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STATE OF WASHINGTON
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NO. 69129-5

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IN THE COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION ONE

JAMES C. EGAN, *Petitioner,*

v.

CITY OF SEATTLE, *Respondent.*

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR
REVIEW

JAMES C. EGAN
Petitioner

FILED
APR 17 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
E CRF

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 ORIGINAL

Motion to Extend Time to File Petition for Review

Pursuant to RAP Rule 18.8, petitioner James Egan respectfully moves the Washington State Supreme Court to extend the time to file a petition of review for review of the decision published by the Court of Appeals, Division One, on February 3, 2014, Case No. 69129-5 from thirty days to thirty-one days.

RAP Rule 13.4(a) states that if a motion to reconsider the Court of Appeals decision is timely made, a “petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration.” RAP Rule 18.6(a) states, “[i]n computing any period of time prescribed by these rules, the day of the event from which the time begins to run is not included.” “The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday.” *Id.*

The Order Denying the Motion for Reconsideration was filed by the Court of Appeals on March 12, 2014 at 4:52 p.m.. The following day, March 13, 2014, Egan received an email from Senior Case Manager Susan Dahlem with a cover letter attached informing Egan that reconsideration had been denied. *Declaration of James Egan*, ¶ 4. The cover letter was also dated March 13, 2014. *Declaration of James Egan*, ¶ 4. Under RAP

Rule 18.6, thirty days from the filing date of March 12, 2014 would be April 11, 2014, while thirty days from the March 13, 2014, the date Egan received notice of the opinion, would be April 14, 2014, the day Egan filed his petition for review.

RAP Rule 18.8(a) states “[t]he appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice.”

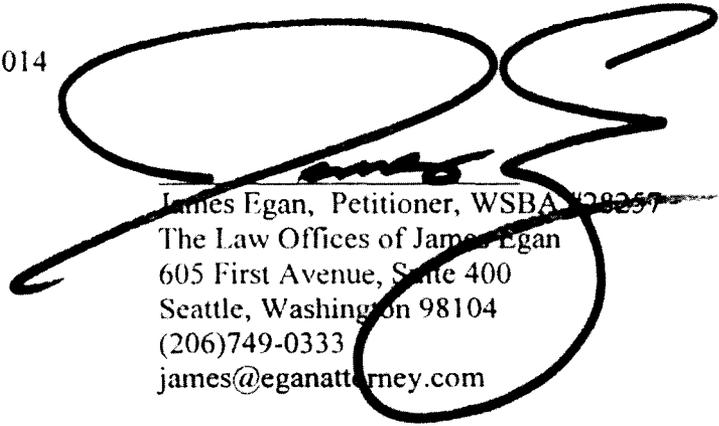
In the interests of justice, we believe the Court should calculate the due date from the date Mr. Egan received notice of the Court of Appeals decision, and find that the petition was timely filed on April 14, 2014.

In the alternative, Mr. Egan believes the situation warrants a one day extension of time under RAP Rule 18.8 to serve the ends of justice and prevent a gross miscarriage of justice. Previously, when Mr. Egan received an email from the Court of Appeals, both the attached cover letter and the document that was filed with the court were both dated on the same date. For instance, On October 18, 2013, Mr. Egan received an email from Susan Dahlem, Senior Case Manager with the Court of Appeals, informing him that the court had granted a motion to file an amicus brief. *Declaration of James Egan*, ¶ 1. Both the email and cover letter are dated October 18, 2013. *Declaration of James Egan*, ¶ 1. On February 3, 2014,

Mr. Egan received another email from Ms. Dahlem informing him of the court's published decision. *Declaration of James Egan*, ¶ 3. The email, the cover letter, and the decision were all dated February 3, 2014. *Declaration of James Egan*, ¶ 3.

On March 13, 2014, after timely filing a motion for reconsideration, Mr. Egan received an email from Ms. Dahlem informing him that that the court had denied his motion to reconsider. *Declaration of James Egan*, ¶ 4. Both the email and the cover letter were dated March 13, 2014. *Declaration of James Egan*, ¶ 4. However, the actual order was apparently filed a day earlier than the email and cover letter, on March 12, 2014, at 4:52 pm. Since, on previous occasions, the emails and cover letters had all been dated the same date as the document that was filed, Mr. Egan assumed that the order denying his motion to reconsider was also filed on March 13, 2014, the date he received notice of the order. Had the order been filed on March 13, 2014, the deadline for the petition for review would be on March 14, 2014, which is the date Mr. Egan filed the petition. Based on this anomaly, the court should allow the petition for review to be filed on April 14, 2014 under RAP Rule 18.8.

Dated April 15, 2014



James Egan, Petitioner, WSBA #28257
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DECLARATION OF SERVICE

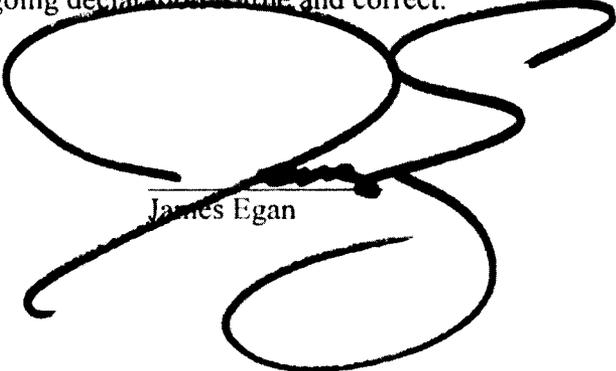
I, James Egan, declare that on April 15, 2014, I did serve this Motion for Extension of Time to File Petition for Review and the Declaration of James Egan on counsel for the City of Seattle as follows:

Ms. Mary Perry
Seattle City Attorney's Office
600 4th Avenue, 4th Floor
Seattle, WA 98124
BY HAND DELIVERY

Mr. Philip Talmadge
18010 Southcenter Parkway
Tukwila, WA 98188
**BY DEPOSITING A COPY IN THE UNITED STATES MAIL,
POSTAGE PREPAID**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

April 15, 2014



James Egan

NO. 69129-5

IN THE COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION ONE

JAMES C. EGAN, *Petitioner*.

v.

CITY OF SEATTLE, *Respondent*.

DECLARATION OF JAMES EGAN

JAMES C. EGAN
Petitioner

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COPY

**DECLARATION OF JAMES EGAN IN SUPPORT OF MOTION
TO EXTEND TIME TO FILE PETITION FOR REVIEW**

1.) I, James Egan, am the petitioner on this case, which was decided by the Court of Appeals, Division One, on February 3, 2014, Case No. 69129-5.

2.) On October 18, 2013, I received an email from Susan Dahlem, Senior Case Manager with the Court of Appeals, informing me that the court had granted a motion to file an amicus brief, which was requested by Allied Daily Newspapers of Washington and Washington Newspaper Publishers Association. Both the email and cover letter attached to the email were dated October 18, 2013.

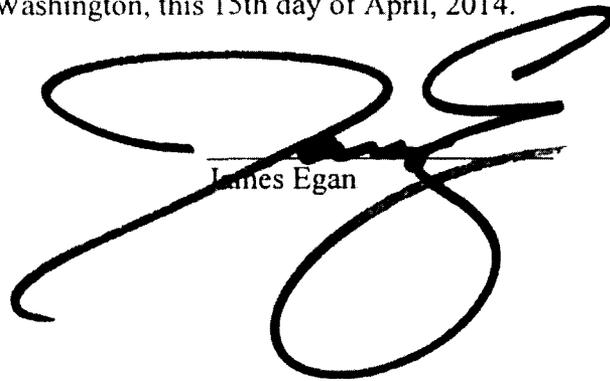
3.) On February 3, 2014, I received an email from Ms. Dahlem informing me the court had made a decision in the case and published that decision. The email, the cover letter attached to that email, and the decision were all dated February 3, 2014. The published decision was also filed on February 3, 2014, the same date that the email was sent and received by me.

4.) On March 13, 2014, after I timely filing a motion for reconsideration, I received an email from Ms. Dahlem informing me that that the court had denied my motion for reconsideration. The email and the cover letter attached to the email were dated March 13, 2014. (See Appendix A). The email was sent and received on March 13, 2014 at 10:49 am. (See Appendix A).

5.) Even though the email and cover letter were dated March 13, 2014, the Order Denying Motion for Reconsideration was filed with the court a day earlier on March 12, 2014, at 4:52 pm. Neither the email nor the cover letter made this apparent to me. The first date I received notice of the Order Denying Motion for Reconsideration was March 13, 2014.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED in Seattle, Washington, this 15th day of April, 2014.



James Egan

APPENDIX A

Jay W. Wilkinson

From: Dahlem, Susan <Susan.Dahlem@courts.wa.gov>
Sent: Thursday, March 13, 2014 10:49 AM
To: 'james@eganattorney.com'; 'dawn.bettinger@eganattorney.com'; 'phil@tal-fitzlaw.com'; 'j.wilkinson@eganattorney.com'; 'Mary.Perry@Seattle.Gov'; 'Michele@alliedlawgroup.com'
Subject: James C. Egan, Appellant v. City of Seattle - Order on Amicus Curiae & Motion for Reconsideration
Attachments: 2014_03_13_10_45_25SusanDalem.pdf

No hard copy will follow.

Susan S. Dahlem

Senior Case Manager

Court of Appeals - Division One

☎ Direct 206.464.5387 ~ Fax 206.389.2613

✉ susan.dahlem@courts.wa.gov

♻️ *Think Green! Please do not print this e-mail unless it is necessary.*

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

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March 13, 2014

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CASE #: 69129-5-1

James C. Egan, Appellant v. City of Seattle, Respondent

Counsel:

Enclosed please find a copy of the Order Granting Motion to File Amicus Curiae Brief and Order Denying Motion for Reconsideration entered in the above case.

Within 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. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

ssd

Enclosure

c: The Reporter of Decisions

OFFICE RECEPTIONIST, CLERK

To: Beth Ann Hinkle
Subject: RE: Motion for Extension of Time to File Petition for Review, Egan v. City of Seattle, Court of Appeals Div I No. 69129-5

Rec'd 4/15/14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Beth Ann Hinkle [mailto:info@eganattorney.com]
Sent: Tuesday, April 15, 2014 3:35 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: James C. Egan; 'Lee H. Rousso'; Jay W. Wilkinson; Daniel L. Nelson
Subject: Motion for Extension of Time to File Petition for Review, Egan v. City of Seattle, Court of Appeals Div I No. 69129-5

To Whom It May Concern:

Please find the attached Motion for Extension of Time to File Petition for Review for Egan v. City of Seattle, Court of Appeals Division One No. 69129-5, filed by James Egan, WSBA #28257. A copy of this has been served on the Court of Appeals and to all parties. It is unclear to our office whether it is required that we serve this on the Supreme Court as well; our apologies if it is unnecessary.

A hard copy is to follow in the mail.

Sincerely,

Beth A. Hinkle
Paralegal

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