WASHINGTON STATE SUPREME COURT

ERIC HOOD, Appellant , v. CITY OF LANGLEY, Respondent.	No. 1035209 **REPLY TO MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW**

Hood replies to *Respondent's Opposition To Appellant's Latest Motion For Extension Of Time To File Petition For Review*. ("Opp.")

I. FACTUAL SUMMARY

Hood was formerly represented by attorney William Crittenden on appeal in Court of Appeals No. 850750 – Division I. That appeal was terminated. Its termination based this petition.

Hood, pro se, moved for reconsideration of Division 1's termination. It was denied. On August 26, 2024, the clerk at Division 1 served its denial of Hood's pro se motion to

Crittenden, not to Hood. Hood was not aware of that denial until October 6, 2024. Hood therefore filed a motion to extend his petition for review.

This Court ordered that Hood file his petition on November 6, 2024. Hood filed a motion to extend filing his petition on the grounds that it was due within two days of a consolidated brief required by Division 1.

See Hood's 10/25/24 *Motion For Extension Of Time To File Petition For Review,* for reference to the above facts.

On November 19, 2024, Division 1 granted Hood's motion to separate the two cases that it had formerly consolidated and ordered Hood to file his opening brief within 30 days. Appendix 1. It linked those cases. *Id.*

II. REPLY ARGUMENT

Like City's response to Hood's PRA request, City's insurer-appointed attorney Jessica Goldman has unnecessarily complexified a clerical error by misrepresenting facts, misrepresenting or misapplying law, misrepresenting argument

as facts, discussing irrelevant facts, lying, violating the PRA and blaming Hood. 10/25/24 *Respondent's Opposition To Appellant's Latest Motion For Extension Of Time To File Petition For Review*, ("*Opp*.")

a. Goldman made false and unsupported arguments in the facts section of her opposition

In the "procedural history" of Goldman's opposition to Hood's motion to extend, she referenced a brief she filed in Division 1. *Opp*. p. 2

In that brief, Goldman admitted that Hood is "now pro se" and requested that "Mr. Hood," *not* his former attorney, should be sanctioned. Appendix 2, p. 1, 32.

To "support" her procedural history argument that Hood is barred from representing himself, Goldman a *second* time misrepresented that *State v. Romero,* 95 Wn. App. 323, 975 P.2d 564 (1999) applies to these circumstances. *Compare id*., p. 2 *with* Opp. p. 2. *Romero* is a criminal case in which a defendant, who was "*appointed"* counsel, CR 71 (b), was denied filing pro

se. *State v. Romero,* 95 Wn. App. 323, at 325-26. No civil case supports Goldman's argument. CR 71(c) governs, thus of course, Goldman does not mention it. It requires that "attorney shall file and serve a Notice of Intent To Withdraw on all other parties in the *proceeding*." (Emphasis added)

Crittenden's representation of Hood ended when Hood's appeal in Division 1, i.e., the "proceeding," was denied.

> "A "decision terminating review" is defined as having three characteristics: (1) it is filed after review is accepted by the appellate court filing the decision, (2) it terminates review unconditionally, and (3) it is "(i) a decision on the merits."

Personal Restraint of Lord, 123 Wn. 2d 737, 739 (Wash. 1994) Division 1's decision terminated the proceeding, thus also terminated his former counsel's representation. RAP 18.3(b) did not apply. *Opp*., p. 3

Goldman's argument also omits the relevant fact that Hood was not represented by Crittenden when Hood, pro se, filed his motion for reconsideration in Division 1, thus her argument that Division 1's "service on [Crittenden] was service on Hood"

also does not apply. *Id*., p. 4.

Finally, "when CR 71 is applicable, strict compliance is unnecessary where no prejudice is shown." *Jones v. Home Care of Wash. Inc.*, 152 Wn. App. 674, 681 (Wash. Ct. App. 2009). Goldman admitted that Hood is pro se. Thus, even if CR 71 applied here, Goldman could show no prejudice.

Goldman argued in her procedural history that Hood was aware of Division 1's denial of his motion because she had noted it in the:

> 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. 857075-0-1 (Div. I. Aug. [2]6, 2024)[.]

Opp., p. 4-5. Goldman intentionally failed to mention that the brackets, *id.,* were *not* in the original brief. Instead, Goldman

falsely stated that the above quote was contained in the "10/7/24 Decl. of Jessica L. Goldman in Opp'n to Hood Mot., Ex. 3," calculating that either Hood or this Court would not examine "Ex. 3," which exhibit does *not* contain the text she cited.

The actual text of Exhibit 3 states:

> 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. 857075-0-1 (Div. I Aug. 6, 2024)

10/7/24 Decl. of Jessica L. Goldman in Opp'n to Hood Mot., Ex. 3.

No "Order" was issued on "Aug. 6, 2024." *Id*. Of course, Goldman omitted that material information from this Court.

City's insurer-appointed attorneys have repeatedly lied and misrepresented facts and law to Hood and courts. For example, Goldman recently lied that Hood "always" seeks continuance of his opening brief. *Compare* Appendix 3, p.3, with

Hood v. City of Nooksack, No. 82081 8, (Wash. Ct. App. Aug. 2, 2021).

https://acdocportal.courts.wa.gov/PublicAccess/search ca.html

For anyone to rely on *anything* Goldman says would be imprudent, at best. Hood had no basis for relying on Goldman's false claim that Hood's motion for reconsideration had been denied on August 6, 2024.

b. Goldman misrepresented case law in her argument

In the argument section of her opposition, Goldman claims that no extraordinary circumstance justifies extension. Opp. p. 6. Her claim of course ignores the reason why Hood filed the instant motion: Hood was tasked by two appellate courts to file major briefs within two days of one another. Hood's motion to extend his brief in Division 1 was not granted until November 19, 2024. Had Hood not filed his motion to extend his petition in this Court, he would have risked that Division 1 would not grant his motion to extend his brief in Division 1. Goldman does not address those extraordinary circumstances.

Instead, Goldman repeated some arguments made in her opposition to Hood's motion to extend in Division 1.

None of the cases that Goldman cites in her opposition here involve the circumstances here, viz., that Division 1's clerical error prevented Hood from learning of Division 1's denial of his motion for reconsideration.

The cases Goldman cites instead involve:

> [n]egligence or the lack of reasonable diligence [;] mistake by the appellant's attorney [;] *a trial court*[s failure to] advise the [plaintiff] of an entry of an order [or] failure of [lawyer] to act with reasonable diligence.

Opp. p. 6-11 (emphasis added).

As is her practice, which too many courts have tolerated, Goldman does not cite case law that might apply to the circumstances presented by this case. She instead again distinguishes Hood in violation of RCW 42.56.080, Opp., p. 12-13, a practice that lower courts have repeatedly tolerated.

By granting Hood's motion to extend, Division 1 decision rejected her arguments. So should this court.

c. Applicable case law does not merit dismissal

Case law that remotely applies to these circumstances holds:

> This oversight was corrected as soon as it was brought to his attention. It is difficult to visualize how "the demands of justice" would be served by dismissing petitioner's appeal under the facts of this case.

State v. Ashbaugh, 90 Wn. 2d 432, 438-39 (Wash. 1978).

Here, Hood committed no "oversight." Rather, the "oversight" was caused by Division 1's uncorrected clerical error. Hood immediately addressed Division 1's "oversight" as soon as it was brought to his attention.

With regard to CR 18.8(b)

> "Extraordinary circumstances" include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control.

.*Shumway v. Payne*, 136 Wn. 2d 383, 395 (Wash. 1998) (Sanders, dissenting).

For example, where a pro se petitioner did not realize that procedural rules had changed, he fell into a "trap for the unwary."

Scannell v. State, 128 Wn.2d 829, 831, 912 P.2d 489 (1996). Similarly, Hood was unaware that Division 1 failed to properly serve Hood its denial of his pro se motion for reconsideration, which was "understandable [and] clearly an innocent mistake. An objective and reasonable pro se litigant […] could have made the same mistake." *Id.,* at 834. Similarly, to deny review because of Division 1's oversight would be "drastic: [Hood] loses his filing fee and loses any chance to appeal, an opportunity which he had otherwise diligently pursued." *Id.* This Court has been lenient where court actions "caused confusion." *Id.* at 835.

Any oversight, *if* it is to be attributed to Hood, does not warrant dismissal but might instead be subject to the alternative rule of RAP 1.2(b).

> Cases . . . will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands . . .

RAP 1.2(a).

Goldman has cited no "compelling circumstances" or case law justifying dismissal based upon a clerical error. Goldman delayed resolution of this case for *years* by litigating on false pretenses, but now blames Hood for a short delay caused by a clerical error that had nothing to do with Hood's actions. She has not shown that the City is prejudiced by delay.

Goldman misrepresented that she moved for sanctions under RAP 18.9(a). Opp. p. 13. As she is aware, RAP 18.9(a) applies to *appeals*, not motions to extend. Second, Hood's appeal is not "frivolous." *Id*. An appeal "is frivolous [when] it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." *Streater v. White*, 26 Wn. App. 430, 434 (Wash. Ct. App. 1980) *And see id.* at 435 (determinants of frivolousness). Goldman's opposition is frivolous.

Goldman requests extraordinary punishment, i.e., dismissal *and* sanctions because she wasted everyone's time with her erroneous citations, her misrepresentations of facts, court

rules and case law, and her cutting and pasting arguments that Division 1 rightly rejected.

The purpose of civil rules is not to punish appellants for a court's clerical errors beyond appellant's control. Rather,

> [The] basic purpose of the new rules of civil procedure is to eliminate or at least to minimize technical miscarriages of justice inherent in archaic procedural concepts once characterized ... as the sporting theory of justice. Thus, whenever possible, the rules of civil procedure should be applied in such a way that substance will prevail over form.

Griffith v. Bellevue, 130 Wn.2d 189, 922 P.2d 83 (1996), 192. (internal citations and quotation marks omitted).

Unfortunately, there is no "archaic procedural concept" that Goldman will not exploit to try to evade review of her misrepresentations. Her stratagems should not be condoned by this Court as they have been by lower courts. Rather, this Court should recognize by now that when Goldman accuses Hood of doing something wrong, she is projecting her own misconduct.

III. CONCLUSION

In addition to Hood's untimely filing, this Court may want to deny or ignore this petition: it is complicated by eight years of litigation in two courts under at least five separate judges, involves four attorneys and a pro se litigant, and references thousands of pages of documents.

Those are the reasons *why* this court should accept review. As shown in this brief, disentangling the lies and misrepresentations of City's insurer-appointed attorneys complexifies everything, consumes time, and is easier for courts to ignore. For this Court to continue to ignore their misconduct would weaken the PRA and be a "gross miscarriage of justice." RAP 18.8(b). Hood's motion to extend time to file his petition for review should be granted.

This document contains 2004 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 2nd day of December, 2024, by

/s/ Eric Hood
Eric Hood, Pro Se

CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on November, 20, 2024, in Langley, WA Washington, I emailed the foregoing documents to: Jessica Goldman

By: /s Eric Hood Date: December 2, 2024,
ERIC HOOD

Appendix

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERIC HOOD, Appellant, v. CITY OF LANGLEY, Respondent.	No. 86209-0-I (Consolidated with No. 86686-9-I) DIVISION ONE ORDER GRANTING MOTION FOR RECONSIDERATION AND GRANTING MOTION TO EXTEND TIME TO FILE

Attorney for appellant, Eric Hood, filed a motion for reconsideration of October 4, 2024 ruling consolidating case 86686-9-I under case 86209-0-I. Appellant, Eric Hood, filed a pro se motion to extend time under case 86686-9-I. A majority of the panel has determined that the motion for reconsideration should be granted. Further, a majority of the panel has determined the motion to extend time should be granted.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is granted, 86686-9-I and 86209-0-I are unconsolidated and shall be linked.

Further, it is hereby

ORDERED that the motion to extend time is granted, and the appellant's brief in 86686-9-I shall be due 30 days from the date of this order.

APPENDIX 1

FOR THE COURT:

Díaz, J.

Judge

APPENDIX 2

No. 85075-0

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

ERIC HOOD,

Appellant,

v.

CITY OF LANGLEY,

Appellee.

RESPONDENT'S ANSWER TO MOTION FOR RECONSIDERATION

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I. INTRODUCTION

Appellant Eric Hood, now *pro se*, moved for reconsideration of this Court's affirmance of the trial court's discretionary assessment of Public Records Act ("PRA") penalties. This Court rejected the sole issue he raised on appeal – his claim that the trial court was required, as a matter of law, to find the City of Langley acted dishonestly based on a subsequent case and, based on that claimed error of law, to undo the court's comprehensive penalty assessment.

Having failed to overturn the trial court's assessment based on his lone assignment of error, he seeks another bite at the apple. Now he would like to challenge some of the trial court's unappealed findings of fact, all of which are verities on appeal, and based on these new claims asks this Court to undo the trial court's discretionary assessment.

Because Mr. Hood's "reconsideration" motion requests that the Court consider for the first time his arguments regarding unappealed fact findings and because this Court's

review *still* is limited to the legality of the trial court's approach and the overall reasonableness of its selected remedy, his frivolous motion should be rejected.

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).

III. PROCEDURAL HISTORY

On January 5, 2016, Mr. Hood requested records from the City which the trial court, in an **unappealed** finding of fact, held was "fairly characterized as seeking everything but the kitchen sink related to" a former mayor. CP 2300. Ten days later he sent another email which the trial court, in an **unappealed** finding of fact, held the City reasonably believed to have narrowed his January 5 request to records referring to

him. CP 2434. Following his first appeal, the City produced to him the former mayor's calendar which included no mention of him. CP 1532.

Over more than eight years of litigation, Mr. Hood abandoned many baseless arguments. The issues remaining were whether the City violated the PRA by concluding that he only sought any mention of himself in the calendar and, if so, what penalties the trial court should assess.

In an **unappealed** finding of fact, the trial court ruled that:

> in its judgment, the City's initial response to Mr. Hood's January 5 [request] was adequate: the City identified Mayor McCarthy's laptop as well as the physical responsive documents in its initial response, communications between City Clerk Mahler and Mr. Hood suggest that he could have an opportunity to review the contents of the laptop himself once City Clerk Mahler had time to supervise him, the City's later denial of that opportunity was expressly based on the City's understanding that Mr. Hood had narrowed his original request by his email of January 15, 2016, and this Court expressly finds that understanding to have been reasonable until its receipt of Mr. Hood's March 1, 2016 email[.]

CP 1274-1275.

In another **unappealed** finding of fact, the court held that the Clerk:

> offer[ed] to search for electronic records about Mr. Hood himself and asked for a written request, which Mr. Hood provided on January 15th. The City then searched both the laptop and the City's computer system, using the same terms that had been used to identify Mr. Hood in the settlement agreement that resolved his PRA case. On January 27th [], City Clerk Mahler provided Mr. Hood with the results of his January 15, 2016 request, and the adequacy of that search is not at issue.

CP 1270.

The trial court further held, in an **unappealed** finding of fact, that "[u]nder the circumstances, it was reasonable for City Clerk Mahler to regard her conversation with Mr. Hood on January 15, 2016, during the hours-long sessions of tangible document production as a clarification and/or modification of his initial public records request." CP 1392.

In another **unappealed** finding of fact, the court held that the City denied his demand to review the former mayor's laptop

which accessed his calendar "expressly based on the City's understanding that Mr. Hood had narrowed his original request by his email of January 15, 2016, and this Court expressly finds that understanding to have been reasonable until its receipt of Mr. Hood's March 1, 2016 email[.]" CP 1395.

In an **unappealed** finding of fact, the trial court held that "the City had no reason to know that Mr. Hood had a different idea, or would come to have a different idea, than Ms. Mahler about the significance of his January 15, 2016 email as an initial matter." CP 1272-1273.

In another **unappealed** finding of fact, the court ruled it was:

> mindful that the significance of Mr. Hood's March 1, 2016 email may at the time simply have been overlooked or fairly regarded as a minor point: from this backward-looking vantage point, it appears to this Court that the principal bone of contention between the parties in the 2017 summary judgment briefing was the production (and destruction) of Mayor McCarthy's personal journals.

CP 1273.

In an **unappealed** finding of fact, the trial court ruled:

> [T]he Court has spent most of a judicial day reviewing the record in this case to confirm its impression that the former mayor's daily appointment calendars were simply not the principal object, or among the principal objects, of Mr. Hood's efforts before this case went on [the first] appeal.

CP 2433.

The court, in another **unappealed** finding of fact, held that after March 1, 2016, based on the later *O'Dea* decision,[1] the City would be deemed to have known that Mr. Hood intended (at least in retrospect) to make two separate public records requests. CP 2297. So, the trial court, in an **unappealed** finding of fact, held that the City violated the PRA for 1,063 days, beginning five days after March 1, 2016, by not providing the calendar. CP 2297.

Mr. Hood claimed that a $100 daily penalty, the top of the statutory range, was "necessary," CP 1987, based on myriad

[1] *O'Dea v. City of Tacoma*, 19 Wn. App. 2d 67, 493 P.3d 1245 (2021).

arguments to the trial court. CP 1986-2002; CP 2003-2101. Among the many arguments he pressed was that "the City of Langley, through its insurance-defense attorneys, has been intentionally withholding the calendars and lying to this Court for six years." CP 1987. He argued that "the City itself is liable for the conduct of its attorney, Jeff Myers," whom Mr. Hood alleged made false statements and knew that Mr. Hood had "not narrowed his request." CP 1988.

In detailed findings of fact based on the *Yousoufian* framework,[2] the trial court rejected Mr. Hood's factual assertions. In an **unappealed** finding of fact, the court held:

> The City promptly responded, followed up with, and was helpful to Mr. Hood. The City complied with the PRA's five-day response requirement. [] In fact the City responded within three days of Mr. Hood's January 5, 2016 request. The City notified Mr. Hood that all of the records responsive to his request were available for his review, to wit: "6 boxes, 25 binders and on a laptop located at Langley City Hall." This response was proper under the PRA.

[2] *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010).

> *Hoffman*, 4 Wn. App. 2d at 499 (The County "responded within five working days[.] While the response of the sheriff's office to Hoffman's initial PRA request was incomplete, that was not an independent aggravating factor. It is instead what caused the PRA violation in the first place[.] No further enhancement was required based on lack of timely compliance.")[.]

CP 2298.

In another **unappealed** factual finding, the trial court held:

> When Mr. Hood emailed the City with follow-up questions on January 10, 2016, the City responded the next day. When he visited the City's offices and inspected the voluminous hard copy records responsive to his request, the City's Clerk copied the records he identified for copying.

CP 2298.

The trial court further held, in an **unappealed** finding of fact, that "[o]n January 27, 2016, within less than a month, the City completed its response to Mr. Hood's narrowed January 5, 2016 request and so advised him." CP 2299

Continuing its assessment of the *Yousoufian* factors, the court, in an **unappealed** finding of fact, held:

> The City acted with good faith and honesty and complied with the PRA's procedural requirements. "When determining the amount of the penalty to be imposed the existence or absence of [an] agency's bad faith is the principal factor which the court must consider." *Yousoufian*, 168 Wn.2d at 460. The evidence amply demonstrates the City's good faith and honesty in responding to Mr. Hood's initial January 5, 2016 request and his January 15, 2016 email.

CP 2299.

In another **unappealed** finding of fact, the trial court confirmed its rejection of Mr. Hood's claim:

> that the City's first litigation counsel, Jeffrey S. Myers (who defended the case from its filing to some point after the appellate court decision was issued) was dishonest. But this Court has already determined that the City reasonably believed that Mr. Hood had narrowed his request for electronic records on January 15, 2016.

CP 2434.

The court, in an **unappealed** finding of fact, further ruled:

> Mr. Myers was not the only one who was on notice that, at least as of March 1, 2016, that Mr. Hood wanted all of the public records responsive to his January 5, 2016 email to which he

> was entitled: so was Mr. Hood himself. But Mr. Hood did not base his opposition to the City's 2017 motion for summary judgment on the proposition that his March 1, 2016 email made what did or did not occur on January 15, 2016 irrelevant: he based it on the proposition that he did not, in fact, narrow his request on January 15th.

CP 2434.

In another **unappealed** finding of fact, the trial court held:

> The City promptly brought in a lawyer to assist. *West*, 168 Wn. App. at 190 (approving the trial court's finding that "the County demonstrated adequate training and supervision of the County's personnel with respect to PRA requests because the County assigned the responsibility to respond to Mr. West's PRA request to a licensed, practicing attorney who has specific knowledge of the issues presented in" the case) (quotation marks & brackets omitted). The City engaged a PRA lawyer to look at the January 15, 2016 email and provide Clerk Mahler advice.

CP 2299-2300.

In yet another **unappealed** finding of fact, the court held:

> It was not agency dishonesty for Mr. Myers to defend this case based on the City employee's understanding of what happened on January 15, 2016, and not on Mr. Hood's assertions about it more than a month

> afterwards rather than anticipating an appellate court opinion in a different case that did not yet exist.

CP 2434-2435.

In an **unappealed** finding of fact, the trial court ruled that "[h]ad Mr. Myers denied receipt of Mr. Hood's March 1, 2016 email or otherwise misrepresented facts to the Court, that would be a basis for a finding of agency dishonesty." However, the court found:

> Mr. Myers does not deny receiving the March 1, 2016 email: indeed, an email string that he attached to his declaration referred to it repeatedly. What Mr. Myers declared was that Mr. Hood never responded to the request that he specify what electronic records he was still looking for. The February 19, 2016 letter expressly advised Mr. Hood that the City employee regarded the January 15th discussion as his narrowing of the scope of his request and asked him to confirm that she was correct. Although Mr. Hood's March 1, 2016 email to the litigation counsel was not a model of clarity, this Court has already determined that it was sufficient to put the lawyer on notice that Mr. Hood did not, at least then, agree with the City employee's characterization of the January 15th discussion. But the February 19, 2016 letter also asked that, if the City employee's understanding was not correct, Mr. Hood identify the specific records that he was seeking and his

> request. And, despite the Court's renewed search, the Court has not found any response from Mr. Hood specifying the records that he was still seeking: which appears to have been the point of Mr. Myers' reply declaration. There is certainly no indication from the March 1, 2016 email that what Mr. Hood was requesting in particular was the former mayor's daily calendars.

CP 2435.

In its next **unappealed** finding of fact, the court held:

> the City's explanation for noncompliance before March 1, 2016 eminently reasonable. [] "Mr. Hood's January 5, 2016 public records request is fairly characterized as seeking everything but the kitchen sink related to Mayor McCarthy." [] "[I]t was reasonable for City Clerk Mahler to regard her conversation with Mr. Hood on January 15, 2016, during the hours-long sessions of tangible document production as a clarification and/or modification of his initial public records request." [] "[T]his Court also finds that the City had no reason to know that Mr. Hood had a different idea, or would come to have a different idea, than Ms. Mahler about the significance of his January 15, 2016 email as an initial matter." [] *See also Hood v. S. Whidbey School Dist.*, 2016 WL 462649, No. 73165-3-I, 195 Wn. App. 1058, *17 (unpublished) (Sept. 6, 2016) (approving the trial court's finding that the agency's "explanations for particular oversights in its searches and productions were 'reasonable and fully understandable in light of the numerous broad and overlapping

> requests with which it was faced'"), *review denied*, 187 Wn.2d 1020 (2017). This Court also recognized that in March 2016 and thereafter, the former mayor's calendar was "fairly regarded as a minor point" as "the principal bone of contention between the parties in the 2017 summary judgment briefing was the production (and destruction) of Mayor McCarthy's personal journals," [] issues on which Mr. Hood lost in this lawsuit.

CP 2300.

The trial court held in another **unappealed** finding of fact:

> The calendar was of no public importance. The calendar was of no foreseeable public importance. "An agency should not be penalized under this factor, however, unless the significance of the issue to which the request is related was foreseeable to the agency." *Yousoufian*, 168 Wn.2d at 462; *see also Hood v. S. Whidbey School Dist.*, 195 Wn. App. 1058 at *17 (approving the trial court's finding that there was no public importance as "'the overwhelming majority of Hood's requests were directly related to his personal challenge to his nonrenewal as a teacher,'" the very issue that drove Mr. Hood to make his January 5, 2016 PRA request to the City about former Mayor McCarthy, the individual who long ago fired him at South Whidbey School District).

CP 2301.

The court further held, in an **unappealed** finding of fact:

> Mr. Hood did not experience any foreseeable personal economic loss as a result of the delay in receiving the calendar. The delay in Mr. Hood's receipt of the calendar caused him no personal economic loss. Moreover, an agency should "be penalized for such a loss only if it was a foreseeable result of the agency's misconduct. In short, actual personal economic loss to the requestor is a factor in setting a penalty only if it resulted from the agency's misconduct and was foreseeable." *Yousoufian*, 168 Wn.2d at 461-62; *accord Zink*, 4 Wn. App. 2d at 126 ("compensating a plaintiff should be a factor in increasing a penalty only if an economic loss to the requestor was a foreseeable result of the agency's misconduct"). There was no foreseeable economic loss here.

CP 2301.

Based on voluminous evidence, the court also held in an **unappealed** finding of fact: "The City did not act with negligence, recklessness, wantonly or in bad faith, nor did it intentionally fail to comply with the PRA. The City was not intransigent." CP 2301.

In setting the daily penalty, the court further held in an **unappealed** finding of fact:

> No penalty above the lower end of the statutory range is necessary to deter future misconduct considering the City's size and the facts of this case. "[T]he PRA penalty is intended to discourage improper denial of access to public records and to encourage adherence to the goals and procedures dictated by the statute." *Zink*, 4 Wn. App. 2d at 123-24 (quotation marks, brackets & citations omitted). In the case of a small city, the "trial court does not abuse its discretion by treating the ninth 'deterrence' *Yousoufian* aggravating factor as the most important aggravating factor[.]" *Id.* at 123. The Supreme Court has "explicitly recognized that an agency's smallness and limited resource can matter." *Id.* at 126 (citing *Yousoufian*, 168 Wn.2d at 462-63); *see also id.* at 129 ("The trial court did not err or abuse its discretion in concluding that the penalty amount needed to deter the city is not the same as that presented in the cases involving Washington jurisdictions or agencies with much larger budgets and resources."). Courts "cannot lose sight of the fact that public records penalty awards are ultimately paid with taxpayer dollars." *O'Dea*, 19 Wn. App. 2d at 86.

CP 2301-2302.

Further, the court in an **unappealed** finding of fact held:

> The sole PRA violation here arose from Mr. Hood's unclear communications with the City (or his after-the-fact interpretations of those communications), not with the City's process for responding to PRA requests. The City responded to the request nearly seven years ago by way

> of a City Clerk who long ago left her job with the City. *Hoffman*, 194 Wn.2d at 232 (This factor mitigated the penalty because the problem was attributed solely to an employee who had retired and that employee's "negligence was due to her idiosyncratic understanding of a particular PRA provision rather than to systemic lapses in training, supervision, or work flow."); *Hoffman*, 4 Wn. App. 2d 489, 499, 422 P.3d 466 (2018) ("When it comes to liability, an agency's weakest link can cause a PRA violation. But because the question of penalty is guided by an overarching concern for deterrence, it is appropriate for a trial court to consider an agency's overall level of culpability, not just the culpability of the worst actor.") (citation omitted), *aff'd*, 184 Wn.2d 217 (2019). Moreover, while "it is appropriate to increase penalties as a deterrent where an agency's misconduct causes a requestor to sustain actual personal economic loss," *Yousoufian*, 168 Wn.2d at 461-62, Mr. Hood has sustained no loss whatsoever.

CP 2302.

The trial court held, in an **unappealed** finding of fact:

> Langley is a small City with only 1,147 residents and the penalty needed to deter a small city and that necessary to deter a larger public agency is not the same. *Id.* at 463; *Hoffman*, 194 Wn.2d at 232 (penalty assessed cost $0.34 per county resident); *Yousoufian*, 168 Wn.2d at 470 (penalty assessed cost $0.19 per resident); *O'Dea*, 19 Wn. App. 2d at

> 86 (reversing penalty that amounted to almost $12 per resident).

CP 2303.

In another **unappealed** ruling, the trial court held: "[T]he Court's determination as regards an appropriate penalty was based on the City's culpability for what it knew and reasonably should have known[.]" CP 2435.

Mr. Hood moved for reconsideration of the trial court's penalty assessment. CP 2320. The motion re-argued his view that the City's prior lawyer must be held to have acted with dishonesty. CP 2321-2325. Mr. Hood complained that the court "failed to assign any culpability to, or find any *Yousoufian* aggravating factors for, the conduct of the City's attorney, Jeff Myers, in willfully ignoring Hood's email dated March 1, 2016 which, as this Court has found, gave the City notice that Hood had not narrowed his request." CP 2329. He challenged the court's findings of fact, claiming that the court "erroneously failed to consider Hood's evidence of the City's post-litigation misconduct in awarding penalties." CP 2329.

The trial court again rejected these factual arguments. CP 2430. And then, he abandoned these arguments on appeal. He did not appeal any of the findings of fact. Slip op. at 2 ("Neither party challenges the trial court's factual findings in this matter.").

IV. ARGUMENT

A. This appeal is limited to assigned errors.

Pursuant to RAP 10.3(a)(4), an appellant must identify "each error a party contends was made by the trial court" **in his opening brief**. "The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto." RAP 10.3(g).

The assigned errors confine the issues to which the appellee must respond, and which the court will adjudicate. "In reviewing findings of fact," appellate courts "will review only those facts to which error has been assigned." *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994); *accord Escude v. King*

Cnty. Pub. Hosp. Dist. No. 2, 117 Wn. App. 183, 190 n.4, 69 P.3d 895 (2003) ("It is well settled that a party's failure to assign error to or provide argument and citation to authority in support of an assignment of error, as required under RAP 10.3, precludes appellate consideration of an alleged error."); *Strout v. McGee*, No. 84883-6-I, 2024 WL 1718813, *13 (Div. I Apr. 22, 2024) (unpublished) ("given her failure to assign error to this issue," this Court would not address it). For this reason, arguments raised for the first time in appellant's reply brief are too late to warrant consideration. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("the assignment of error is waived").

Moreover, RAP 10.3 is not satisfied if the opening brief merely contains a recitation of the facts in the light most favorable to the appellant even if it contains a sprinkling of citations to the record throughout the factual recitation. It is incumbent on counsel to present the court with argument as to

why specific findings of the trial court are not supported by the evidence and to cite to the record to support that argument. *In re Lint*, 135 Wn.2d 518, 531-32, 957 P.2d 755 (1998).

B. Mr. Hood assigned error to one issue.

He appealed one issue of law – abandoning the factual arguments he unsuccessfully pressed below. In his opening brief a year ago, he assigned one error "of law" challenging the trial court's ruling "that there was no aggravating 'agency dishonesty' in this case because *O'Dea* was decided after the City finally produced the calendars[.]" Brf. of Appellant at 4-5. He reminded the Court repeatedly that he isolated one issue for appeal. *Id.* at 22-23 (the "legal issue that Hood raises in this Court [is] whether the trial court erred in finding no 'agency dishonesty' because *O'Dea, supra*, was issued after the City finally produced the calendars"); *id.* at 29 ("Hood wants this Court to focus this appeal on the important legal issue of properly applying *O'Dea*, *supra*, to the resulting PRA penalty award to establish agency dishonesty in this case."); *id.* at 30

("Hood challenges only the trial court's refusal to apply *O'Dea* [] retroactively, which is an error of law that this Court reviews *de novo*."); *id.* at 30-31 ("In this appeal Hood challenges only the trial court's error of law in failing to find the aggravating factor of 'agency dishonesty' in this case because *O'Dea*, *supra*, was issued after the City finally produced the mayor's calendars").

In his reply brief nine months ago, he reaffirmed the solitary issue of law challenged on appeal: "[T]he issue presented in this appeal is whether the trial court erred as a matter of law in refusing to apply *O'Dea* retroactively on an issue of penalties." Reply Brf. of Appellant at 8; *accord id*. at 16 ("the sole legal issue in this appeal is whether *O'Dea* should apply retroactively to require a larger penalty in this case"); *id.* at 28 ("the sole legal issue presented by this appeal [is] whether the trial court's refusal to follow *O'Dea* in finding agency dishonesty was erroneous as a matter of law"). He stated that

the sole issue he appealed was "***not*** a question of fact," but a question of law. *Id.* at 30 (emphasis original).

He challenged the court's ruling on one *Yousoufian* factor – agency dishonesty – based solely on his argument that the City should have been found to have acted dishonestly because of *O'Dea*. Brf. of Appellant at 35 ("The trial court's ruling that the City could not have anticipated the *O'Dea* decision was erroneous."); *id.* at 42 ("Ignorance of the law has never been a defense against PRA liability or a justification for willfully withholding records in violation of the PRA."); *id.* at 46 ("In sum, the trial court's refusal to follow *O'Dea* [] because that case was issued after the City produced the calendars is erroneous as a matter of law.").

And that is the issue the parties briefed, and this Court resolved. This Court correctly noted that "[n]either party challenges the trial court's factual findings in this matter. **Therefore, the factual findings set forth in the trial court's rulings are verities on appeal.**" Slip op. at 2 (citing *Hoffman*,

194 Wn.2d 217, 219-220, 449 P.3d 277 (2019)) (emphasis added). This Court properly noted that, "when an appellant 'does not challenge any of the factual findings underlying the trial court's penalty assessment, our review is limited to the legality of the trial court's approach and overall reasonableness of its selected remedy.'" *Id.* (quoting *Hoffman v. Kittitas Cnty.*, 4 Wn. App. 2d 489, 498, 422 P.3d 466 (2018), *aff'd*, 194 Wn.2d 217, 449 P.3d 277 (2019)).

This Court resolved the singular issue appealed. *Id.* at 1 ("Hood challenges only the court's application of law to one out of the nine penalty factors that the court considered in imposing the lower-end penalty."). As required by the Supreme Court, this Court "decline[d] Hood's request to engage in piecemeal de novo review of a single Yousoufian II factor." *Id.* at 9.

For "guidance only," this Court noted that the trial court "did not err in its application of O'Dea." *Id.* at 10 n.4. "[T]he trial court properly reasoned that, prior to the O'Dea decision,

the City could not have reasonably known that it was the state of the law that an e-mail from Hood occurring in the context of litigation constituted a clarification of the scope of his public records request." *Id.* (emphasis added). "Thus, in determining that there was an absence of 'agency dishonesty' in this matter, in reliance on O'Dea, the trial court did not incorrectly apply the law." *Id.*

C. Mr. Hood does not seek reconsideration of the sole issue appealed.

Mr. Hood now improperly asks this Court to consider findings of fact he never appealed and which were never briefed to this Court. RAP 10.3(a)(1); RAP 10.3(g); *Hill*, 123 Wn.2d at 647; *Cowiche*, 118 Wn.2d at 809; *Escude*, 117 Wn. App. at 190 n.4; *Strout*, 2024 WL 1718813 at *13.

D. Mr. Hood did not assign error to any of the issues he wishes to have "reconsidered."

Having abandoned the *O'Dea* argument, his only assigned error, Mr. Hood now requests "reconsideration" of his newly minted challenge to the trial court's **unappealed** factual

findings that the City acted honestly. *See supra* § III. These new issues of fact that he wishes the Court to address in his suggested re-do have been waived.

1. The "trial court misquoted mitigating factor (3)" and thus made erroneous findings of fact. Mot. at 3. He claims for the first time on reconsideration that the "omission" of the words "timely," "strict," and "all" made the trial court's finding "inaccurate." *Id*. In addition to being a brand-new challenge to a verity on appeal, he offers no legal support for his contention. *Hoffman*, 194 Wn.2d at 227 (The *Yousoufian* factors "may overlap, *are offered only as guidance*, may not apply equally or at all in very case, and are not an exclusive list of appropriate considerations.") (quotation marks & citation omitted).

2. The "trial court altered" "aggravating factor (5)" resulting in an (unexplained) erroneous finding of fact. Mot. at 4. This brand-new challenge to a verity on appeal also is not supported by any legal basis.

3. This Court "inaccurately found that trial court findings were 'amply supported'" and therefore "rested on unsupported facts." *Id.* at 5. The trial court's findings of fact are unchallenged verities on appeal. *See supra* § III; Appellant's Reply at 26 ("neither party has appealed the trial court's determinations on those penalty factors"); slip op. at 11 ("When an appellant 'does not challenge any of the factual findings underlying the trial court's penalty assessment, our review is limited to the legality of the trial court's approach and overall reasonableness of its selected remedy.'") (quoting *Hoffman*, 4 Wn. App. 2d at 498).

4. The "[t]rial court improperly assessed City's initial response to Hood's January 5, 2016 PRA request." Mot. § IV.B. He says now: "trial court's penalty assessment omitted or misinterpreted facts regarding City's initial response[.]" *Id.* at 14. For the first time on appeal, he claims that the trial court erred in its findings of fact regarding other

Yousoufian factors: "Penalty assessment #18," "Penalty assessment #19," and "Penalty assessment #24." *Id.* at 16-17.

But Mr. Hood told the trial court that "[t]he City's actions prior to March 1, 2016 are irrelevant to penalties in this case," CP 1989, and did not appeal the court's factual assessment of the City's initial response. *See* Appellant's Brf. § II.

All the unappealed findings of fact are verities. Brf. of Appellant at 28-29 (Mr. Hood's lawyer averred that "Hood could have appealed from the trial court's refusal to find as a matter of fact that Hood never narrowed his January 5, 2016 PRA request," but he did not.); *id.* at 34 ("the trial court's un-appealed ruling establishes" that "the City had not violated the PRA ***before*** March 1, 2016"); Reply Brf. of Appellant at 4-5 ("The undisputed facts as found by the trial court on remand are that: Prior to March 1, 2016 the City's staff reasonably believed that Hood's second PRA request narrowed Hood's first PRA request on January 5, 2016."); *id.* at 14-15 ("prior to March 1,

2016" "the clerk had reasonably believed that Hood's second PRA request was a narrowing of the first request"); *id.* at 18 ("Neither party has appealed the trial court's determination that there was no meeting of the minds prior to March 1, 2016.").

5. The "trial court improperly assessed City's response after January 15, 2016." Mot. § IV.C. For the first time, Mr. Hood contends that the trial court was "mistaken" in finding that the City properly brought in a lawyer to advise it and that the City (and its lawyer) did not know that Mr. Hood's January 15, 2016 email was meant to be treated as a brand new public records request. *Id*. at 18.

But he did not appeal the trial court's factual assessment of the City's initial response. Appellant's Brf. § II. These unchallenged findings also are verities.

E. Mr. Hood still is not entitled to *de novo* review of the trial court's *Yousoufian* analysis.

Mr. Hood says that this Court should reconsider its decision declining to conduct a *de novo* review of the trial

court's penalty assessment. Mot. at 32. He has pivoted from his *legal argument* regarding the finding of agency honesty – the one to which he assigned error – to an *unappealed factual* challenge to the trial court's finding of agency honesty. Not only does his motion improperly challenge unappealed findings of fact, but he still is wrong on the law.

Citing *Sargent v. Seattle Police Department*, 179 Wn.2d 376, 398, 314 P.3d 376 (2013), he now says for the first time that the trial court did not conduct its analysis within the *Yousoufian* framework. Mot. at 31. *Sargent* does not support this new argument. In *Sargent*, the Supreme Court faulted the trial court for not even "mention[ing] *Yousoufian*" "or engag[ing] in any sort of balancing analysis, but instead focused exclusively on whether the SPD acted in bad faith to calculate a penalty." 179 Wn.2d at 398. The Court reaffirmed that, under the *Yousoufian* "framework," "not all factors may apply in every case" and "'no one factor should control[.]'" *Id.* "These factors should not infringe upon the considerable

discretion of trial courts to determine PRA penalties." *Yousoufian*, 168 Wn.2d at 468. In assessing a trial court's exercise of discretion, the reviewing court does not "weigh conflicting evidence even though we may disagree with the trial court[.]" *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017) (quotation marks & citation omitted).

The trial court below assessed penalties according to the *Yousoufian* framework and Mr. Hood chose not to assign error to any of the court's findings of fact. Moreover, his contention now that "[b]ecause agency dishonesty founded [the] City's entire response, it was not necessary for Hood to ask the court to review other penalty factors," Mot. at 32, is contrary to law. *Sargent*, 179 Wn.2d at 398 ("Although bad faith is an important consideration under *Yousoufian 2010*, it cannot be the only consideration.").

Based on a single legal argument, Mr. Hood fully pressed his challenge to the trial court's analysis of one *Yousoufian* factor: the City's honesty. This Court rejected his challenge.

> Because the legislature has conferred considerable discretion to trial courts when determining Public Records Act penalties, because our Supreme Court has repeatedly emphasized that such a determination must be reviewed holistically for its overall reasonableness and that no one penalty factor should control appellate review of any such determination, and because a holistic review of the trial court's determination in this matter reveals that no abuse of discretion occurred, Hood's assertion fails.

Slip op. at 5. That remains the case today as Mr. Hood asks the Court to consider for the first time his challenge to several unappealed findings of fact. *Hoffman*, 194 Wn.2d at 223-24.

Even had he appealed the factual claims he made to the trial court but abandoned on appeal, his challenge to only one of the *Yousoufian* factors would have warranted the same result. "[A]n appellate court's function is to review claims of abuse of trial court discretion with respect to the imposition or lack of imposition of a penalty, not to exercise such discretion ourselves." *Yousoufian*, 152 Wn.2d at 430 (quotation marks & citation omitted). "[A] trial court abuses its discretion by focusing exclusively on bad faith" – as Mr. Hood urges now –

"without considering either the remaining *Yousoufian II* factors or any other appropriate considerations." *Hoffman*, 194 Wn.2d at 282. "Engaging in de novo review of the bad faith factor would risk distorting its role as one piece of a holistic, discretionary determination of the appropriate penalty amount." *Id.* The task for an appellate court "is to review the trial court's overall penalty assessment for abuse of discretion." *Id.* "The abuse of discretion standard is extremely deferential." *Hoffman*, 4 Wn. App. 2d at 495.

V. SANCTIONS

Mr. Hood's reconsideration motion is frivolous and, as set forth above, he failed to comply with the Rules of Appellate Procedure that would justify his purported request for *re*consideration of issues never considered. Pursuant to RAP 18.9(a), the City moves for an award of attorney's fees incurred to respond to his baseless motion which further delayed resolution of this lawsuit.

VI. CONCLUSION

Because Mr. Hood did "'not challenge any of the factual findings underlying the trial court's penalty assessment," this Court's "'review is limited to the legality of the trial court's approach and overall reasonableness of its selected remedy.'" Slip op. at 11 (quoting *Hoffman*, 4 Wn. App. 2d at 498). Nothing in his motion overcomes this Court's finding of "legality" and "overall reasonableness."

His motion should be denied.

This document contains 5,999 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 16th day of August, 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 16th day of August, 2024.

s/ Sharon K. Zankich
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APPENDIX 2

SUMMIT LAW GROUP

August 16, 2024 - 8:17 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	85075-0
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	16-2-00107-1

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APPENDIX 3

No. 86686-9

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

ERIC HOOD,

Appellant,

v.

CITY OF LANGLEY,

Respondent.

RESPONDENT'S OPPOSITION TO APPELLANT'S LATEST MOTION TO EXTEND TIME TO FILE

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I. INTRODUCTION

Again, Eric Hood asks this Court to delay his narrow appeal in this lawsuit he filed seeking *daily* penalties under the Public Records Act ("PRA") against the City of Langley. The Court already has allowed him one 45-day continuance to file his opening brief and, on the Court's consolidation of this case with another Hood appeal, allowed Mr. Hood an additional 18 days to file his opening brief. No further delay should be allowed.

II. ARGUMENT

A. This is a narrow appeal.

Mr. Hood has appealed only the trial court's denial of his baseless CR 60(b) motion. CP 2329-2332. This is a ruling that will "not be overturned on appeal unless the [trial] court manifestly abused its discretion." *Coogan v. Borg-Warner Morse Tec Inc.*, 197 Wn.2d 790, 820, 490 P.3d 200 (2021) (quotation marks & citation omitted). Only the Superior Court, not an appellate court, is permitted to weigh the evidence or the

credibility of the witnesses. *Dalton v. State*, 130 Wn. App. 653, 656, 124 P.3d 305 (2005).

Vacation of a judgment is an extraordinary remedy. *Id.* at 655, and CR is a limited procedural tool. *Fireside Bank v. Askins*, 195 Wn.2d 365, 375, 460 P.3d 157 (2020). "A CR 60(b) motion is not a substitute for appeal and does not allow a litigant to challenge the underlying judgment." *Winter v. Dep't of Social & Health Servs.*, 12 Wn. App. 2d 815, 830, 460 P.3d 667 (2020). Furthermore, CR 60 may not be used to set aside a judgment where the moving party "slept on [his] rights" because doing so "would clearly undermine the salutary purpose served by finality of judgments." *Peoples State Bank v. Hickey*, 55 Wn. App. 367, 371, 777 P.2d 1056 (1989). Finally, the decision to grant or deny a motion to vacate a judgment under CR 60(b) is addressed to the sound discretion of the trial court. *Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013) (affirming denial of CR 60(b) motion that was "an attempt to get a second bite of the apple after [the

city's] strategic choices proved unwise") (quotation marks omitted).

Mr. Hood's latest request for delay is made in the context of this narrow appeal and should not be allowed.

B. No further delay should be allowed.

As he always does in every appeal, Mr. Hood already has sought and obtained a continuance of his opening brief. His opening brief was due September 2, 2024. Several weeks before that deadline, he moved for a 45-day extension of time. 8/20/24 Mot. to Extend Time to File Opening Brf. He said that this delay was necessary because, *inter alia*, of his vacation schedule and his need to pick vegetables in his garden. *Id.* at 3. The City did not object to this first request for delay and the Court Administrator granted the motion, requiring Mr. Hood to file his opening brief, in *his* appeal, in *his* lawsuit, by October 17, 2024. 8/27/24 Ltr. Ruling.

After denying Mr. Hood's subsequent motion to stay this proceeding, this Court consolidated this appeal by Mr. Hood,

Cause No. 866869, with an appeal by Mr. Hood of a separate case, Cause No. 862090, and gave Mr. Hood an additional 18 days, until November 4, to file his opening brief. 10/4/24 Ltr. Ruling. All the briefing in Cause No. 862090 has been completed. So, that leaves only the addition of the limited briefing in the present limited appeal of the CR 60(b) denial.

Now, Mr. Hood requests another 18-day delay to file his opening brief. He says he will not be able "to work October 12-13 and 19-21, 2024 due to family events." Hood Mot. at 5.

There is no justification for further delay.

C. The City is prejudiced by further delay.

Mr. Hood claims that this appeal "is not time sensitive and [the] City will not be prejudiced by an extension." *Id.* This is an unsupported and baseless claim.

Further delay will further prejudice the City of Langley. This is a PRA case, and the Supreme 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). This important guidepost should be enforced here.

Moreover, as always, Mr. Hood's lawsuit at bar is about his attempt to obtain daily penalties from a small public agency, here the City of Langley. While he failed in that attempt in a judgment he did not appeal, and while he should fail in the present appeal of the CR 60(b) denial, Mr. Hood's purpose in bringing this appeal is to reopen the underlying proceedings and to take yet another run at a claim for daily penalties. Mr. Hood should not be allowed to again run-up the number of possible days for penalties to be assessed should he be granted the relief he seeks in this appeal.

No further delay can be justified. The City of Langley is entitled to closure of this lawsuit, finally. It would most definitely "be prejudiced," Hood Mot. at 5, by yet another effort to prolong this baseless lawsuit.

III. CONCLUSION

For each of these reasons, the City of Langley respectfully requests that this Court deny Mr. Hood's latest Motion to Extend Time to File.

This document contains 876 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of October, 2024.

Respectfully submitted,

SUMMIT LAW GROUP, PLLC

By *s/ Jessica L. Goldman*
Jessica L. Goldman, WSBA #21856
jessicag@summitlaw.com

Attorneys for City of Langley

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 RESPONDENT'S OPPOSITION TO APPELLANT'S **LATEST** MOTION TO EXTEND TIME TO FILE ***via electronic service*** on the following:

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Langley, WA 98260

DATED this 8th day of October, 2024.

s/ Sharon K. Zankich
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APPENDIX 3

SUMMIT LAW GROUP

October 08, 2024 - 2:51 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86686-9
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	21-2-00226-0

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ERIC HOOD

December 02, 2024 - 11:50 AM

Transmittal Information

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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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