

DIVISION ONE  
OF THE STATE OF WASHINGTON

Andrew Gillespie and Katherine  
Ward,

Respondents,

v.

Paul Drinkwine,

Appellant

NO. 82452-0

APPELLANT'S  
RESPONSE TO  
RESPONDENT'S  
FIFTH MOTION FOR  
EXTENSION OF TIME  
TO FILE BRIEF AND  
REQUEST FOR  
SANCTIONS

**I. INTRODUCTION**

Appellant Paul Drinkwine objects to Respondents Fifth Motion for Extension of Time to file their Brief of Respondent. Drinkwine asks the Court to deny the motion, and order Respondents to file their Brief of Respondent immediately. Appellant also requests that this Court impose monetary sanctions against Respondents, including attorney fees incurred in preparing this response.

**II. RELEVANT FACTS**

Drinkwine filed his corrected Opening Brief of Appellant on September 23, 2021. As of today, Respondent's counsel

Philip Ornstil has had 160 days, or five months and one week, to prepare the Brief of Respondent, yet his latest motion claims that this is still not enough time.

Gillespie and Ward’s brief was originally due on October 23, 2021. Mr. Ornstil’s first request for extension, filed October 8, requested an extension to December 8. First Motion for Extension at 3. He listed his many work obligations, and also stated that he needed this additional time because, *inter alia*, he had personal volunteering commitments, including to the “KBTC Association” and “West Seattle Baseball.” *Id.* at 4. Drinkwine did not object to this extension of time.

Mr. Ornstil’s second request for extension, filed December 6, asked for a new due date of January 7, 2022. Second Motion for Extension at 2. He stated that he needed that additional month because, *inter alia*, he was having “Christmas vacation in Massachusetts.” *Id.* at 4. Drinkwine did not object to this second extension of time.

Mr. Ornstil's third request for extension was filed January 5, 2022, and requested a new due date of February 8, 2022. Third Motion for Extension at 2. He stated that he needed that additional month because of an unspecified family emergency that occurred while he was on vacation (presumably the aforementioned Massachusetts vacation):

...a family a [sic] vacation that turned into a family emergency that has required my attention for longer than expected. I am back in the office, however, additional time is necessary to file Appellee's [sic] Response.

*Id.* Mr. Ornstil did state on January 5<sup>th</sup> that he was "back in the office", and therefore presumably able to finally complete on the brief. Drinkwine did not object to this third extension of time.

Mr. Ornstil's fourth request for extension, filed February 4, requested a "brief" additional extension to March 1, 2022. Fourth Motion for Extension at 2. Unlike in his prior motions, he did not specify what work he had that took precedence over his work on this case. He stated he was "simply" too busy:

An extension to March 1, 2022 is requested and necessary as I simply have not been able to completely catch up from having an unplanned absence coupled with active litigation files at the trial level and responding to discovery requests. A *brief* additional time is necessary to file Appellee's Response, and Petitioner is not prejudiced as a result of this request.

*Id.* (emphasis added).

Regarding this final statement that Drinkwine was “not prejudiced” by Mr. Ornstil's request, Mr. Ornstil was not authorized by Drinkwine to make the representation to this Court, and it is false. Drinkwine is prejudiced by this delay, because he is challenging an unlawful anti-harassment order obtained by his neighbors, Gillespie and Ward, that currently restricts his First Amendment rights. The order is not stayed, and his free expression is chilled *in the very home where he resides*.

However, Drinkwine still did not object to this fourth extension request.<sup>1</sup>

In its order granting Mr. Ornstil's fourth extension request, this Court noted that "further extensions will not be granted without good cause or imposition of sanctions." Feb. 7, 2022 Commissioner's Notation Ruling.

Now Mr. Ornstil has filed a fifth request for extension of time "one last time." Fifth Motion for Extension at 2. He filed it at 9 p.m. last night. As the "good cause", he cites a single cause, a February 25 mediation, claiming that his time throughout February was completely consumed with "communication leading up to the mediation." *Id.*

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<sup>1</sup> It is not a customary practice for the undersigned counsel to object to extensions of time. It is a common motion in appellate practice, one that is rarely abused in this manner. That tendency, and perhaps an overactive sense of collegiality, is what caused the undersigned counsel to avoid objecting sooner.

### **III. ARGUMENT**

**A. This Court should order that the Brief of Respondent be filed immediately.**

Given these unusual circumstances, this Court should exercise its authority to deny the fifth motion for extension, and order Gillespie and Ward to file their brief immediately. Mr. Ornstil's last two declarations provided no specificity as to why he could not meet the prior deadlines. He just generally stated that he too busy with other matters to meet his professional obligations to this Court. And his current motion does not meet this Court's previously imposed standard of "good cause" for an extension. Handling one mediation is not "good cause" for why he has not found time to complete his work in January and February, or indeed for that last five-plus months.

Also, it should be noted that the delay cannot be explained by the need to review a lengthy appellate record. The Clerk's Papers are only 230 pages, and the hearing transcript is 34 pages. And Mr. Ornstil is very familiar with the record, having

represented Gillespie and Ward in the superior court proceedings.

Today is the long-extended due date. The Brief of Respondent should be filed immediately.

**B. This Court should impose sanctions against Gillespie and Ward and their counsel for abusing the appellate rules for purposes of delay.**

This Court has authority to sanction parties who abuse the Appellate Rules for purpose of delay. RAP 18.9. Far from feeling the need to justify their continued delay, Gillespie, Ward, and Ornstil have apparently been emboldened by this Court's generous extensions of time. The initial requests for extension at least attempted to itemize Mr. Ornstil's time constraints, but the last two vaguely assert family or professional commitments that do not justify the delay.

It appears from the recent requests that Gillespie, Ward, and their counsel have been using the appellate rules to delay disposition of this case as long as possible, so that they can continue to benefit from the unlawful and unconstitutional order

imposed against Mr. Drinkwine. They are presumably aware that this Court will not set this matter for consideration until the Brief of Respondent is filed. Their actions are prejudicial to Mr. Drinkwine, and disrespectful of this Court's process.

In addition to denying the current request, Drinkwine respectfully requests that this Court impose the following monetary sanctions against Gillespie, Ward, and/or their counsel Mr. Ornstil: (1) a flat amount of the Court's choosing to be paid to the Court as a sanction for all of the administrative work Respondents and their counsel have created, and (2) reasonable attorney and costs incurred by Drinkwine for having to prepare this response.

#### **IV. CONCLUSION**

The Court should deny Respondents' Motion for Extension of Time, order that their brief be filed immediately, and impose monetary sanctions.



This document contains 1,170 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 1st day of March, 2022.

CARNEY BADLEY SPELLMAN, P.S.

By /s/ Sidney C. Tribe  
Sidney C. Tribe, WSBA No. 33160  
*Attorneys for Respondent Paul Drinkwine*

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Via Appellate Portal to the following:

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DATED this 1<sup>st</sup> day of March, 2022.

*S/Allie M. Keihn*

Allie M. Keihn, Legal Assistant

**CARNEY BADLEY SPELLMAN**

**March 01, 2022 - 1:32 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 82452-0  
**Appellate Court Case Title:** Andrew Gillespie et ano, Respondents v. Paul Drinkwine, Appellant

**The following documents have been uploaded:**

- 824520\_Answer\_Reply\_to\_Motion\_20220301133012D1722829\_1334.pdf

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Appellants Objection to Respondents Fifth Motion for Extension of Time to File Brief and Request for Sanctions

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