



***It's All in the Timing:
Strict Deadlines to File Appeals in Washington.***

You have just suffered a major loss or had a court order against your client's interest, and now you must decide whether or not to appeal - quickly. When filing an appeal with the Washington Court of Appeals, it is critical that your filing be timely. Unlike other deadlines, missing appellate filing deadlines can result in losing jurisdictional grounds and the court having little discretion to grant you relief. While Washington courts have found other reasons to allow defective appeals, untimely appeals will only be allowed under "extraordinary circumstances."¹ In practice, this standard is harsh and rarely met.

General Timing for Appeals

The Washington State Rules of Appellate Procedure provide that generally an appeal must be filed in the trial court within 30 days after the entry of the decision of the trial court.² Similarly, a notice for discretionary review also needs to be filed in the trial court within 30 days after the act of the trial court that the appealing party wants reviewed.³ Some limited exceptions exist to these rules. First, if a statute provides that a notice of appeal or notice of discretionary review must be filed within a time period other than 30 days, the statute controls.⁴ Also, appeals must be filed 30 days after entry of the order or within the time prescribed by statute when appealing orders deciding certain timely motions, such as a motion for arrest judgment or a motion for new trial, in criminal matters, or a motion for judgment as a matter of law, a motion for reconsideration or new trial, or a motion for amendment of a judgment, in civil matters.⁵ If another party files notice, and you want relief from the decision as well, you must file a notice of appeal or a notice for discretionary review with the trial court clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) the 30 days or time allotted by statute.⁶

Motions to Extend Time Require "Extraordinary Circumstances"

Generally, the Rules of Appellate Procedure "will be liberally interpreted to promote justice and facilitate the decision of cases on the merits."⁷ However, with respect to the extension of time, the Washington courts hold a strong presumption against extending the time to file a notice of appeal or notice for discretionary review.⁸ The appellate court will "only in extraordinary

¹ RAP 18.8(b)

² RAP 5.2(a)

³ RAP 5.2(b)

⁴ RAP 5.2(d)

⁵ RAP 5.2(e)

⁶ RAP 5.2(f)

⁷ RAP 1.2(a)

⁸ See RAP 1.2, 18.8(b)

circumstances and to prevent a gross miscarriage of justice extend the time with which a party must file a notice of appeal [or a] notice of discretionary review.”⁹

Rarely have courts found the “extraordinary circumstances” mandated by RAP 18.8(b). Extraordinary circumstances have been found to justify extensions of time where the findings were defective, despite the reasonable diligence of counsel, “due to excusable error or circumstances beyond the party’s control.”¹⁰ In *Weeks v. Chief of State Patrol*, extraordinary circumstances were found where notice was timely filed in the wrong court.¹¹ In *State v. Ashbaugh*, the burden under 18.8(b) was met when notice was timely filed without filing fee.¹² And, in *Structurals N.W., Ltd. v. Fifth & Park Place, Inc.*, notice timely when it was filed within 30 days of a stipulated amended judgment.¹³ Notably, in none of these cases were extraordinary circumstances found when an appeal was not filed timely.

Confirming the strict stance on not allowing untimely appeals, in *Reichelt v. Raymark Indus., Inc.*, when an appeal was untimely because one of the appealing party’s attorney’s left the firm during the 30 days following entry of judgment, and the firm’s other attorney had an unusually heavy workload, the Court of Appeals held that those circumstances did not represent the type of diligence required to grant an extension of time.¹⁴ *Reichelt* summarizes the cases allowing late filings by explaining that “[i]n each case, the defective filings were upheld due to ‘extraordinary circumstances,’ i.e., circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control. In such a case, the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant’s reasonably diligent conduct.”¹⁵ The *Reichelt* court further commented that the Rules of Appellate Procedure purposefully “restrict extensions of time in these circumstances for sound policy reasons.”¹⁶ “[G]ranting an extension without extraordinary circumstances prejudices the appellate system and to litigants generally, who are entitled to an end to their day in court.”¹⁷ Moreover, lack of prejudice to the respondent is irrelevant in determining whether extraordinary circumstances exist under RAP 18.8 (b).¹⁸ These strict guidelines were followed, and the untimely appeal was disallowed, in *Beckman ex. rel. Beckman v. State, Dep’t of Social and Health Services*, where the Attorney General’s Office missed the appeal deadline because it apparently failed to have a reasonable procedure for calendaring hearings.¹⁹ The court found that there was nothing so extraordinary as to allow the untimely appeal and that the Attorney General’s Office did not demonstrate any reasonable diligence in attempting to file a timely appeal.²⁰

⁹ RAP 18.8(b)

¹⁰ *Reichelt v. Raymark Indus., Inc.*, 52 Wn.App. 763, 765, 764 P.2d 653 (1988).

¹¹ 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982).

¹² 90 Wn.2d 432, 438, 583 P.2d 1206 (1978).

¹³ 33 Wn.App. 710, 714, 658 P.2d 679 (1983).

¹⁴ *Reichelt*, 52 Wn.App. at 766.

¹⁵ *Id.* at 765-66.

¹⁶ *Id.*

¹⁷ *Id.* at 117 (internal citations and quotations omitted).

¹⁸ *City of Spokane v. Landgren*, 127 Wn.App. 1001, 107 P.3d 114 (2005).

¹⁹ 102 Wn.App. 687, 695, 11P.3d 313 (2000).

²⁰ *Id.*

Finally, an appeal must not only be timely filed, but the underlying motions filed prior to an appeal, such as a motion for reconsideration must also be timely filed and served pursuant to the Civil Rules. In *Schaeferco, Inc. v. Columbia River Gorge Commission*, the Washington Supreme Court held that when a motion for reconsideration was timely filed, but untimely served, that the appeal was not timely perfected.²¹ Civil Rule 59 requires that a motion for reconsideration be “served and filed not later than 10 days after the entry of the judgment.” When a case is transferred to the Court of Appeals that “has not been properly perfected, [the] court upon transfer will consider such a defect and take appropriate action.”²²

In practical application, the strict construction of time deadlines in the Rules of Appellate Procedure require that when you have a decision or final order from a trial court, which you may want to appeal, you must closely monitor the deadlines for appeal. Without careful monitoring, you may miss the relevant deadlines and thus, lose your right to appeal entirely.

Jaime Drozd Allen is a member in Ogden Murphy Wallace P.L.L.C.’s newly-formed Appellate Practice Group, as well as in the firm’s Litigation Department. She can be reached at jallen@omwlaw.com. The information in this article is not intended as legal advice, nor is it something you should rely on.

²¹ 121 Wn.2d 366, 368, 849 P.2d 1225 (1993).

²² *Id.* at 368, n.1 citing *Glass v. Windsor Nav. Co.*, 81 Wn.2d 726, 727, 504 P.2d 1135 (1973).