other issues.³ More importantly, that interpretation creates substantial uncertainty about what documents are and are not “judgments” triggering post-judgment deadlines and entitling prevailing parties to enforcement rights, contrary to a primary goal of the statutory scheme.

That problem of certainty and uniformity is one faced by many courts.⁴ In Washington, the legislature attempted to create certainty for

³ To the extent Fidelity argues that the court’s order was appealable, it must face a serious practical problem. If orders like the one in dispute were appealable, a defendant could appeal and divest the trial court of the ability to enter an enforceable money judgment complying with RCW 4.64.030 and deprive the prevailing party of their rights without complying with the supersedeas requirements.

⁴ The official commentary of Federal Rules Advisory Committee for Fed. R. Civ. P 58 explains the problem.

Hitherto some difficulty has arisen, chiefly where the court has written an opinion or memorandum containing some apparently directive or dispositive words, *e.g.*, “the plaintiff’s motion [for summary judgment] is granted,” *see United States v. F. & M. Schaefer Brewing Co.*, 356

the parties and the public by requiring that all judgments awarding affirmative relief be recorded in an “execution docket.” RCW 4.64.060. In part to allow clerks to determine what documents are judgments and enter them in the execution docket, the legislature required judgments to be in a specific form. As relevant here, the legislature required that all judgments awarding money contain a summary on the first page of the document.

RCW 4.64.030 Entry of judgment — Form of judgment summary.

* * *

(2)(a) On the first page of each judgment which provides for the payment of money . . . , the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment, and in the entry of a foreign judgment, the

U.S. 227, 229, 78 S. Ct. 674, 2 L.Ed.2d 721 (1958). Clerks on occasion have viewed these opinions or memoranda as being in themselves a sufficient basis for entering judgment in the civil docket as provided by Rule 79(a). However, where the opinion or memorandum has not contained all the elements of a judgment, or where the judge has later signed a formal judgment, it has become a matter of doubt whether the purported entry of judgment was effective, starting the time running for postverdict motions and for the purpose of appeal. (citations omitted.)

The amended rule eliminates these uncertainties by requiring that there be a judgment set out on a separate document—distinct from any opinion or memorandum—which provides the basis for the entry of judgment. That judgments shall be on separate documents is also indicated in Rule 79(b).

filing and expiration dates of the judgment under the laws of the original jurisdiction.

* * *

(3) . . . The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary.

In addition, the Supreme Court adopted rules that provide certainty and uniformity, and avoid traps for the unwary.⁵ As the Washington Supreme Court explained in *Kennewick, infra*, discussed below, CR 54(e) requires counsel to draft and submit a proposed form of judgment or final order, and CR 54(f) prohibits the signing or entry of a judgment or final order without five days' notice and an opportunity to object. The latter rule is particularly important because, in the absence of prejudice, "[t]he effect of the failure to comply with the notice requirement of CR 54(f) is to void the entry of the judgment and make the action of the trial court ineffectual." *City of Seattle v. Sage*, 11 Wn. App. 481, 523 P.2d 942, 943 (1974)(holding that an order dismissing charges and exonerating a bond was ineffective to trigger the time for appeal).⁶ Because the trial court issued its order without following

⁵ Note that Washington has a strong policy favoring resolution of disputes on the merits, not on technical procedural issues, illustrated by the authorities cited on pages 22-23 below.

⁶ Although that is the general rule, the Washington Supreme Court has held that a judgment entered without notice is not void if its entry did not prejudice the complaining party.

Failure to comply with the notice requirement in CR 54(f)(2) generally renders the trial court's entry of judgment void. *Seattle v. Sage*, 11 Wn.App. 481, 482,

those procedures, its order is effective as a decision but is void to the extent it was a “judgment.”⁷

The Washington Supreme Court confirmed its intent to provide certainty about judgments, and avoid traps for the unwary, by making post-judgment deadlines applicable only to (1) clearly identified or “formal” judgments (and, when a final decision is made without a judgment, limited appealable orders) that are (2) entered using the process set out in CR 54(e) and (f), in *Department of Labor & Industries v. City of Kennewick*, 99 Wn.2d 225, 661 P.2d 133 (1983). There, the trial court issued and filed a written decision affirming an administrative action imposing a penalty on the City. The Department of Labor & Industries issued a warrant to collect the penalty under a statute that required the entry of “a final decree” and the running of the appeal

523 P.2d 942 (1974). A judgment entered without the notice required by CR 54(f)(2) is not invalid, however, where the complaining party shows no resulting prejudice. *Soper v. Knafllich*, 26 Wn.App. 678, 681, 613 P.2d 1209 (1980).

Burton v. Ascol, 105 Wn.2d 344, 352, 715 P.2d 110 (1986). Here, North Coast suffered prejudice because the entry of the court’s order without following the procedures in CR 54(e) and (f) shortened North Coast’s deadline by a minimum of five days and contributed to North Coast’s belief that the court expected it to submit a proposed judgment and that the time for requesting attorney’s fees would not begin to run until entry of that judgment.

⁷ The Supreme Court also adopted CR 54(d)(1) and 78(e) requiring clerks to tax costs if the prevailing party does not file a motion within ten days of entry of a judgment. That task requires the clerk to have a document clearly recognizable as a judgment or (as happened here) the clerk will not do so.

period. The City objected, arguing that the decision affirming the penalty was not an appealable judgment or final order even though it purported to resolve the merits of the sole issue in the case. The trial court agreed and voided the warrant. The Department of Labor & Industries appealed, arguing that the decision affirming the penalty was a “final decree” (a “judgment” under CR 54(a)) from which the City could have appealed. In a split decision, the Court of Appeals held that the trial court’s decision affirming the penalty was a final judgment and reinstated the warrant. 31 Wn. App. 777, 779-81, 644 P.2d 1196 (1982). The Supreme Court reversed, holding that the decision affirming the penalty was not an appealable judgment because the procedures for presentation of a formal judgment or final order set out in CR 54(e) and (f) had not been followed. In doing so, the court explained that the definition of judgment in CR 54(a) must be interpreted so as to maximize certainty and clarity about when post-judgment deadlines begin to run. As a result, only a “formal” judgment or final order “prepared (in most cases) by the prevailing party,”⁸ separate from decisions and interlocutory orders, and entered after presentation and an opportunity to object, are final determinations and “judgments” for the purposes of post-judgment deadlines.

Judgments are defined in CR 54(a)(1):

A judgment is the final determination of the rights of the parties in the action and

⁸ 99 Wn.2d at 228.

includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in Rule 58.

These rules[,] standing alone, indicate the filing of a trial court's signed memorandum decision with the court clerk could constitute entry of a judgment. However, CR 54(e) clearly contemplates a more formal procedure.

(e) Preparation of Order or Judgment.

The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and his attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in paragraph (f)(2).

CR 54(e). This rule, on its face, requires entry of a formal order prepared (in most cases) by the prevailing party and signed by the judge. The memorandum decision in this case did not comply with these requirements.

* * * * *

Application of CR 54(e) in this case promotes uniformity and certainty. We see no apparent hardship on the prevailing party to present a formal order.

* * * * *

To summarize, we agree with the following reasoning in Judge Munson's dissent:

As a practical matter, the bar should not have to act as soothsayers to determine when a written trial court opinion or decision might be a final judgment. For the

sake of uniformity, the better practice is to follow CR 54; the prevailing party should submit a proposed judgment, decree or order, with appropriate notice and service upon the opposing party. All parties are then aware of the status of the proceeding and can consider the applicability of postjudgment motions such as motions for reconsideration, CR 59(b), appeals under RAP 2.2, and other time-limited procedures hinging upon entry of judgment. 31 Wn. App., at 783, 644 P.2d 1196. (Emphasis added.)

99 Wn.2d, at 228-31. *See also, Christensen v. Ellsworth*, 162 Wn.2d 365, 372, 173 P.3d 228 (2007) (“As a general matter, time calculation rules should be applied in a clear, predictable manner. ‘It is a well-accepted premise that [l]itigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights,” quoting *Stikes Woods Neighborhood Ass'n v. City of Lacey*, 124 Wn.2d 459, 463, 880 P.2d 25 (1994)). Note that this Division applied *City of Kennewick* to hold that a decision with an order remanding a case was not a judgment under CR 54 because it did not have a proper title for a “formal order or judgment.” *State v. Knox*, 86 Wn. App. 831, 835-36, 939 P.2d 710 (1997), *overruled on other grounds by State v. O'Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003).

The Supreme Court’s reasoning in *City of Kennewick* is clear. CR 54 must be read so as to give all of its provisions effect and, most importantly, in a way that promotes clarity and certainty, and avoids traps for the unwary. That reasoning applies at least equally to the order

granting North Coast’s motion for summary judgment as it does to the decision affirming the penalty in *City of Kennewick*.⁹ The trial court’s order granting North Coast’s motion for summary judgment was a decision, albeit one set out in an “order.”¹⁰ It was not identified as a judgment and did not satisfy the statutory requirements for a judgment awarding money. That order was drafted and filed by the court without following the presentation process required by CR 54(e) and (f). As the court’s later consideration of Fidelity’s motion for reconsideration and entry of a formal judgment show, that order did not end the case. As a

⁹ The order here is even more appropriate for designation as interlocutory because (1) RCW 4.64.030 requires judgments awarding money to contain specific information the trial court here did not include, a factor not present in *City of Kennewick*; (2) the nature of a judgment awarding money requires entry of a formal judgment clearly designated as such as a practical matter to allow entry in the execution document and related processing, also a factor not present in *City of Kennewick*; and (3) at least common practice requires the entry of a formal judgment after a monetary award. In other words, the circumstances here more strongly call for interpretation of the court’s order as a decision to be followed by presentation and entry of a formal judgment under CR 54(e) and (f) than the decision rejecting the appeal and affirming the administrative action in *City of Kennewick*.

¹⁰ Fidelity argued below that policy clarified in *City of Kennewick* applies only to “memorandum decisions,” apparently meaning opinions, and does not apply to orders granting motions. That is a distinction of form over substance. The court’s order here was its statement of its decision. The court could have used almost identical words in a document entitled “decision” or “opinion” to communicate its ruling (e.g., “After considering all the arguments, the court grants North Coast’s motion” (or “determines that North Coast’s motion should be granted”). There is no practical reason to treat a ruling differently based on its label. On the contrary, the Supreme Court’s reasoning makes it clear that all final decisions need to go through the notice and presentation process in CR 54(e) and (f) before they trigger post-judgment deadlines to provide the required clarity and certainty

result, that order was an interlocutory decision that triggered North Coast's obligation to present, and the court's later entry of, a formal judgment, but did not trigger post-judgment deadlines. In other words, the deadline in dispute did not begin to run until entry of the formal judgment after the filing of North Coast's motion for an award of fees. Accordingly, this court should hold that the trial court's order did not trigger the 10-day deadline in CR 54(b)(2) and remand for consideration of North Coast's motion for an award of attorney's fees on the merits..

3. **The Trial Court's Order Did Not Trigger the Running of the 10-day Period Because it Was Not a "Final" Resolution of the Action.**

Even if the court's order was a "judgment," it triggered the 10-day deadline only if was a "final determination of the rights of the parties in the action . . ." CR 54(a)(1). "A final judgment is a judgment that ends the litigation, leaving nothing for the court to do but execute [meaning enforce] the judgment." *In re Petersen*, 138 Wn.2d 70, 980 P.2d 1204, 1214 (1999), quoting *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 79 Wn. App. 221, 225, 901 P.2d 1060 (1995), *aff'd*, 130 Wn.2d 862, 929 P.2d 379 (1996)(Holding that retention of jurisdiction for later acts prevented an order from being final and appealable).

Except for orders dismissing actions or otherwise directing an

affirmative act,¹¹ orders granting motions are not final and may be revised, on a motion for reconsideration or otherwise, until entry of a final judgment.¹² The court's consideration and denial of Fidelity's motion for reconsideration, and later entry of a formal judgment, demonstrate that the order granting North Coast's motion did not end the litigation.¹³

More importantly, North Coast asserted claims against two parties here: (1) its first claim for relief asserted against Signal Electric, including its claim for 18 percent interest; and (2) its smaller second and third claims asserted against Fidelity. North Coast's motion for summary judgment sought only recovery of the lesser amount, leaving its claim for 18 percent interest against Signal Electric for further proceedings. CP 11, 15-16.¹⁴ Fidelity acknowledged that North Coast's

¹¹ We acknowledge that an order dismissing a case or directing requested action may be final because it does resolve and end litigation. In that sense, an order granting a motion for summary judgment could be a final judgment. However, an order granting a motion for an award of money in the form of the trial court's order here is not final because a formal judgment complying with RCW 4.64.030 must be entered to complete the case.

¹² Upon entry of final judgment, CR 59 and 60 control.

¹³ Note that "finality" for the purposes of *Res Judicata* and Collateral Estoppel is different. Fidelity confused the issue below by citing a number of *Res Judicata* decisions in support of its argument that an order granting a motion for summary judgment was a "final" determination under CR 54(a).

¹⁴ North Coast expressly acknowledged that its motion sought only the 12 percent interest due from Fidelity "rather than the 18 percent owed by Signal." CP 16.

motion sought only principal plus the 12 percent interest recoverable from Fidelity, not the 18 percent interest owed by Signal. CP 95. The trial court's order granting that motion does not mention Signal Electric and appears to resolve only the bond claims asserted against Fidelity.¹⁵ That order does not contain an express determination, supported by findings, that there is no just reason for delay or an express direction to enter the order as a final judgment. Accordingly, it was not a final determination under CR 54(b) ("In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."). *See also*, RAP 2.2(d). *See generally*, *Nelbro Packing Co. v. Baypack Fisheries*, 101 Wn. App. 517, 522-26, 6 P.3d 22, 25-27 (2000) (discussing the rule and holding that a judgment on a claim closely related to an unresolved claim with the required findings was not final and appealable because the trial court abused its discretion in making those findings).

In short, the trial court's order did not end the litigation. That did

¹⁵ The trial court's order also does not clarify whether it awarded summary judgment on one or both of North Coast's claims against Fidelity.

not occur until entry of the formal judgment that effectuated the court's monetary award in compliance with RCW 4.64.030, resolved North Coast's claims against Signal Electric, and dismissed all other claims. CP 227-29. Accordingly, the 10-day period did not begin to run until entry of that judgment. *Doolittle v. Small Tribes of Western Washington, Inc.*, 94 Wn. App. 126, 138, 971 P.2d 545 (1999)(A party who obtains summary judgment dismissing one party's claims may seek costs from that party ten days after entry of final judgment on all party's claims even though entered months after the summary judgment).

C. Entry of a Formal Judgment Cured Any Problem.

The more difficult questions here are moot. CR 54(d) requires only that a motion for fees be filed "no later than 10 days after entry of judgment." It does not require filing after the first judgment if more than one are entered.¹⁶ Even if the court's order granting summary judgment was a "judgment" under CR 54(a), the court indisputably entered a judgment on April 24, 2015. CP 227-28. Entering that judgment permitted North Coast an independent opportunity to file a motion for fees. Because it filed its motion before entry of that judgment, its motion was timely.

¹⁶ We do not intend to imply that there can be more than one "final determination of the rights of the parties" in an action outside of an amendment to a judgment or an appeal. On the contrary, common sense tells us that there can be only one. Here, that is the formal judgment entered at the end of the case.

II. The Trial Court Abused its Discretion in Refusing to Accept North Coast's Motion in the Absence of Prejudice.

A. The Trial Court's Ruling.

North Coast alternatively argued that the trial court should disregard any failure to meet the 10-day deadline pursuant to RCW 4.36.240 and its discretion to do so under CR 54(d)(2). CP 229-42; TR 10-15, 24-26. In particular, North Coast pointed out that (1) the Supreme Court's decision in *City of Kennewick* requires final orders to go through the presentment process set out in CR 54(e) and (f), and the court's order did not do so; (2) the court's order did not comply with RCW 4.64.030 and otherwise did not appear to be a final judgment; (3) the law was at least unclear; (4) North Coast reasonably anticipated the filing of a formal final judgment resolving the entire case; (5) considering its claim on the merits would further the public policies behind both the bond statutes and procedural scheme;¹⁷ (6) Fidelity contributed to the delay by entering into settlement negotiations but failing to respond; and (7) Fidelity suffered no prejudice. Fidelity argued that the court did not have discretion to allow a late filing

¹⁷ The ten-day deadline was added to the rule by the Supreme Court primarily to prevent "parties from raising trial-level attorney fee issues very late in the appellate process, sometimes after one or all appellate briefs have been submitted," not to be a trap for the unwary or to prevent an award required by statute to support an important public policy. The rule was also intended to be interpreted consistently with applicable statutes and other rules. Karl B. Tegland, *Washington Practice: Rules Practice* § 54, Supp. 40 (5th ed. 2006 & Supp. 2010) (drafters' comment on 2007 amendment to CR 54(d)(2)).

because North Coast could not show “excusable neglect.” CP 314-15, 297; TR 19-20. North Coast countered, pointing out that RCW 4.36.240 required the court to disregard any failure unless Fidelity could show substantial prejudice and no showing of excusable neglect was required. CP 238-41; TR 10-12. The court accepted Fidelity’s argument, impliedly holding that no showing of prejudice was required, and declined to consider North Coast’s motion on the merits. TR 26-30.

B. Standard of Review.

This court reviews a trial court's decision to reject untimely filed documents for an abuse of discretion. *E.g., O'Neill v. Farmers Ins. Co. of Wash.*, 124 Wn. App. 516, 521, 125 P.2d 134 (2004). A court abuses its discretion when it acts under a mistaken belief about the law, acts contrary to the undisputed facts, or makes a decision outside the range of reasonable decisions permitted by the law and facts. *E.g., Mitchell v. Washington State Institute*, 153 Wn. App. 803, 225 P.3d 280, 288 (2009); *Gourley, supra*, 158 Wn.2d at 466.

C. RCW 4.36.240 Required The Trial Court to Disregard Any Delay Because Fidelity Did Not Suffer Any Prejudice from the Delay.

Washington law favors resolution of cases “on the merits rather than technicalities.” *E.g., Keck v. Collins*, 181 Wn. App. 67, 325 P.3d 306, 314-17, 319 and n. 6 (2014) (reversing an order striking a late filing and holding that the trial court abused its discretion in rejecting a request for an extension under CR 6(b)). *See also, Vaughn*, 119 Wn.2d at 280 (“... the civil rules contain a preference for deciding cases on their

merits rather than on procedural technicalities,” citing cases); *Smith v. Arnold*, 127 Wn. App. 98, 103, 110 P.3d 257 (2005); *Hessler Const. Co., Inc. v. Looney*, 52 Wn. App. 110, 112, 757 P.2d 988 (1988)(failure to consider a filing in violation of the rules “violates the spirit of the Civil Rules, whose purpose is to allow the court to reach the merits.”). That policy is codified in RCW 4.36.240.

RCW 4.36.240 Harmless error disregarded.

The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party

North Coast challenged Fidelity to demonstrate any prejudice arising from the filing of North Coast’s motion 49 days after the deadline set in CR 54(d)(2), if applicable to the court’s order, and 18 days after the denial of Fidelity’s motion for reconsideration. CP 238-41. Fidelity offered no evidence of any prejudice, probably because the undisputed evidence showed that Fidelity suffered no prejudice.¹⁸

¹⁸ Prejudice in this context must be some interference with Fidelity’s ability to respond to the merits of North Coast’s motion. *E.g.*, *Zimny v. Lovric*, 59 Wn. App. 737, 740, 801 P.2d 259 (1990)(“To establish prejudice, the party making the challenge must show a lack of actual notice, a lack of time to prepare for the motion, and no opportunity to provide countervailing oral argument and submit case authority.” *See also*, *Goucher v. J.R. Simplot Co.*, 104 Wn.2d 662, 665, 709 P.2d 774 (1985); *Loveless v. Yantis*, 82 Wn.2d 754, 759-60, 513 P.2d 1023 (1973).”) Fidelity could not claim any surprise or interference because the statutes entitling North Coast to an award of fees are clear; North Coast sought and obtained an award of fees against Fidelity in the related action; and North Coast pleaded a claim for fees, asserted a claim in its motion for summary judgment, and attempted to settle that claim before filing its motion. Fidelity had a full opportunity to litigate the issue, including 93 days to respond to North Coast’s motion in writing and full oral argument. Fidelity was also allowed to

Instead, Fidelity asserted that no prejudice was required to reject North Coast's motion. It offered no argument for why RCW 4.36.240 was not applicable. As to authorities cited below, Fidelity either ignored them or incorrectly argued that they were distinguishable. Fidelity's core argument was far from clear. However, it appeared to assert that the discretion to extend the time for filing a motion for attorney's fees set out in CR 54(d) (the deadline applies "[u]nless otherwise provided by . . . order of the court") was controlled by CR 6(b)(2), and that rule did not require prejudice (and instead required North Coast to show excusable neglect).¹⁹ CP 296-97.

file a 13-page legal brief in response supported by a declaration presenting evidence, an 11 page sur-reply (CP 292-02), and a motion to strike North Coast's motion to excuse any delay.

Fidelity did assert that the delay in resolving the attorney's fees issues kept it from "settling" the case, referring to an attempt it made to tender payment of the principal amount awarded on the condition it be applied to only principal and cut-off North Coast's right to interest. TR 20-21. However, that assertion was frivolous because it was contrary to the only evidence in the record (CP 183, 266, 271-73), nonsensical in that Fidelity could have paid principle and interest at any time, and unrelated to the 49 days by which North Coast allegedly missed the deadline for filing its motion.

¹⁹ CR 6 provides as follows.

CR 6 TIME.

* * * * *

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

Fidelity's assertion that CR 6 controls is incorrect. At first glance, RCW 4.36.240 and CR 6 appear to be inconsistent. RCW 4.36.240 prohibits courts from rejecting claims on the basis of defects in the proceedings unless the defect caused the opposing party to suffer substantial prejudice, without consideration of excusable neglect. CR 6 does not mention prejudice. However, statutes and rules must be interpreted to be consistent if reasonable. *E.g., Emwright v. King County*, 96 Wn.2d 538, 543, 637 P.2d 656 (1981); *Williams v. Pierce County*, 13 Wn. App. 755, 759, 537 P.2d 856 (1975). RCW 4.36.240 and CR 6 can be interpreted to be consistent by recognizing the mandate in RCW 4.36.240 to disregard all errors that do not cause substantial prejudice and interpreting CR 6 to supplement that statute by permitting courts to extend deadlines with excusable neglect even when the failure to meet the deadline caused substantial prejudice. In short, the court must disregard a failure to meet a deadline in the absence of substantial prejudice, and may disregard a failure that causes prejudice with a showing of excusable neglect.

* * *

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 50(b), 52(b), 59(b), 59(d), and 60(b).

We also note that Courts must interpret statutes (and rules) “such that all of the language is given effect, and "no portion [is] rendered meaningless or superfluous,"" *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598, 601-02 (2003)(citing cases, internal quotation marks removed). Fidelity’s argument would make the grant of discretion in CR 54 superfluous because it would provide nothing not already provided by CR 6.

The Washington Supreme Court considered a closely analogous issue in *Goucher v. J.R. Simplot Co.*, 104 Wn.2d 662, 664-65, 709 P.2d 774 (1985). There, the trial court granted the defendant’s motion *in limine* made on the morning of trial. The plaintiff appealed, arguing that the motion was filed too late under CR 6(d)(requiring motions to be filed at least five days before the hearing). The Supreme Court affirmed, reaffirming earlier holdings that “reversal for failure to comply [with the time requirement] requires a showing of prejudice,” and finding no prejudice because the opposing party had an opportunity to argue the merits. 104 Wn.2d, at 665. Although the court discussed only CR 6(d), its reasoning and holding are broader and extend to CR 6(b)(2).²⁰ Other cases have generally reaffirmed that principle and its application to other rules. *E.g., Beers v. Ross*, 137 Wn. App. 566, 154 P.3d 277, 281 (2007)

²⁰ Both subsections (b)(2) and (d) of CR 6 were applicable to the late filing. Accordingly, the affirmance indicates that both subsections are subject to a prejudice requirement. In any event, nothing in the opinion suggests that the court would treat subsection (b)(2) any differently, and there is no logical reason to do so.

(reversing a trial court’s refusal to allow the filing of a late reply caused by an “oversight,” citing CR 6(b) and *Goucher*); *Santos v. Dean*, 96 Wn. App. 849, 982 P.2d 632, 637 (1999)(rejecting an argument that CR 6 controlled and holding that the test to be applied when a court considers a motion to extend the deadline for responding to requests for admissions, similar to the discretion permitted under CR 54(b)(2), involves only “two questions: (1) whether permitting the extension subserves the presentation of the merits of the case; and (2) whether the extension will prejudice the opposing party.”); *Zimny v. Lovric*, 59 Wn. App. 737, 740, 801 P.2d 259 (1990)(affirming acceptance of a late motion and noting that “Washington courts have held that reversal for failure to comply with the notice provisions of CR 6 requires a showing of prejudice.”).

The recent decision of *O’Neill v. City of Shoreline*, 183 Wn. App. 15, 332 P.3d 1099 (2014), is of particular note here because it holds that the court’s discretion to permit a late motion under CR 54(b)(2) is independent of CR 6, no excusable neglect is necessary to do so, and the *Goucher* prejudice requirement applies. *O’Neill* also rejects

the primary authority Fidelity relied upon below.²¹ There, the City of Shoreline appealed an award of attorney's fees against it on a motion made nearly a month after entry of a judgment. The City argued, as Fidelity did below, that the trial court could not retroactively extend the time for filing a motion for fees without a showing of excusable neglect under CR 6(b). The Court of Appeals rejected that argument and affirmed the trial court's award of fees, explaining as follows.

The City contends that the trial court erred by considering the [plaintiffs'] motion for determination of the amount of fees and costs because they filed it more than 10 days after the court entered a stipulated judgment for damages in their favor. The City asserts that the trial court must, but did not, make a finding of excusable neglect before it could consider the [Plaintiffs'] untimely motion. We disagree.

CR 54(d)(2) requires a party seeking attorney fees and expenses to file a claim by motion "no later than 10 days after entry of judgment." CR 6(b) provides

²¹ Fidelity relied heavily on *Corey v. Pierce County*, 154 Wn. App. 752, 773-74, 225 P.3d 367 (2010), claiming that the court there "held that the plaintiff failed to show excusable neglect" and, as a result, could not overturn a denial of a motion for attorney's fees for a failure to file a motion for an award within ten days of entry of judgment. CP 214. It appears that the trial court accepted that argument. A close examination of *Corey*, however, shows that it does not stand for the proposition Fidelity claimed. Although the court did make a comment about "excusable neglect" without explanation or citation, the opinion makes it clear that the only issue on appeal was whether the 10-day limit in CR 54(d) or a different limit in RCW 49.48.030 applied to a request for fees under the wage claim statute. The court analyzed only that issue and held only that CR 54(d) does apply to a claim under RCW 49.48.030. The comment about "excusable neglect" is, at most, unsupported *dicta* not followed in any decision.

As the quotation below shows, the *O'Neil* court rejected *Corey* as authority for the proposition that a party must show excusable neglect to avoid the ten-day deadline in CR 54(d)(2).

procedures for enlarging the time specified in this rule. CR 6(b) specifically prohibits extending the time for taking action under rules 50(b), 52(b), 59(b), 59(d), and 60(b). The [plaintiffs] never filed a motion to enlarge time. The City claims that this omission resulted in the [plaintiffs'] waiver of any right to recover fees and costs.

Neither party cited in its briefing what we consider to be the controlling authority, *Goucher v. J.R. Simplot Co.*, [104 Wn.2d 662, 709 P.2d 774 (1985)]. In *Goucher*, the defendant filed a motion *in limine* the first day of trial, in violation of the time requirements of CR 6(d). Our Supreme Court rejected the plaintiff's contention that the trial court erred in considering the motion, stating, "CR 6(d) is not jurisdictional, and that reversal for failure to comply requires a showing of prejudice." A party establishes prejudice by showing "a lack of actual notice, a lack of time to prepare for the motion, and no opportunity to provide countervailing oral argument and submit case authority."

The City has offered no meaningful distinction between the time requirements of CR 6(d) and CR 54(d)(2), and we see none. The identification in CR 6(b) of specific time requirements in rules that cannot be enlarged strongly supports the conclusion that *Goucher* applies to the other time requirements of the civil rules. Here, the City conceded at oral argument that it demonstrated no prejudice to the trial court. Therefore, even if the [plaintiffs] failed to comply with the 10-day time limit, they did not waive their right to recover fees. (Citations in footnotes omitted.)

183 Wn. App. at 21-22, 332 P.3d at 1103-04.

We recognize that those cases involved appeals from the allowance of late motions, not denials, and that the standard for exercise of discretion is broad. However, those authorities are significant here because their reasoning is broad, and they all apply a prejudice standard without differentiating between allowances or denials. In addition, RCW 4.36.240 is not limited to appeals of allowed motions-it applies to

all failures to comply with the Civil Rules at all stages of litigation. *See, Veranth v. State, Dept. of Licensing*, 91 Wn. App. 339, 344, 959 P.2d 128, (1998)(Applying RCW 4.36.240 to reverse a decision).

In short, the trial court erred by ignoring RCW 4.36.240 and concluding that it could reject North Coast's motion for an award of fees in the absence of substantial prejudice. Because that legal conclusion is wrong, the trial court's decision must be reversed and remanded for consideration of North Coast's motion on the merits.

D. The Court Also Erred in Accepting Fidelity's "Excusable Neglect" Argument.

1. North Coast Was Not Required To Show "Excusable Neglect."

As the quotation immediately above shows, the discretion allowed under CR 54(b)(2) is independent of the discretion allowed by CR 6, and the former does not require a showing of excusable neglect, at least in the absence of prejudice. *O'Neill*, 183 Wn. App. at 21, 332 P.3d at 1103. Accordingly, the trial court also erred in accepting Fidelity's "must show excusable neglect" argument.

2. If Excusable Neglect Was Required, North Coast Met that Burden.

The analysis here must begin with recognition of the trial court's issuance of a document entitled an "order," without adjudicatory language, that did not comply with the statutory requirements for a judgment awarding money, without following the procedures and protections set out in CR 54 (e) and (f), and that did not resolve all of

North Coast's claims. Doing so led North Coast to reasonably believe that the court's order was just an order to be finalized in a proper judgment after presentment, and that it could file its motion for attorney's fees after entry of that judgment.

North Coast's decision to file its motion with its presentation of a proposed judgment must also be considered in the context of the custom of obtaining formal judgments for money awards (in part because of the requirements of RCW 4.64.030). Similarly, the trial court needed to consider the state of the law, particularly (1) RCW 4.64.030's command that a money judgment without the required summary cannot be entered in the execution docket; and (2) the Supreme Court's statement in *City of Kennewick* to the effect that post-judgment time requirements do not begin to run until the "prevailing party . . . submit[s] a proposed judgment, decree or order, with appropriate notice and service upon the opposing party" and a formal final order or judgment is entered. Similarly, the trial court needed to consider the fact that the motion it granted did not purport to resolve North Coast's claim against Signal Electric, or at least its claim for 18 percent interest, and was not a final disposition under CR 54(b). In short, if not establishing that the order was not a judgment, the law was at least unclear and it was reasonable for North Coast to treat the court's order as an "order" under the definition in CR 54(a), submit a proposed judgment pursuant to CR 54(e), and treat that judgment as the document triggering the 10-day deadline.

Prejudice is also an important factor in determining whether a delay was caused by “excusable neglect.” *E.g.*, *Keck v. Collins*, 181 Wn. App. 67, 84-85, 325 P.3d 306, 314-15, *rev. granted*, 325 P.3d 306 (2014) (listing commonly considered factors and reversing a refusal to accept a late filed affidavit). In addition to its independent significance, the lack of any prejudice to Fidelity favors a finding of excusable neglect. In other words, the lack of any foreseeable prejudice supports the reasonableness of North Coast’s reading of the rule and decision to file its motion with its proposed judgment.

Although not critical, Fidelity’s knowledge of North Coast’s claim for attorney’s fees and promise to respond to North Coast’s offer to settle the attorney’s issue, without disclosure of its view that the order triggered the 10-day deadline, also support a finding of excusable neglect.

Finally, the court must consider the purposes of the statutory schemes that provide the underlying right to recover attorney’s fees. RCW Chapters 30.08 and 60.28 are remedial statutes intended to protect suppliers of labor or materials on a public construction projects, and to impose the obligation to pay on the sureties who issue bonds.²² In

²² Both statutory schemes must be liberally construed to protect claimants within the protected class. *E.g.*, *Better Financial Solutions, Inc. v. Transtech Electric, Inc.*, 112 Wn. App. 697, 51 P.3d 108, 112 (2002)(“the statute[s are] liberally construed to provide security for all parties intended to be protected by [them],” citing *TPST Soil Recyclers of Washington, Inc. v. W. F. Anderson Const., Inc.*, 91 Wn. App. 297, 300, 957 P.2d 265 (1998)).

particular, both sets of statutes include mandatory, one-sided attorney's fee provisions intended to protect claimants who are forced to sue to collect. *E.g., Diamaco, Inc. v. Mettler*, 135 Wn. App. 572, 145 P.3d 399 (2006)(confirming that an award is mandatory). Accordingly, the courts must liberally apply the statutes to promote that protective purpose.

On the other side, there is no evidence that North Coast acted without regard for the Civil Rules, with "a complete lack of diligence," *Keck, supra*, or in bad faith. North Coast did not base its request for an extension on "an easily manufactured excuse that the court could not verify." *Id.* Although North Coast could have avoided the controversy by filing its second motion earlier, that is always the case and does not make North Coast's decision to file its motion with its proposed judgment unreasonable.

In short, if the court's order was a "judgment" under CR 54(a) and the later entry of a formal judgment did not correct that problem, the circumstances here show sufficient excuse to require consideration of that motion.

E. The Trial Court Abused Its Discretion in Refusing to Consider North Coast's Motion.

The trial court's discretion is not in issue unless this court decides that North Coast's initial motion for an award of fees was insufficient; the trial court's order granting North Coast's motion for summary judgment was a final disposition of all North Coast's claims

and a “judgment” sufficient to trigger the 10-day deadline in CR 54(b)(2); and the entry of a formal judgment did not cure any problem. In that event, this court must hold that the trial court abused its discretion under CR 54(b)(2) because the delay was short, Fidelity suffered no prejudice from the delay, North Coast’s belief that the deadline would run from entry of a formal judgment complying with 4.64.030 was reasonable, and the circumstances described above otherwise require that the court consider North Coast’s motion on the merits.

CONCLUSION

This court should reverse the trial court’s denial of North Coast’s motion for an award of attorney’s fees and remand for consideration on the merits, holding either that the court incorrectly determined that North Coast’s motion was late or that the court abused its discretion in failing to excuse any delay.

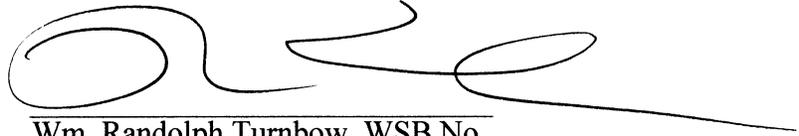
REQUEST FOR ATTORNEY’S FEES

Pursuant to RAP 18.1, North Coast requests an award of its reasonable attorney’s fees on appeal under RCW 30.08.010 and 60.28.030.

CERTIFICATE OF SERVICE

I certify that I served Defendant/Respondent’s counsel with a copy of this brief by email and by First Class Mail on August 28, 2015.

DATED: August 28, 2015.

A handwritten signature in black ink, consisting of a large, stylized 'W' followed by a cursive 'R' and 'T'. The signature is written above a horizontal line.

Wm. Randolph Turnbow, WSB No.
19650, Attorney for
Plaintiff/Appellant