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FILED
FEB 09 2015
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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

JAMES ENGLE, an individual,
Plaintiff-Respondent,

v.

JAY DEE MILLER and his separate
property only,

Defendant-Appellant.

No. 70609-8-1

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

I. Identity of Moving Party

Appellant Jay Dee Miller asks for the relief set forth below.

II. Statement of Relief Sought

An order extending the time for filing of appellant's petition for review
until January 28, 2015, the date of filing.

RECEIVED FEB 9 2015

1 **III. Facts in Support of Motion**

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3 (1) On December 1, 2014, undersigned counsel filed a motion for
4 reconsideration of the panel's decision on appellant's behalf.

5 (2) On January 2, 2015, I filed a supplemental memorandum in support
6 of our motion for reconsideration.

7 (3) On January 23, 2015, I filed my declaration in support of appellant's
8 motion for reconsideration.

9 (4) On January 27, 2015, I received a voice mail from the case manager,
10 Ms. Helen Kistler. I called her back. She advised that the court had received
11 my supplemental memorandum and declaration, but the panel did not look at
12 them. She explained that the motion for reconsideration had been denied. This
13 was the first that I heard of the denial. Ms. Kistler advised that the order had
14 been entered on December 22, 2014. She advised that notice of the order had
15 been sent out by email on that date.

16
17 (5) I looked in my email and backup email folders. I could not find an
18 email with the denial order. I was unaware of the Court's denial order until
19 January 27, 2015. Ms. Kistler emailed me a copy.

20 (6) On or about December 22, 2014, I had document problems which
21 arose from malware that had infected my computer. On December 23rd, I
22 purchased new anti-malware software and ran a scan. The scan found 244
23 potentially unwanted programs (PUP's) in 53 folders, and quarantined them. I
24 did not locate any missing emails. It is possible the Court's email on December
25 22nd came into my system while the malware was active.

1 (7) Under the rules, the petition for review would be due by January 21,
2 2015. I certainly would have filed our petition for review by that date had I
3 known of the court's order. I also would not have prepared and filed the
4 supplemental memorandum on January 2nd and the declaration with the court on
5 January 23rd had I known of the denial order of December 22nd.

6 (8) I believe that these circumstances justify granting a short extension of
7 time within which to file the petition for review.
8

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10 IV. Grounds for relief and argument

11 RAP 18.8(b) authorizes the relief sought. The appellate court can extend
12 the time within which to file a petition for review in extraordinary
13 circumstances and to prevent a gross miscarriage of justice. The facts outlined
14 above are sufficient to meet this standard. Undersigned counsel is not aware of
15 any prejudice to the respondent if this request is granted.

16 Dated this the 28th day of January, 2015.

17
18 Respectfully submitted,
19 MUENSTER AND KOENIG

20 By: S/ John R. Muenster

21 John R. Muenster

22 Attorney at Law

23 WSBA # 6237

24 Of Attorneys for Defendant-Appellant
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CERTIFICATE OF SERVICE

I certify that on the 28th day of January, 2015, I caused a true and correct copy of this document to be served on counsel of record via email and first class mail.

Dated this the 28th day of January, 2015.

S/ John R. Muenster
Attorney at Law

FILED
JAN 29 2015
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