No. 1035209

**IN THE SUPREME COURT OF
THE STATE OF WASHINGTON**

ERIC HOOD,

Appellant,

v.

CITY OF LANGLEY,

Appellee.

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

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I. INTRODUCTION

Appellant Eric Hood has filed yet another baseless motion to delay the conclusion of this lawsuit he filed more than eight years ago. For the second time, he asks for an extension of the deadline to file a petition for discretionary review with this Court pursuant to RAP 18.8(b). For the second time, Appellee the City of Langley opposes further delay because Mr. Hood has not shown "extraordinary circumstances" that could justify further delay. RAP 18.8(b). Again, "the desirability of finality of decisions outweighs" Mr. Hood's continued efforts to stall the conclusion of this lawsuit. RAP 18.8(b).

II. PROCEDURAL HISTORY

On July 1, 2024, the Court of Appeals unanimously affirmed the trial court's exercise of its broad discretion to set Public Records Act ("PRA") penalties pursuant to *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3 735 (2010). Mr. Hood is represented in this appeal by attorney Bill

Crittenden who signed the appeal briefs, presented oral argument to the Court of Appeals on Mr. Hood's limited appeal, and still has not withdrawn as counsel of record.

Despite his continued representation by counsel, on July 21, 2024, Mr. Hood filed with the Court of Appeals a Motion for Reconsideration "pro se." At the direction of the Court of Appeals, the City of Langley filed its opposition to the reconsideration motion. The City of Langley noted in that brief:

> **II. MR. HOOD MAY NOT FILE A *PRO SE* MOTION.**
>
> Mr. Hood is represented here by a PRA lawyer. His lawyer has neither withdrawn nor signed on to the motion. Mr. Hood was not permitted to file that motion *pro se*. *State v. Romero*, 95 Wn. App. 323, 325-26, 975 P.2d 564 (1999); *In re B.R.*, 25 Wn. App. 2d 1012, 2023 WL 142180, *3 n.3 (Jan. 10, 2023) (unpublished).

10/7/24 Decl. of Jessica L. Goldman in Opp'n to Hood Mot., Ex. 1 at 2. The City of Langley served its opposition brief on

both Attorney Crittenden, as required, and on Mr. Hood. *Id.* at final page.

RAP 18.3(b) requires that an attorney notify the Courts of his intent to withdraw as counsel of record. To date, Mr. Crittenden has not withdrawn and remains counsel of record for Mr. Hood in this appeal.

On August 26, 2024, the Court of Appeals issued its Order Denying Motion to Reconsider and, as required, served the Order on Mr. Hood's counsel of record, Mr. Crittenden. 10/7/24 Decl. of Jessica L. Goldman in Opp'n to Hood Mot., Ex. 2. The Court of Appeals Administrator/Clerk advised all counsel of record that "[w]ithin 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." *Id.* (emphasis added). RAP 13.4 required that Mr. Crittenden "must" file any petition for review by September 25, 2024.

Mr. Crittenden did not file a petition for review by September 25, 2024.

On October 7, 2024, Mr. Hood filed with the Court of Appeals a Motion for Extension of Time to File Petition for Review ("Hood's 1st Mot."). He represented in that motion that he did not learn of the Court of Appeal's August 26 Order denying reconsideration until October 6, 2024, when "Mr. Crittenden forwarded to Hood for the first time [the Court of Appeal]'s *Order Denying Motion for Reconsideration*[.]" Hood's 1st Mot. at 2. Of course, the Court of Appeal's service on Mr. Hood's counsel of record of that Order was service on Mr. Hood. Moreover, Mr. Hood's statement is false. He **did not** "bec[o]me aware of" the Court of Appeal's denial of reconsideration "for the first time on October 6, 2024." *Id.*

On September 26, 2024, the City of Langley had filed its opposition to yet another *pro se* motion Mr. Hood filed with the Court of Appeals in yet another baseless appeal. 10/7/24 Decl. of Jessica L. Goldman in Opp'n to Hood Mot., Ex. 3. In that

brief, served directly on Mr. Hood, *id.*, the City specifically noted that the Court of Appeals had rejected the reconsideration motion in the case at bar:

> There is no meritless motion that Mr. Hood will not file before the Island County Superior Court or this Court to draw out his unsuccessful lawsuits against the City of Langley. ***See, e.g.*, Order Denying Motion for Reconsideration, No. 857075-0-I** (Div. I. Aug. [2]6, 2024)[.]

Id. at 2 (emphasis added).

Mr. Hood waited an additional 10 days to file his first motion under RAP 18.8(b).

Upon transfer of Mr. Hood's first RAP 18.8(b) motion to this Court, the Acting Supreme Court Clerk informed Mr. Hood and his lawyer Mr. Crittenden on October 7, 2024 as follows:

> The parties are advised that no ruling is being made at this time on the Petitioner's motion for an extension of time to file a petition for review. A Department of the Court will decide the Petitioner's motion for extension of time, but only if the Petitioner files

> a proposed petition for review in this Court by **November 6, 2024**….
>
> A motion for extension of time to file is normally not granted; see RAP 18.8(b).
>
> Failure to file a proposed petition for review by **November 6, 2024**, will likely result in dismissal of this matter.

10/7/24 Supreme Court Clerk Ltr. Ruling (underlining added).

III. ARGUMENT

Again, Mr. Hood does not so much as acknowledge that he must show "extraordinary circumstances" pursuant to RAP 18.8(b), let alone meet that heavy burden. *State v. Moon*, 130 Wn. App. 256, 260, 122 P.3d 192 (2005) ("The burden is on" the appellant "to provide 'sufficient excuse for [his] failure to file a timely notice of appeal' and to demonstrate 'sound reasons to abandon the [judicial] preference for finality.'") (quoting *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993)).

In *Reichelt v. Raymark Industries, Inc.*, the court rejected a request to re-open the appeal period 10 days after the 30-day appeal deadline had run. 52 Wn. App. 763, 765, 764 P.2d 653 (1988). The court noted that RAP 18.8(b):

> severely restricts this court's authority to grant [appellant's] motion to extend time to file its notice of appeal. RAP 18.8(b) permits such an extension "only in extraordinary circumstances to prevent a gross miscarriage of justice" and clearly favors the policy of finality of judicial decisions over the competing policy of reaching the merits in every case.

Id. The court noted that "[t]his rigorous test has rarely been satisfied" and that where it had been satisfied "the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged." *Id.* "In each case, the defective filings were upheld due to 'extraordinary circumstances,' *i.e.*, circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control." *Id.* In other words,

the appeal had been faulty despite the "appellant's reasonably diligent conduct." *Id.* at 766. Negligence or the lack of reasonable diligence does not satisfy the extraordinary circumstances test of RAP 18.8(b). *State v. Hand*, 177 Wn.2d 1015, 308 P.3d 588, 589 (2013) (affirming denial of RAP 18.8(b) motion).

Moreover, "[a]pplication of this rule does not turn on prejudice to the opposing party, since if it did the court would rarely deny a motion for extension of time." *Id.* "Even if the appeal raises important issues, it would be improper to consider those issues absent sufficient grounds for granting an extension of time." *Id.*[1] "The court will ordinarily hold that the interest in finality of decisions outweighs the privilege of a litigant to obtain an extension of time." *Id.* "In light of this policy, the standard set forth in RAP 18.8(b) is rarely satisfied." *Id.* "[T]he prejudice of granting such motions would be to the appellate

[1] Of course, Mr. Hood *already* has had his appeal.

system and to litigants generally, who are entitled to an end to their day in court." *Reichelt*, 52 Wn. App. at 766 n.2.

In *Reichelt*, the court ruled that a mistake by the appellant's attorney resulting in a 10-day delay did not satisfy RAP 18.8(b)'s rigorous test. *Id.*; *accord Shumway v. Payne*, 136 Wn.2d 383, 396-97, 964 P.2d 349 (1998) (RAP 18.8(b) not satisfied where appellant's attorney may have told her that it was not necessary to ask the Supreme Court for review, though it was necessary).

In *Bostwick v. Ballard Marine, Inc.*, the court rejected a motion to extend the appeal deadline where the trial court did not advise the appellant of the entry of the underlying order. 127 Wn. App. 762, 775, 112 P.3d 571 (2005). The court noted that the appellant "failed to make any inquiry as to the status of pending orders. Its lack of diligence in monitoring entry of an order on a pending motion does not amount to 'extraordinary circumstances.'" *Id.* at 776.

Likewise, the court in *Beckman v. State Department of Social and Health Services*, found there were no extraordinary circumstances where the State untimely appealed a $17.76 million jury award against the State which included substantial punitive damages. 102 Wn. App. 687, 11 P.3d 313 (2000). The court rejected the State's argument that the failure of plaintiffs' counsel to give the State notice of entry of judgments was sufficient to satisfy RAP 18.8(b). "Plaintiffs' counsel gave the State notice of presentation of the proposed judgments. This was all Plaintiffs' counsel was required to do; the State was then obligated to monitor the actual entry of the judgments." *Beckman*, 102 Wn. App. at 695. Likewise, the court held that the failure of the State's lawyer to act with reasonable diligence in ensuring that the notice documents were timely routed to the responsible attorneys in the Attorney General's Office also did not arise to "extraordinary circumstances." *Id.* "Negligence, or the lack of reasonable

diligence does not amount to extraordinary circumstances." *Id.* (quotation marks & citations omitted).

Nothing here comes close to satisfying this *second* motion pursuant to RAP 18.8(b). Mr. Hood has known since September 26, 2024 – when the City so informed him in a brief to the Court of Appeals – that the Court of Appeals had previously denied his reconsideration motion, triggering his 30-day deadline to petition for discretionary review. 10/7/24 Decl. of Jessica L. Goldman in Opp'n to Hood Mot., Ex. 3 at 2. A month has elapsed since then.

And Mr. Hood has known since October 7, 2024 that his first RAP 18.8(b) motion would "only" be considered by this Court if he "file[d] a proposed petition for review in this Court by **November 6, 2024**." 10/7/24 Supreme Court Clerk Ltr. Ruling at 1. Another 18 days have elapsed since then.

The mere fact that Mr. Hood has two appellate briefs due in *another* 10 days and 12 days, respectively, is not an "extraordinary circumstance[]" that can justify further enlarging

the firm deadline for filing a petition for discretionary review. RAP 18.8(b). While this would be true for any litigant, it is all the more true here with an appellant who makes his living suing and alleging violation of the Public Records Act against public agencies and has deep familiarity with appellate process, including petitions for discretionary review. *See, e.g.*, *Hood v. City of Langley*, No. 85075-0-I, 2024 WL 3252978 (Div. I July 1, 2024) (unpublished); *Hood v. City of Prescott*, 31 Wn. App. 2d 1003, 2024 WL 1883967 (Div. III Apr. 30, 2024) (unpublished) (**pro se**); *Hood v. Centralia College*, 30 Wn. App. 2d 1054, 2024 WL 1732719 (Div. II Apr. 23, 2024) (unpublished) (**pro se**); *Hood v. Centralia College*, 200 Wn.2d 1032, 525 P.3d 151 (2023) (**denying petition for discretionary review**); *Hood v. Centralia College*, 23 Wn. App. 2d 1003, 2022 WL 3043208 (Div. II Aug. 2, 2022) (unpublished) (**pro se**); *Hood v. Columbia Cnty.*, 21 Wn. App. 2d 245, 505 P.3d 554 (2022); *Hood v City of Nooksack*, 18 Wn. App. 2d 1050, 2021 WL 3291749 (Div. I Aug. 2, 2021) (unpublished) (**pro**

se); *Hood v. City of Langley*, 193 Wn.2d 1021, 448 P.3d 61 (2019) (**denying petition for discretionary review**); *Hood v. City of Langley*, 7 Wn. App. 2d 1030, 2019 WL 360132 (Div. I Jan. 28, 2019) (unpublished); *Hood v. S. Whidbey School Dist.*, 187 Wn.2d 1020, 390 P.3d 349 (2017) (**denying petition for discretionary review**); *Hood v. S. Whidbey School Dist.*, 195 Wn. App. 1058, 2016 WL 4626249 (Div. I Sep. 6, 2016) (unpublished).

Mr. Hood's second baseless RAP 18.8(b) motion should be denied. Moreover, this is a PRA case, and this Court has emphasized "the importance of speedy review of PRA claims." *Kilduff v. San Juan Cnty.*, 194 Wn.2d 859, 871, 453 P.3d 719 (2019). While this eight-and-a-half-year-old case has been anything but speedy due to Mr. Hood's delaying tactics, it should be ended now.

IV. SANCTIONS

Mr. Hood's latest motion is frivolous just like his first RAP 18.8(b) motion. Each of these frivolous motions required

the City of Langley to respond further to a lawsuit that should be concluded. Pursuant to RAP 18.9(a), the City moves for an award of attorney's fees incurred to respond yet again.

V. CONCLUSION

The City of Langley, again, respectfully requests that this Court reject a baseless motion from Eric Hood and award the City attorney's fees pursuant to RAP 18.9(a).

This document contains 2,143 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 25th day of October, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused to be served a copy of the foregoing ***via electronic service*** on the following:

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DATED this 25th day of October, 2024.

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October 25, 2024 - 8:18 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,520-9
Appellate Court Case Title:	Eric Hood v. City of Langley
Superior Court Case Number:	16-2-00107-1

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Appellee's Opposition to Appellant's Latest Motion for Extension of Time

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