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No. 89574-1

E. CRJ  
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SUPREME COURT  
OF THE STATE OF WASHINGTON

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ALEXANDER HANUSKA,

Petitioner/Plaintiff

v.

DEPARTMENT OF LABOR & INDUSTRIES, ET AL.,

Respondent/Defendant

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ON PETITION FOR REVIEW FROM  
COURT OF APPEALS, DIVISION I

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ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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I. Identity of Answering Party.

Nordstrom, Inc. (“Nordstrom”) is the answering party on Appellant/Petitioner Alexander Hanuska’s Petition for Review. Mr. Hanuska failed to address and satisfy the rigorous standard for the grant of review under RAP 13.4, and his Petition should be denied.<sup>1</sup>

II. Brief Counterstatement of the Facts.

This appeal stems from a Workers’ Compensation claim Mr. Hanuska filed after suffering an anxiety attack while working at Nordstrom in 2002. On April 11, 2012, after the Superior Court affirmed the administrative rulings denying Mr. Hanuska’s claim, Mr. Hanuska filed his Notice of Appeal. After a delay in the proceedings for failure to file the Clerk’s Papers, Mr. Hanuska requested a continuance to file his opening brief. Division One of the Court of Appeals granted this request in February 2013, moving the filing date to May 13, 2013.<sup>2</sup> Mr. Hanuska submitted his opening brief on May 10, 2013 – 13 months after he originally filed his appeal.

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<sup>1</sup> Regarding the motion to waive the filing fees, Nordstrom disputes the content of Mr. Hanuska’s subjoined declaration. Nordstrom does not, however, oppose the request for waiver of the filing fee given the financial data set forth in the Financial Statement.

<sup>2</sup> All of the briefs, motions and orders cited herein are part of the Court of Appeals docket, Case No. 68602-0.

The brief, however, did not conform to the Rules of Appellate Procedure. Accordingly, the Court of Appeals provided Mr. Hanuska a checklist detailing the infirmities in his brief and giving him additional time to conform to the RAP. On May 30, 2013, Mr. Hanuska filed another brief that also failed to conform with the RAP. The Court of Appeals provided Mr. Hanuska another checklist to clarify how he could conform his briefing, giving him until July 1, 2013 to re-file.<sup>3</sup> On June 28, 2103, instead of adding the record cites and making the other changes identified by the Court of Appeals, Mr. Hanuska filed a five-page motion for a continuance, citing the need for surgery on his leg. The Court of Appeals denied the request, noting that Mr. Hanuska failed to comply with its February 11, 2013 order. Mr. Hanuska moved to modify the Court of Appeals' decision. The Court of Appeals denied the motion. Mr. Hanuska's petition for review, then, is not over a substantive issue, but rather his disagreement with the Court of Appeals' denial of another request for continuance.

### III. Issues Raised by the Petition.

Whether the petition for review should be denied because:

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<sup>3</sup> In addition to formatting issues, Mr. Hanuska had submitted several sworn statements with his brief that were not part of the record.

A. Mr. Hanuska has failed to satisfy the requirements of 13.4(c) regarding the content and form of a petition for review.

B. The Court of Appeals' decision is not in conflict with a decision of the Supreme Court.

IV. Authority for the Denial of the Petition.

Rule of Appellate Procedure 13.4 governs the procedures for granting or denying a petition for review. RAP 13.4(c) requires that the petition include, among other things, issues presented for review and why review should be accepted under the specific criteria set forth in RAP 13.4(b). Mr. Hanuska failed to comply with these requirements, and the petition should be denied for this reason alone.

Given Mr. Hanuska's failure to identify the qualifying criteria for his petition, Nordstrom and the Court are left to guess the basis for his request. Reviewing the substance of the petition, it appears that Mr. Hanuska is relying on RAP 13.4(b)(1) (conflict between the Court of Appeals' decision and a Supreme Court decision), referring to the case *In re Disciplinary Proceeding Against Sanai*, 167 Wn.2d 740, 753, 225 P.3d 203 (2009).<sup>4</sup> Petition, pp. 5-8. *Sanai*, however, is inapposite to the facts

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<sup>4</sup> In *Trummel v. Mitchell*, 156 Wn.2d 653, 131 P.3d 305 (2006), this Court affirmed the denial of a request for a continuance, applying the "manifest abuse of discretion" standard. *Id.* at 670. Thus, the Court of Appeals' decision here would not be in conflict with this Court's ruling in  
(continued . . .)

here. In *Sanai*, the issue was whether an attorney facing malpractice disciplinary proceedings should have been permitted a continuance of *his disbarment hearing* due to his medical condition. *Sanai*, 167 Wn.2d at 748-49. The crux of the issue was whether or not the attorney should have been able to present his defenses and confront adverse witnesses at the hearing. *Id.* at 748. That is not the case here.

Here, the issue is whether Mr. Hanuska failed to meet deadlines repeatedly extended by the Court of Appeals. It is a matter of whether Mr. Hanuska, in the more than 15 months since filing his appeal, had the opportunity to file a brief in conformance with the RAP. He had that opportunity, but did not do so. The Court of Appeals' ruling is not in conflict with *Sanai*, and Mr. Hanuska fails to satisfy the requirements of RAP 13.4(b)(1).<sup>5</sup> The petition should be denied.

V. Conclusion.

For the reasons stated above, this Court should deny Mr. Hanuska's Petition for Review.

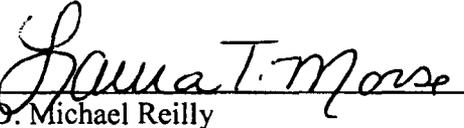
Respectfully submitted this 23rd day of December, 2013.

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(. . . continued)  
*Trummel.*

<sup>5</sup> Nor would any of the other criteria in RAP 13.4(b) apply.

LANE POWELL PC

By 

D. Michael Reilly

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Attorneys for Nordstrom,. Inc.

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on December 23, 2013, I caused to be served a copy of the foregoing Answer to Petition For Review on the following person(s) in the manner indicated below at the following address(es):

Joseph Russell Haynes  
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\_\_\_\_\_  
Debi Wollin

## OFFICE RECEPTIONIST, CLERK

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To the Clerk of the Court,

Attached please find the Answer to Petition for Review on behalf of Attorneys for Respondent/Defendant Department of Labor & Industries in the above-referenced matter. Please let us know if you are unable to open the attachment.

**Debi Wollin**



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