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SUPREME COURT
STATE OF WASHINGTON
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No. 90576-2

Court of Appeals No. 44064-4-II

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THE SUPREME COURT
STATE OF WASHINGTON

ALDOREN KAUZLARICH,

Appellant,

vs.

CITY OF TACOMA,

Respondent.

**RESPONDENT CITY OF TACOMA'S
ANSWER TO APPELLANT'S MOTIONS FOR
EXTENSION OF TIME AND ANSWER TO PETITION FOR
REVIEW**

Debra E. Casparian, WSBA No. 26354
Deputy City Attorney
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ORIGINAL

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I. IDENTITY OF RESPONDENT

The Respondent is the City of Tacoma.

II. COUNTERSTATEMENT OF ISSUES

- 1) Whether this Court should grant Appellant Aldoren Kaulzarich's motions for extension of time when he has a pattern of filing pleadings late and presents no extraordinary circumstances for his motions?
- 2) If the Court accepts his motions for extension, whether this Court should accept review of this case when the Court of Appeals dismissed Appellant Kaulzarich's appeal for repeatedly failing to comply with the Rules of Appellate procedures, and when this case does not present an issue of substantial public interest, a constitutional question, or a conflict between the Court of Appeals' decision and a decision of other state appellate courts?

III. STATEMENT OF THE CASE

Mr. Kaulzarich's property was identified as a nuisance, per Tacoma Municipal Code (TMC) 8.30, in early 2010. CP 17-30. The City communicated with Mr. Kaulzarich many times

that he was required to remove abandoned cars, and clean up the random automotive parts and construction materials strewn about his property. CP 17-73. After he refused to clean up his property, the City obtained a warrant from the superior court to abate the nuisance. CP 90-91. At trial solely about the costs of abatement the City incurred for abating the property, the trial court ruled in favor of the City and ordered Mr. Kauzlarich to pay the full clean-up costs of \$1,465.02, plus statutory attorney fees. CP 286-300.

Appellant Kauzlarich appealed to the Court of Appeals. After he appealed, Mr. Kauzlarich routinely failed to comply with the Rules of Appellate procedure and orders from the Court of Appeals:

1. In a letter from the Court of Appeals dated January 24, 2013, the Court advised Mr. Kauzlarich that he did not comply with the court rules regarding the Statement of Arrangements and must resubmit the Statement within 10 days. See Appendix, page 1.
2. In a letter dated February 11, 2013, the Court of Appeals noted that Mr. Kauzlarich did not file his Amended Statement of Arrangements and required him to file them by March 4, 2013 (and pay sanctions) or the Court would dismiss his appeal. See Appendix, p. 2.

3. In a Conditional Ruling of Dismissal on March 20, 2013, the Court of Appeals stated it would dismiss the appeal if an Amended Statement of Arrangements was not filed by April 1, 2013. See Appendix, p. 3.
4. In June 2013, the Court of Appeals stated that the verbatim report of proceedings was late, and ordered that Mr. Kauzlarich pay another sanction and file the report by July 15, 2013. See Appendix, p. 4.
5. In September 2013, the Court notified Mr. Kauzlarich that his appellate brief was late. The Court imposed another sanction and ordered the brief to be filed by October 7, 2013, or the court would consider dismissal or further sanctions. See Appendix, p. 5.
6. On October 7, 2013, Mr. Kauzlarich filed his first of six requests for extension of time to file his opening brief. The request was to extend the time to file the brief to October 10, 2013.
7. On October 15, 2013, Mr. Kauzlarich filed his second request to file his opening brief on October 28, 2013.
8. On October 21, 2013, the Court of Appeals stated that Mr. Kauzlarich's brief must be filed by October 28th or the Court would consider dismissing his appeal. See Appendix, p. 6.
9. On October 31, 2013, Mr. Kauzlarich filed his third request to file his opening brief on November 5, 2013.
10. On November 14, 2013, Mr. Kauzlarich made his fourth request to file his opening brief on November 18, 2013.
11. On November 27, 2013, Mr. Kauzlarich made his fifth request to file his opening brief on December 23, 2013.

12. In December 2013, the Court issued a letter advising Mr. Kauzlarich that he filed a supplemental verbatim report of proceedings without the permission to do so. See Appendix, p. 7.
13. In January 2014, the Court noted again that Mr. Kauzlarich's appellate brief was late, imposed sanctions and ordered him to file his brief by February 3, 2014, or the court would consider dismissal or other sanctions. See Appendix, p. 8.
14. On February 3, 2014, Mr. Kauzlarich made his sixth request to file his opening brief on February 6, 2014.
15. The Court ordered his brief to be filed and a \$400.00 sanction be paid by February 4, 2014, or his appeal would be dismissed on February 5, 2014. See Appendix, p. 9.
16. Mr. Kauzlarich filed a partial opening brief on February 5, 2014. In his brief, he states "[NOTE: THE FOLLOWING PORTION OF THE BRIEF IS INCOMPLETE AS TO EDITING, SPELLING, DUPLICATION, AND CITATIONS TO THE RECORD DUE TO DENIAL OF COUNSEL'S EMERGENCY SHELTER CARE HEARING THAT DEPRIVED COUNSEL OF SUFFICIENT TIME.] (See Opening Brief of Appellant, page 25; capitalization in original).
17. The Appellant filed his tables of contents and authorities on February 7, 2014.

More than a year after receiving the case, the Court finally dismissed Appellant's appeal on February 7, 2014. See Appendix, pp. 10-11. Thirty-one days later, Appellant filed a motion to modify the Court's ruling. The Court of Appeals affirmed its decision to terminate review. See Appendix, p. 12.

Mr. Kauzlarich's petition for review was due July 24, 2014. However, he filed it after close of business that day.

In a letter dated August 5, 2014, this Court advised Mr. Kauzlarich that his petition for review was late and permitted him until September 5, 2014 to file and serve a motion for extension of time to file his petition for review.

Not until after this Court contacted Mr. Kauzlarich's attorney again on September 18, 2014 (See Request for Extension of Time Until September 19, 2014, page 2) did Mr. Kauzlarich file a motion for extension of time (from September 5th until September 19th) for him to file the original motion for extension of time to file his petition for review.

On September 19, 2014, Mr. Kauzlarich filed a motion to extend the time for "two minutes" in which to file his petition for review.

IV. ARGUMENT

The Court should deny review of this case for two reasons. First, Mr. Kauzlarich did not timely file his petition for review and he offers no extraordinary reason for doing so.

Second, Mr. Kauzlarich has not met any of the criteria governing review under RAP 13.4(b).

A. The Court should deny Mr. Kauzlarich's requests for extension of time to file his petition for review.

RAP 1.2(a) provides that the Rules of Appellate Procedure will be "liberally interpreted to promote justice and facilitate the decision of cases on the merits." Explicit exceptions to that rule of liberality exist however. One such exception is RAP 18.8(b), specifically referenced in RAP 1.2(a)¹, which severely restricts the Court's authority to grant a motion for extension of time to file a petition for review.

RAP 18.8(b) allows for extensions of time in which to file a petition for review only in extraordinary circumstances:

The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section....

¹ RAP 1.2(a) provides in full: "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b)."

(Emphasis added). This “rigorous test has rarely been satisfied in reported case law since the effective date of the Rules of Appellate Procedure on July 1, 1976.” Reichelt v. Raymark Indus., 52 Wn. App. 763, 765, 764 P.2d 653 (1988); see also Shumway v. Payne, 136 Wn.2d 383, 395, 964 P.2d 349 (1998). The rule “clearly favors the policy of finality of judicial decisions over the competing policy of reaching the merits in every case.” Reichelt, 52 Wn. App. at 765.

A plethora of cases exist to show how rarely a Court grants a motion for extension of time under RAP 18.8. For example, Washington courts have not granted a motion for extension when an internal lack of calendaring procedure led to a late filing of a notice of appeal. State v. Beckman, 102 Wn. App 687, 695, 11 P.3d 313 (2000) (stating that when the “Attorney General’s Office lacked any reasonable procedure for calendaring hearings,” this did not constitute “extraordinary circumstances.”). Nor have courts granted a motion for extension when one of appellant’s two trial attorneys left the firm during the 30 days following entry of the judgment, the firm’s appellate attorney had an unusually heavy workload at

that time, and the attorneys admitted they “made a mistake.” Reichelt, 52 Wn. App at 764-65. See also Shumway, 136 Wn.2d at 396-97 (holding that there were no extraordinary circumstances where a pro se litigant was erroneously informed by her ad hoc counsel that she did not need to file a particular motion in order to pursue a federal writ of habeas corpus); Schaefco v. Columbia River Gorge Comm'n, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993) (finding that failing to timely file an appeal because counsel misinterpreted the court rules did not constitute an extraordinary reason to grant motion for extension).

In a rare case, the Court granted a motion for extension of time in which to file an appeal when a pro se litigant, acting in good faith, misinterpreted a recently amended rule of appellate procedure. Scannell v. State, 128 Wn.2d 829, 834, 912 P.2d 489 (1996). In contrast to the pro se litigant in Scannell, here Mr. Kauzlarich is represented by an attorney and has been since the City filed its lawsuit in superior court.

The facts in the present case are essentially the same as in Beckman and Reichelt. Here, as in Reichelt, Mr. Kauzlarich's "overlooked" the September 5th deadline in which to file a motion for extension. See Request for Extension of Time Until September 19, 2014, page 2. Like in Beckman, Mr. Kauzlarich's counsel did not calendar the petition for review date. These facts do not constitute an extraordinary circumstance.

Moreover, in Reichelt, the Court noted that "nothing of record suggests that this matter would have resurfaced in counsel's mind within a 'reasonable' time" if the opposing party had not contacted appellant for payment of the underlying judgment. Reichelt, 52 Wn. App at 765. As in Reichelt, nothing here suggests Mr. Kauzlarich would have filed a motion for extension if the Court had not contacted his attorney a *second* time about it. See Request for Extension of Time Until September 19, 2014, page 2. This Court should not accept his requests for extensions of time.

This case is not like Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253 (9th Cir. 2010) as Mr. Kauzlarich suggests.² (See Request for Extension of Time Until September 19, 2014, p. 3). First, that case had to do with an entirely different court rule for granting a motion for extension of time, “for good cause”, to respond to a summary judgment motion. Id. at 1259 (referring to Fed. R. Civ. P. 6(b)(1)). That standard is starkly different than the “extraordinary circumstances” test present here under RAP 18.8.

Moreover, in Ahanchian, counsel petitioned for an extension of time *before* the deadline in which to file the brief, “acted conscientiously through the litigation, promptly seeking extensions of time when necessary....” Id. at 1260. Counsel argued he needed a one-week extension in which to respond to a motion for summary judgment because he had only 8 days to respond, the motion contained more than 1000 pages of exhibits, and he has a previously scheduled trip out of town during the 8 days he had to respond. After his request was

² Mr. Kauzlarich’s reference to Washington Const. art. IV, §§ 2, 11, and 30 as authority for granting a motion for extension is misplaced. (See Request for Extension of Time Until September 19, 2014, p. 3). None of those constitutional provisions relate to granting motions for extensions of time.

denied, counsel mistakenly filed his brief 3 days late. The Ninth Circuit held that counsel's original motion for extension, based on "good cause", should have been granted.

Here, Mr. Kauzlarich fails to present any "extraordinary circumstances" that warrant this Court to grant his motions for extension. Instead, as outlined above, Mr. Kauzlarich has an established pattern of filing pleadings late.

The City is sympathetic to Mr. Kauzlarich's health issues. See Request for Extension of Time Until September 19, 2014, page 2. However, his late request was not due to health issues—it was admittedly due to the fact that although counsel received the email from the Court on August 5, 2014, she "overlooked" the due date and did not file a motion for extension until after being contacted by the Court again. Id. Negligence, or lack of "reasonable diligence," does not amount to "extraordinary circumstances." Beckman, 102 Wn. App at 695.

As the Court did in Reichelt, and Beckman, this Court should deny Mr. Kaularich's motions for extension in which to file his petition for review.

B. There is no reason under RAP 13.4(b) why this Court should grant review in this case.

Even if the Court granted Mr. Kauzlarich's motions for extension for his petition for review, it should not accept review of this case. No issue outlined in RAP 13.4(b) is raised here.³

RAP 13.4(b) outlines when this Court will accept a petition for review:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Mr. Kauzlarich does not argue that *any* of the above applies. Indeed, none do. There is no conflict between this case and another case of this Court or the Court of Appeals. Nor is there a significant constitutional question present.

³ Mr. Kauzlarich argues that this Court should accept review for various reasons (Petition for Review, page 3-4), and cites to language contained in RAP 13.5-Discretionary Review of Interlocutory Decision. That rule does not apply here since the trial court's judgment was a final one. As a result, RAP 13.4—Discretionary Review of Decision Terminating Review, is the appropriate rule.

Finally, there is no issue of substantial public interest present here, when the case is solely about missing deadlines.

Mr. Kauzlarich argues that the Court of Appeals' dismissal of his case "is in direct conflict with RAP 10.2(i)" (Petition for Review, page 4) which states:

The appellate court will ordinarily impose sanctions under rule 18.9 for failure to timely file and serve a brief.

There is no conflict here. All RAP 10.2(i) says is that the appellate court will "ordinarily" impose sanctions for failing to timely file and serve a brief. The Court of Appeals did that here—many times.

Mr. Kauzlarich had every conceivable opportunity to comply with the rules and the Court's orders. But he routinely failed to do so. Finally, on its own motion, the Court of Appeals dismissed his appeal. Such dismissal order is authorized by RAP 18.9(b), which provides in pertinent part:

(b) Dismissal on Motion of Commissioner or Clerk.
The commissioner or clerk, on 10 days' notice to the parties, may (1) dismiss a review proceeding as provided in section (a)...

Section (a)⁴ referenced above states in relevant part

(a) Sanctions.... The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling...

Read together, RAP 18.9 authorizes an appellate court to dismiss an appeal when an appellant fails to comply “with the terms of an order or ruling.” That is what happened here.

Mr. Kauzlarich was warned countless times that his failure to comply with the rules may lead to dismissal his appeal:

⁴ The full text of RAP 18.9(a) and (b) reads:

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days' notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2) except as provided in rule 18.8(b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in rule 17.7.

- 1) In a letter dated February 11, 2013, the Court stated it “scheduled a motion for dismissal and/or further sanctions because of [Mr. Kauzlarich’s] failure to timely file the amended statement of arrangements.” See Appendix, p. 2.
- 2) On March 20, 2013, the Court issued a “Conditional Ruling of Dismissal” stating that if Mr. Kauzlarich did not file an Amended Statement of Arrangements and pay sanctions before April 1, 2013, the appeal would be dismissed. See Appendix, p. 3.
- 3) On September 16, 2013, the Court stated it would dismiss Mr. Kauzlarich’s appeal if he did not file his brief by October 7, 2013. See Appendix, p. 5.
- 4) On October 21, 2013, the Court stated it would dismiss Mr. Kauzlarich’s appeal if he did not file his brief by October 28, 2013. See Appendix, p. 6.
- 5) On January 15, 2014, the Court the Court stated it would dismiss Mr. Kauzlarich’s appeal if he did not file his brief by February 3, 2014. See Appendix, p. 8.
- 6) On February 4, 2014, the Court stated that it would consider dismissing this case on February 5, 2014 if Mr. Kauzlarich did not file his brief on February 4, 2014. See Appendix, p. 9.

On February 7, 2014, the Court finally dismissed the appeal. See Appendix, pp. 10-12. The Court of Appeals properly conditioned Mr. Kauzlarich’s right to participate in his appeal with compliance with the Court’s order and rulings.

Finally after a year of delay, the Court dismissed his appeal under RAP 18.9.

Mr. Kauzlarich's reliance on Johnson v. Chevron U.S.A., Inc., 159 Wn. App. 18, 244 P.3d 438 (2010) to argue that his pattern of late filing is excusable is unpersuasive. See Petition for Review, p. 5. In Johnson, the appellant attached two appendices to his appellate brief, which respondent moved to strike. As Mr. Kauzlarich noted, the Court denied the motion because, while the appendices are arguably improper, they did not contain any new information and just summarized arguments for the Court.

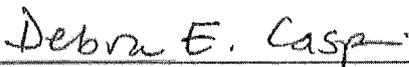
This case goes far beyond filing arguably improper appendices. Here, Mr. Kauzlarich has a pattern of filing pleadings late. For more than a year, he repeatedly failed to comply with procedural rules. He never filed a final and complete appellate brief. These facts do not rise to the level of a substantial public interest as required by RAP 13.4(b). As a result, the City respectfully requests this Court to deny Mr. Kauzlarich's petition for review.

V. CONCLUSION

Mr. Kauzlarich has not shown any extraordinary reason why this Court should accept his late-filed petition for review. Moreover, no grounds exist under RAP 13.4(b) for this Court to accept review. Consequently, the City respectfully requests this Court to deny Mr. Kauzlarich's motions for extension and his petition for review.

RESPECTFULLY SUBMITTED this 22 day of October, 2014.

ELIZABETH A. PAULI, City Attorney



DEBRA E. CASPARIAN
WSB #26354
Deputy City Attorney
Attorney for Respondents

APPENDIX A



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

January 24, 2013

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CASE #: 44064-4-II

City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Dear Ms. Gunther:

The Statement of Arrangements filed January 24, 2013, does not comply with RAP 9.2(a) (Amended 9-1-98), **which requires** the statement of arrangements to include the hearing dates of the requested transcripts, the court reporter(s)/transcriber(s), the trial court judge, and **proof of service on all** parties and all **named court reporters**. Please submit an amended statement of arrangements within 10 days of the date of this letter that includes proof of service on **all named court reporters**. If you do not file an amended statement of arrangements, this case will be placed on a motion calendar for sanctions and/or dismissal.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha", with a long horizontal flourish extending to the right.

David C. Ponzoha
Court Clerk

DCP:k



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

February 11, 2013

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CASE #: 44064-4-II
City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Ms. Gunther:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the amended statement of arrangements, due **February 4, 2013**. (Per Court's letter of January 24, 2013.)

Accordingly, we will impose a sanction of \$300.00 against you unless you filed the amended statement of arrangements with this court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a *motion for dismissal and/or further sanctions* because of your failure to timely file the amended statement of arrangements. A commissioner will consider this motion, without oral argument, if you do not file the amended statement of arrangements, by March 4, 2013. We will strike the clerk's motion for further sanctions if you cure the defect before that date. Please note, however, that even if we strike the clerk's motion for dismissal, you will not be released from **paying the sanction imposed on February 26, 2013**, unless you file your response before that date.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:k

Appendix A-2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

COURT FILED
APPEALS
DIVISION II
2013 MAR 20 AM 7:24
STATE OF WASHINGTON
BY DEPUTY

CITY OF TACOMA,

Respondent,

v.

ALDOREN KAUZLARICH,

Appellant.

No. 44064-4-II

CONDITIONAL RULING OF DISMISSAL

THIS MATTER comes before the undersigned upon a motion by the clerk of this court to dismiss the above-entitled appeal for failure to file an Amended Statement of Arrangements with proof of service on Court Reporter(s), due since February 26, 2013. It appears that dismissal is warranted, but that a brief grace period is also warranted. Accordingly, it is

ORDERED that the above-entitled appeal will be dismissed without further notice unless an Amended Statement of Arrangements with proof of service on Court Reporter(s) and the previously imposed sanction of \$300.00 are on file with the Clerk before the close of business on April 1, 2013.

DATED this 20th day of March, 2013.

Erin B. Schwab

COURT COMMISSIONER

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Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

June 27, 2013

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CASE #: 44064-4-II

City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Ms. Schelbert:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the verbatim report of proceedings, due **May 31, 2013**.

Accordingly, we will impose a sanction of \$250.00 against you unless you file the verbatim report of proceedings with this court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a motion for further sanctions because of your failure to timely file the verbatim report of proceedings. A commissioner will consider this motion, without oral argument, if you do not file the verbatim report of proceedings, by July 15, 2013. We will strike the clerk's motion for further sanctions if you cure the defect before that date. Please note, however, that even if we strike the clerk's motion, you will not be released from **paying the sanction imposed on July 12, 2013**, unless you file the record before that date.

Very truly yours,

David C. Ponzoha
Court Clerk

DGP:k

Appendix A-4



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

September 16, 2013

Marilyn R Gunther
Attorney at Law
5312 9th Ave NE
Seattle, WA, 98105-3617
mgunther@eskimo.com

Debra Ellen Casparia
Tacoma City Attorney's Office
727 Market St, Rm 1120
Tacoma, WA 98402-3701
dcasparian@ci.tacoma.wa.us

CASE #: 44064-4-II
City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Ms. Gunther:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the appellant's brief, due **August 26, 2013**.

Accordingly, we will impose a sanction of \$200.00 against you unless you filed the appellant's brief with this court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a motion for dismissal and/or further sanctions because of your failure to timely file the appellant's brief. A commissioner will consider this motion, without oral argument, if you do not file the appellant's brief, by October 7, 2013. We will strike the clerk's motion for dismissal and/or for further sanctions if you cure the defect before that date. Please note, however, that even if we strike the clerk's motion for dismissal, you will not be **released from paying the sanction imposed on October 1, 2013**, unless you file your brief before that date.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:k

Appendix A-5



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

October 21, 2013

Marilyn R Gunther
Attorney at Law
5312 9th Ave NE
Seattle, WA 98105-3617
mgunther@eskimo.com

Debra Ellen Casparian
Tacoma City Attorney's Office
747 Market St Rm 1120
Tacoma, WA 98402-3701
dcasparian@ci.tacoma.wa.us

CASE #: 44064-4-II
City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY THE CLERK:

Appellant is granted a further extension of time to and including 10/28/13 to file the Appellant's Opening Brief. The court will consider the Clerk's motion for dismissal without oral argument if the brief is not filed by 10/28/13. In view of the length of this extension, the clerk will forward any further continuance requests to the Chief Judge for consideration.

Very truly yours,

David C. Ponzoha
Court Clerk

Appendix A-6



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

December 13, 2013

Marilyn R Gunther
Attorney at Law
5312 9th Ave NE
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mgunther@eskimo.com

Debra Ellen Casparian
Tacoma City Attorney's Office
747 Market St Rm 1120
Tacoma, WA, 98402-3701
dcasparian@ci.tacoma.wa.us

CASE #: 44064-4-II

City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Ms. Gunther:

The Court is in receipt of a supplemental verbatim report of proceedings of June 15, 2012 in the above-referenced matter. To date, the Court has not received a motion seeking this Court's permission to file a supplemental verbatim report of proceedings. See RAP 9.10. Accordingly, you will need to file the appropriate motion no later than December 18, 2013, or the transcript will be placed in the Court file without further action.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:k

Appendix A-7



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

January 15, 2014

Marilyn R Gunther
Attorney at Law
5312 9th Ave NE
Seattle, WA, 98105-3617
mgunther@eskimo.com

Debra Ellen Casparian
Tacoma City Attorney's Office
747 Market St Rm 1120
Tacoma, WA, 98402-3701
dcasparian@ci.tacoma.wa.us

CASE #: 44064-4-II

City of Tacoma, Respondent v. Aldoren Kauzlarich, Appellant

Ms. Gunther:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the appellant's brief, due December 23, 2013, after extensions.

Accordingly, we will impose an additional sanction of \$200.00 (**\$200 due and owing December 23, 2013 per order of December 18, 2013**) against you unless you file the appellant's brief with this court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a **motion for dismissal** and/or further sanctions because of your failure to timely file the appellant's brief. A commissioner will consider this motion, without oral argument, if you do not file the appellant's brief, by February 3, 2014. We will strike the clerk's motion for dismissal/further sanctions if you cure the defect before that date. Please note, however, that even if we strike the clerk's motion for dismissal, you will not be released from paying the sanction imposed on January 30, 2014, unless you file your brief before that date.

Very truly yours,

David C. Ponzoha
Court Clerk

DPC:k

Appendix A-8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF TACOMA,
Respondent,
v.
ALDOREN KAUZLARICH,
Appellant.

No. 44064-4-II

ORDER ON FURTHER MOTION TO EXTEND
TIME TO FILE APPELLANT'S BRIEF

FILED
COURT OF APPEALS
DIVISION II
2014 FEB -4 AM 10:05
STATE OF WASHINGTON
DEPUTY

APPELLANT moves for a further extension of time to February 6, 2014 to file the appellant's opening brief in the above-entitled matter. After consideration, the Court has determined that the appellant's opening brief and the \$400.00 sanctions due and owing must be paid by the close of business on Tuesday, February 4, 2014, or the motion to dismiss will be considered as scheduled on February 5, 2014. Accordingly, it is

SO ORDERED.

DATED this 4th day of February, 2014.

FOR THE COURT:

Worswick
CHIEF JUDGE

Marilyn R Gunther
Attorney at Law
5312 9th Ave NE
Seattle, WA, 98105-3617
mgunther@eskimo.com

Debra Ellen Casparian
Tacoma City Attorney's Office
747 Market St Rm 1120
Tacoma, WA, 98402-3701
dcasparian@ci.tacoma.wa.us

FILED
COURT OF APPEALS
DIVISION II
2014 FEB - 7 AM 7:14
STATE OF WASHINGTON
BY DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF TACOMA,

Respondent,

v.

ALDOREN KAUZLARICH,

Appellant.

No. 44064-4-II

RULING DISMISSING
APPEAL

After the court granted appellant multiple extensions to file an opening brief originally due in August 2013, the chief judge of this court granted appellant an additional extension of time to February 4, 2014, to file an opening brief and pay \$400.00 in sanctions. The order informed appellant that "the motion to dismiss will be considered as scheduled on February 5, 2014," in the event he failed to comply with the February 4, 2014, deadline.

On February 5, 2014, one day late, this court received appellant's opening brief and payment of sanctions. This brief, however, does not comply with RAP 10.3(a).

In light of the multiple opportunities this court gave appellant to file a timely and correct brief and appellant's failure to do so, this matter is dismissed. See RAP 18.9. Accordingly, it is hereby

ORDERED that this appeal is dismissed.

DATED this 7th day of February, 2014.



Aurora R. Barse
Court Commissioner

cc: Marilyn Gunther
Debra Casparian
Hon. Brian Tollefson

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

| |
|--|
| <p>CITY OF TACOMA,</p> <p>Respondent,</p> <p>v.</p> <p>ALDOREN KAUZLARICH,</p> <p>Appellant.</p> |
|--|

No. 44064-4-II

ORDER DENYING MOTION TO MODIFY

2014 JUN 24 PM 3:13
 STATE OF WASHINGTON
 COURT APPEALS
 DIVISION II
 TACOMA

APPELLANT filed a motion to modify a Commissioner's ruling dated February 7, 2014, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 24th day of June, 2014.

PANEL: Jj. Johanson, Worswick, Lee

FOR THE COURT:

Johanson, C. J.
 CHIEF JUDGE

Marilyn R Gunther
 Attorney at Law
 5312 9th Ave NE
 Seattle, WA, 98105-3617
 mgunther@eskimo.com

Debra Ellen Casparian
 Tacoma City Attorney's Office
 747 Market St Rm 1120
 Tacoma, WA, 98402-3701
 dcasparian@ci.tacoma.wa.us

OFFICE RECEPTIONIST, CLERK

To: Kropelnicki, Tina (Legal)
Cc: Casparian, Debra (Legal)
Subject: RE: Kauzlarich v. City of Tacoma #90576-2

Received 10-22-2014

Supreme Court Clerk's Office

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: Kropelnicki, Tina (Legal) [mailto:tkropelnicki@ci.tacoma.wa.us]
Sent: Wednesday, October 22, 2014 11:16 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Casparian, Debra (Legal)
Subject: Kauzlarich v. City of Tacoma #90576-2

Case Name: Aldoren Kauzlarich, Appellant
v.
City of Tacoma, Respondent

Case Number: Supreme Court No. 90576-2
Court of Appeals No. 44064-4-II

Name: Debra E. Casparian
Tele: 253-591-5887
WSBA: #26354
Email: dcasparian @ci.tacoma.wa.us

Pursuant to the above-referenced case - attached please find the Respondent, City of Tacoma's Answer to Appellant's Motions for Extension of Time and Answer to Petition for Review; and Certificate of Service. Thank you, Tina Kropelnicki, for Deputy City Attorney Debra E. Casparian.