

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

KITSAP COUNTY, a political subdivision of  
the State of Washington,

Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB, a  
not-for-profit corporation registered in the  
State of Washington, and JOHN DOES and  
JANE DOES I-XX, inclusive,

Appellant,

and

IN THE MATTER OF NUISANCE AND  
UNPERMITTED CONDITIONS LOCATED  
AT

One 72-acre parcel identified by Kitsap  
County Tax Parcel ID No. 362501-4-002-  
1006 with street address 4900 Seabeck  
Highway NW, Bremerton Washington.

Case No.: 43076-2-II

**DECLARATION OF  
BROOKS M. FOSTER  
(NOV. 20, 2014)**

I, Brooks M. Foster, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my personal knowledge, information, and belief:

1. I am an attorney with Chenoweth Law Group, PC (“CLG”), which represents Appellant Kitsap Rifle and Revolver Club (the “Club”) in this action. This declaration is based on my prior involvement in the case and my review of relevant portions of my file. I am over the age of 18 and competent to testify to the facts herein. I give this declaration in support of *Appellant’s Motion to Enlarge Deadline to File Appellant’s Motion for Reconsideration*, dated November 20, 2014 (the “Motion”).

2. On October 28, 2014, the Court filed its *Published Opinion* (the “Opinion”) in the above-captioned case. Pursuant to RAP 12.4(b), the deadline to file a motion for reconsideration was November 17, 2014. Working with my staff, I filed the Motion electronically on November 17, 2014 at 6:29 PM. I immediately received an email certificate that confirmed the filing. The email was time-stamped 6:30 pm. A true copy of the email certificate is attached as Exhibit 1.

3. On November 19, 2014, I received a letter from the Court Clerk rejecting the Motion on the grounds that it was filed after 5 pm on the due date. This surprised me. I believed the Motion had been timely filed because the Court had previously accepted filings by the Club as late

as 9:43 pm without post-dating them to the next day. This had led me to believe the Court's e-filing system was "open for business" until at least 10 pm.

4. I now understand from the Court's November 19 letter that the Court considers any document e-filed after 5 pm to have been filed the next day. I was not aware of this when the Motion was filed. The Motion could have been filed before 5 pm and would have been but for my misapprehension of the Court's rule regarding e-filing.

5. On at least three earlier occasions in this case, my staff and I e-filed documents with the Court after 5 pm. Each time, the Court immediately delivered an electronic confirmation of filing. On no occasion did the Court inform the Club or its counsel that any of its filings would be post-dated. One of the filings was an answer to a motion to strike, which the Court accepted at 9:43 pm on the day it was due. This prior course of dealings led me to believe the Motion was timely when it was filed at 6:29 pm on November 17, 2014.

6. On February 20, 2014, Respondent Kitsap County filed *Kitsap County's Motion to Strike Portions of Reply Brief*. The Court set a deadline of April 3, 2014, for the Club to answer the motion.<sup>1</sup> On April 3,

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<sup>1</sup> See *Order Granting Respondent's Mot. to File Over-Length Mot. to Strike Portions of Reply Br.*, *Order Granting Appellan't Mot. to File Over-*

2014, at 9:43 pm, my staff and I filed *Appellant's Answer to Respondent's Motion to Strike*. I immediately received the filing confirmation email from the Court attached as Exhibit 2. The Court issued no follow up communication rejecting the answer or warning the Club or its counsel that the answer was untimely. The Court considered the answer and denied Kitsap County's motion to strike on April 22, 2014.

7. Similarly, on at least two other occasions my staff and I filed documents with the Court after 8 pm. By all appearances, the Court accepted them as having been filed on the day of filing. After both filings, I immediately received electronic filing confirmation emails from the Court. The Club and I were never informed that the filings had to be post-dated or that e-filing after 8 pm would not take effect until the next day.

8. I relied on my prior filing experiences described above when filing the Motion at 6:29 pm on November 17, 2014.

9. My staff and I worked diligently to prepare the Motion. But for my misapprehension of the Court's e-filing rule, I would have made sure the Motion was filed before 5 pm on November 17, 2014. The time between 5 pm and 6:29 pm was spent triple-checking the citations and tables in the Motion to ensure their accuracy. The Motion could have

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*Length Resp. to Mot. to Strike and Granting Extension of Time to File Resp. to Mot. to Strike* (March 4, 2014).

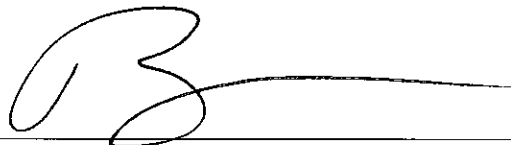
been fully drafted, checked, and filed before 5 pm—and would have been if I had understood the Court’s policy on e-filing.

10. The Motion addresses a legal issue identified by the Court in its Opinion as one that was not addressed by the parties. That issue is whether the repeal of a Kitsap County ordinance after trial should have any effect on the outcome of the case. The Opinion decided not to answer that question on the grounds that a common law rule has the same effect that the repealed ordinance once had. The Opinion then instructed the trial court to fashion a remedy on remand for the violation of that common law rule. The Club’s Motion asks the Court to reconsider this instruction based on multiple Washington Supreme Court cases that hold no such common law rule exists. The Motion then asks the Court to hold that the repeal of the ordinance means that, on remand, the trial court should not remedy a prior violation of the ordinance.

11. Prior to the Court’s November 19, 2014 letter, the Club and I were never informed that the clerk’s business hours for e-filing end at 5:00 pm. The clerk’s business hours are not listed on the Court’s website or e-filing portal. The Court’s website lists the end of its general hours as 4:00 pm, which is one hour before the 5:00 pm time referenced in the clerk’s November 19, 2014 letter. Based on my staff’s research, CR 60(c) and the term “clerk’s business hours” are not referenced in any published

Washington court decision, and there are no general orders regarding the clerk's business hours. I am unaware of any rule of appellate procedure or court document that states the Court's e-filing business hours. In federal court and other jurisdictions that allow e-filing, I have been able to electronically file documents up until midnight on their due date.

DATED: November 20, 2014.

  
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Brooks M. Foster

**Patrick Graves**

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**From:** COA2 File Upload Manager <Div-2eDocManagers@courts.wa.gov>  
**Sent:** Monday, November 17, 2014 6:30 PM  
**To:** cmpalmer@co.kitsap.wa.us; mann@gendlermann.com; rsanders@goodsteinlaw.com; cmichel@michellawyers.com; matt@sherrardlaw.com; Brooks Foster; Patrick Graves  
**Subject:** Document Electronically Filed with Court of Appeals, Division II  
**Attachments:** 430762-20141117-062922.pdf; 430762-Motion for Reconsideration.pdf

Attached is a copy of the Transmittal Letter and document named 430762-Motion for Reconsideration.pdf that Angie Alcorn from Chenoweth Law Group PC electronically filed with the Court of Appeals, Division Two in case number 43076-2. This court will treat the attached transmittal letter as proof of service on you.

David C. Ponzoha  
Court Clerk

Please do not reply to this message. Replies to this message are routed to an unmonitored mailbox. If you have questions, you may email this office at [coa2filings@courts.wa.gov](mailto:coa2filings@courts.wa.gov) or call us at (253) 593-2970.

**CHENOWETH LAW GROUP PC**

**November 17, 2014 - 6:29 PM**

**Transmittal Letter**

Document Uploaded: 430762-Motion for Reconsideration.pdf

Case Name: Kitsap County v. Kitsap Rifle and Revolver Club

Court of Appeals Case Number: 43076-2

**Is this a Personal Restraint Petition?** ☐ Yes ☒ No

**The document being Filed is:**

- ☐ Designation of Clerk's Papers ☒ Supplemental Designation of Clerk's Papers
- ☐ Statement of Arrangements
- ☒ Motion: Motion for Reconsideration
- ☐ Answer/Reply to Motion: \_\_\_\_\_
- ☐ Brief: \_\_\_\_\_
- ☐ Statement of Additional Authorities
- ☐ Cost Bill
- ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition
- ☐ Reply to Response to Personal Restraint Petition
- ☐ Petition for Review (PRV)
- ☐ Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Angie Alcorn - Email: [lheath@northwestlaw.com](mailto:lheath@northwestlaw.com)

A copy of this document has been emailed to the following addresses:

[cmpalmer@co.kitsap.wa.us](mailto:cmpalmer@co.kitsap.wa.us)  
[mann@gendlermann.com](mailto:mann@gendlermann.com)  
[rsanders@goodsteinlaw.com](mailto:rsanders@goodsteinlaw.com)  
[cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)  
[matt@sherrardlaw.com](mailto:matt@sherrardlaw.com)  
[bfoster@northwestlaw.com](mailto:bfoster@northwestlaw.com)  
[pgraves@northwestlaw.com](mailto:pgraves@northwestlaw.com)





**Patrick Graves**

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**From:** Coa2Filings <coa2filings@courts.wa.gov>  
**Sent:** Thursday, April 03, 2014 9:43 PM  
**To:** Brooks Foster  
**Subject:** Receipt Confirmation from Division 2 Court of Appeals

Received in the Court of Appeals, Division 2.

**Patrick Graves**

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**From:** Coa2Filings <coa2filings@courts.wa.gov>  
**Sent:** Friday, March 21, 2014 9:28 PM  
**To:** Brooks Foster  
**Subject:** Receipt Confirmation from Division 2 Court of Appeals

Received in the Court of Appeals, Division 2.

**Patrick Graves**

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**From:** Coa2Filings <coa2filings@courts.wa.gov>  
**Sent:** Friday, May 09, 2014 8:01 PM  
**To:** Brooks Foster  
**Subject:** Receipt Confirmation from Division 2 Court of Appeals

Received in the Court of Appeals, Division 2.

**DECLARATION OF FILING AND SERVICE**

I, Lisa A. Heath, declare under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned have been a resident of the State of Oregon, over the age of eighteen years, not a party to or interested in this cause of action, and competent to be a witness herein. On the date stated below, a copy of the DECLARATION OF BROOKS M. FOSTER (NOV. 20, 2014) was electronically filed with Division II of the Washington Court of Appeals and served upon the following individuals by e-mail and U.S. Mail, postage prepaid, at Portland, Oregon:

Christine Palmer  
Jennine Christensen  
Kitsap County Prosecutor's Office  
Civil Division  
614 Division Street, MS-35A  
Port Orchard, WA 98366  
*Of Attorneys for Respondent Kitsap County*

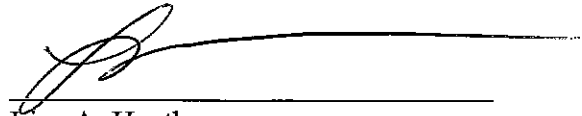
David S. Mann  
Gendler & Mann, LLP  
1424 Fourth Ave., Suite 715  
Seattle, WA 98101-2278  
*Of Attorneys for Amicus Curiae  
CK Safe & Quiet, LLC*

C.D. Michel  
Michel & Associates, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Of Attorneys for Amicus Curiae  
National Rifle Association*

Matthew A. Lind  
Sherrard McGonagle Tizzano, PS  
19719 Front St. NE, PO Box 400  
Poulsbo, WA 98370-0400  
*Of Attorneys for Amicus Curiae  
Kitsap Alliance of Property  
Owners*

DATED this 20<sup>th</sup> day of November, 2014.

CHENOWETH LAW GROUP, PC



Lisa A. Heath  
Chenoweth Law Group, P.C.  
510 SW Fifth Ave., Fifth Floor  
Portland, OR 97204  
Phone: (503) 221-7958