69920-8

69920-8

No. 69220-8-I

COURT OF APPEALS, DIVISION I,
FOR THE STATE OF WASHINGTON

THE FERGUSON FIRM, PLLC,

Respondent,

vs.

TELLER & ASSOCIATES, PLLC,

Other Party,

and

BRIAN J. WAID, d/b/a LAW OFFICE OF BRIAN J. WAID,

Appellant Attorney Lien Claimant.

REPLY BRIEF OF APPELLANT ATTORNEY LIEN CLAIMANT BRIAN J. WAID D/B/A LAW OFFICE OF BRIAN J. WAID

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A. INTRODUCTION

The Ferguson Firm, PLLC's response brief is noteworthy only for Ferguson's blatant and repeated violations of the Rules of Appellate Procedure. Ferguson begins the brief with a rambling, four-page argumentative introduction,[1] which it follows with an equally argumentative statement of the case. The Court should disregard both. More importantly, however, Ferguson offers nothing to dissuade this Court from considering Waid's appeal and reversing the trial court order invalidating his attorney's lien.

Addressing Ferguson's motion to dismiss first, Waid's appeal is proper because he has standing to challenge the trial court's decisions as an aggrieved party and the orders from which he appeals are final orders subject to immediate review under RAP 2.2(a)(1) or RAP 2.2(a)(3). But even if he mischaracterized his notice and the orders are non-appealable as of right, this Court can treat his notice of appeal as a notice for

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[1] Ferguson's introduction is far from "concise." RAP 10.3(a)(3). An introduction should not take the place of the statement of the case and the argument section of a brief. It is meant to be a *concise* introduction to the issues presented. As stated in the *Washington Appellate Practice Deskbook* (WSBA 3d ed. 2005 & 2011 Supplement) at § 19.7(8):

> The introduction should not exceed one or two pages. The introduction should give the reader or listener a high-level picture of the forest before plunging into the trees of the brief. The rule states that the introduction not need contain citations to the record or authority, but this is not a license to lard the introduction with facts that are outside the record. Every fact recited in the introduction should be supported later in the brief by a citation to the record.

discretionary review and permit review. RAP 5.1(c). The Court should deny Ferguson's motion to dismiss and award attorney fees and costs to Waid under RAP 18.9 for defending against the frivolous motion.

Turning to the merits, Ferguson ignores controlling case law interpreting RCW 60.40.010. Nothing presented in Ferguson's response overcomes the basic legal proposition explained in Waid's opening brief that his attorney's lien was valid and enforceable and that the trial court therefore erred by invalidating it. Accordingly, this Court should reverse and reinstate Waid's lien.

B. RESPONSE TO FERGUSON'S INTRODUCTION AND STATEMENT OF THE CASE

Ferguson's introduction and statement of the case are misleading and mischaracterize what few relevant facts are presented.[2] Rather than

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[2] Ferguson is oblivious to RAP 10.3(a)(5), which requires its statement of the case to be a "fair statement of the facts and procedure relevant to the issues presented for review, *without argument*." (Emphasis added). From its lengthy and highly argumentative introduction to its recitation of the "facts," Ferguson's statement of the case is replete with argument and makes this Court's review more difficult.

Ferguson does not get to make up the facts to suit its argument. Its counsel should know better. *Hurlbert v. Gordon*, 64 Wn. App. 386, 399-400, 824 P.2d 1238, *review denied*, 119 Wn.2d 1015 (1992) (experienced counsel sanctioned for improper brief). *See also, Litho Color, Inc. v. Pacific Employers Ins. Co.*, 98 Wn. App. 286, 305-06, 991 P.2d 638 (1999). At a minimum, this Court should disregard Ferguson's statement of the case and instead rely on the impartial statement provided in Waid's opening brief.

respond to all of the misstatements or mischaracterizations, Waid responds only to the most egregious.[3]

Ferguson first states that she successfully litigated the other matter[4] and achieved a settlement in her clients' favor of $530,107.58. Br. of Resp't at 1, 6. No so. Teller negotiated the successful settlement because Sandra Ferguson, Ferguson's principal, had been suspended from the practice of law for 90-days for "misrepresentation and deceit" committed in another case. CP 8.

Similarly, Ferguson incorrectly states that "Teller agreed that Ms. Ferguson was entitled to half of the funds ($265,053.79). He contended that he was entitled to the other half." *Id.* Ferguson and Teller actually *disagreed* about the division of the contingent fee, which is why Ferguson hired Waid to resolve the dispute. CP 8, 66, 118. Thereafter, Teller argued that Ferguson should recover no more than 50% of the disputed fee, that Ferguson should recover less than 50% of the fee based on *quantum meruit*, or that Ferguson should recover

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[3] Ferguson's egregious mischaracterizations appear to be a holdover from the briefing it filed in *The Ferguson Firm, PLLC v. Teller & Assoc., PLLC*, Court of Appeals Cause No. 68329-2 ("*Ferguson/Teller* appeal"). There, as here, it makes a number of highly inflammatory statements about Waid that are not supported by the record. The Court should disregard Ferguson's ad hominem attacks.

[4] Ferguson and Teller & Associates, PLLC ("Teller") jointly represented several clients in an unrelated matter ("other matter"). That lawsuit ended with a confidential settlement. The former clients are not involved in this appeal.

nothing. CP 71. Teller unequivocally disputed the amount of fees to which Ferguson was entitled.

Ferguson argues as fact that Waid failed to obtain a disbursement to Sandra of the fees that she earned at the conclusion of the other matter or a judgment in her favor during his representation. Br. of Resp't at 6, 32. Ferguson fails to recognize that the trial court struck paragraphs 17, 35, and 36 from the declaration upon which she relies for those "facts." CP 336-38. Ferguson did not appeal from the order striking those paragraphs. More to the point, Ferguson did not have an undisputed right to a specific amount of the disputed fees unless and until it acknowledged that a valid and enforceable contract existed with Teller. Ferguson consistently refused to do that. CP 177.

Ferguson's most egregious mischaracterizations of the record are its statements, unsupported by the record, that Waid withdrew from representing it in the fee dispute with Teller because he lost a motion and that his withdrawal left it without representation. Br. of Resp't at 1-2, 7, 11, 23 n.x, 24, 32. Ferguson ignores what actually transpired below. While Waid withdrew, he did so after Ferguson threatened him with a legal malpractice claim. CP 32, 57, 187-88. By then, Ferguson had retained replacement counsel and had already informed Waid that it

wanted its new counsel to file the opposition to Teller's pending motion for sanctions. CP 26-36, 59-61, 187-90.

Contrary to Ferguson's unsupported allegations, the trial court permitted Waid to immediately withdraw for cause based on the conflict of interest. CP 155, 199, 361. Ferguson has not assigned error to the trial court orders permitting Waid to immediately withdraw and to do so for cause in either this appeal or the *Ferguson/Teller* appeal.

Finally, Ferguson tellingly neglects to mention two dispositive facts. First, Ferguson's written fee agreement with Waid defined the scope of his representation:

> CLIENT hereby retains ATTORNEY to provide legal services to CLIENT on an hourly fee basis *relative to claims for a fee division dispute* with Attorney Stephen Teller, *arising out of or relating to CLIENT's and Mr. Teller's representation of clients in the [other matter].*

CP 210 (emphasis added). The "action" for which Ferguson retained Waid thus involved the fee dispute with Teller, without regard to the forum in which that dispute would be resolved. Second, the fee agreement specifically stated that Waid "shall" have a lien against any proceeds recovered by, or on behalf of, Ferguson in connection with the claims arising out of the fee dispute with Teller, including pursuant to RCW 60.40.010 *et seq.* CP 210-11. Under the agreement, Waid invoiced Ferguson each month for the services that he provided. CP 161,

210, 217-42. Ferguson never questioned a single charge and never disputed Waid's fees.[5] CP 161, 166.

C. ARGUMENT

(1) The Court Should Deny Ferguson's Motion to Dismiss

Ferguson begins its argument by moving for a third time to dismiss Waid's appeal,[6] continuing to claim that the orders from which Waid appeals are not final judgments appealable as of right under RAP 2.2(a), that any appeal of the order denying his request to stay disbursement of the funds held in the court registry is moot, and that he lacks standing. Br. of Resp't at 10-16, 33 n.xv. Ferguson fails to explain how or why the Commissioner's ruling was error. It simply regurgitates the arguments already made and rejected. Accordingly, this Court should deny the motion because Waid's appeal is proper.

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[5] For the first time on appeal, Ferguson contends that Waid owes it money. Br. of Resp't at 14, 34-35. Waid presented evidence that Ferguson owed him money. CP 162-66. Ferguson did not dispute that evidence or claim that Waid owed it money. It had every opportunity to raise the issue with the trial court, but ultimately chose not to do so. It is too late to raise that argument now. RAP 2.5(a); *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008) (appellate courts will not entertain issues raised for the first time on appeal). *See also, John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991) (appellate courts do not consider theories not presented below).

[6] The Commissioner denied Ferguson's original motion to dismiss Waid's appeal, finding that Ferguson's arguments were too conclusory to support dismissal of the appeal. Ferguson then moved to modify the Commissioner's ruling. This Court denied that motion on December 17, 2012 and it became final 30-days later when Ferguson did not file a motion for discretionary review. RAP 13.5(a). Ferguson's latest motion offers nothing new.

a. The orders from which Waid appeals are final judgments or orders subject to immediate review

Ferguson first asserts, with little analysis, that Waid's appeal of the order setting aside his attorney's lien is improper because it is not a final judgment appealable as of right. Br. of Resp't at 13-15. It is mistaken. The order setting aside Waid's lien is appealable as of right.

RAP 2.2(a) lists the judgments, orders, and rulings that are appealable as a matter of right. Those decisions are all characterized by a measure of finality[7] or an impact on the parties that is sufficiently fundamental to warrant the right to immediate appellate review. RAP 2.2(a) (listing decisions appealable as a matter of right).

Ferguson's attempt to ignore the impact of *Smith v. Moran, Windes & Wong, PLLC*, 145 Wn. App. 459, 187 P.3d 275 (2008), *review denied*, 165 Wn.2d 1032 (2009) on this case and in this particular context is obvious: the case is indisputably dispositive of the issue presented here. There, a law firm asserted a $750,000 attorney's lien against settlement proceeds recovered in the client's underlying legal malpractice case against another law firm. The client's creditors moved to invalidate the lien and the trial court dismissed it. The law firm *appealed* the order

[7] Like Ferguson, the appellate rules do not define a "final judgment." At common law, a final judgment is one that disposes of all the issues as to all of the parties. No better definition seems to have evolved. 2A Karl B. Tegland, *Washington Practice: Rules Practice*, RAP 2.2 at 82 (6th ed. 2004).

invalidating the lien. *Id.* at 463. *But see State v. Superior Court for King County*, 89 Wash. 342, 344-45, 154 P. 603 (1916) (holding that order overruling motion to strike attorney's lien on the ground that the motion was made at an improper time, but which did not pass on the validity of the lien or the right of the attorneys to file it, was not appealable where the order did not affect a substantial right). This Court reversed the order dismissing the lien and remanded the case to determine what amount, if any, the law firm was entitled to assert.

Here, the order setting aside Waid's attorney lien is a final order that entitles him to immediate appellate review under RAP 2.2(a)(1) because it disposes of all the issues in this case between Waid and Ferguson.[8] Furthermore, the lien has "super priority" over all other liens and attaches automatically. *Smith*, 145 Wn. App. at 467 (citing RCW 60.40.010(3)). The trial court's order is also a decision that terminates the action and entitles Waid to immediate review under RAP 2.2(a)(3) because it sets aside the lien he filed to protect his financial interests. The order has a financial impact on him sufficiently fundamental to warrant immediate review. *Id.* at 463.

[8] But even if Waid mischaracterized his notice and the orders from which he appeals are non-appealable as of right, this Court can treat his notice of appeal as a notice for discretionary review and permit review. RAP 5.1(c).

Ferguson also argues that Waid's appeal of the trial court order denying his motion for a stay and approval of a supersedeas bond is moot because it already withdrew the funds representing his attorney's lien from the court registry. Br. of Resp't at 16, 33 n.xv. Waid's appeal from that order is not moot. Based on Ferguson's own statements and calculations, funds remain available on deposit in the court registry. Furthermore, if Ferguson were to prevail in its appeal against Teller, Ferguson could potentially recover additional money from Teller to which Waid's lien could attach. Finally, the trial court can also order re-deposit of the withdrawn funds on remand. RAP 12.8.

b. Waid has standing to appeal

Ferguson next argues that Waid's appeal should be dismissed because he was not a party to the lawsuit between it and Teller. Br. of Resp't at 15. Ferguson seems to suggest that Waid lacks standing to appeal the trial court's decisions because he is not an aggrieved party under RAP 3.1. This argument is frivolous. Ferguson fundamentally misunderstands who qualifies as an "aggrieved party" entitled to appeal. Even though Waid and Ferguson were not directly adverse to one another in the instant action, Waid has standing to challenge the trial court's decisions because they directly and substantially impact his pecuniary, proprietary, and personal rights.

RAP 3.1 states: "Only an aggrieved party may seek review by the appellate court." An "aggrieved party" entitled to appeal is one whose personal right or pecuniary interests have been affected. *See, e.g., State ex rel. Simeon v. Superior Court*, 20 Wn.2d 88, 90, 145 P.2d 1017 (1944). *See also*, *Breda v. B.P.O. Elks Lake City 1800 SO-620*, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004) (noting sanctioned attorney, rather than attorney's clients, was the "aggrieved party" for purposes of appealing sanctions imposed directly against him); *Temple v. Feeney*, 7 Wn. App. 345, 347, 499 P.2d 1272 (1972) (finding real estate broker was aggrieved party and entitled to appeal when he was a named co-defendant in an action for rescission, was found to have participated in fraudulent misrepresentations, and was ordered to reconvey property received as a commission; trial court judgment directly affected broker's proprietary, pecuniary, and personal rights).

Here, Waid qualifies as an aggrieved party under RAP 3.1. He represented Ferguson in its lawsuit against Teller and incurred substantial attorney fees and costs to do so. When Ferguson failed to pay him pursuant to the terms of their written contract, he filed an attorney's lien and actively participated in the trial court proceedings related to that lien. The trial court issued an order adverse to Waid. If he cannot appeal that decision, then no attorney will ever be able to appeal from an order setting

aside an attorney's lien.

Ferguson continues to turn a blind eye to the actual effect of the trial court's decisions on Waid. He has been both aggrieved and prejudiced; accordingly, he has standing to appeal the trial court's decisions because they directly and adversely impact his proprietary, pecuniary, and personal rights. *See* 2A Karl B. Tegland, *Wash. Prac. Series: Rules Practice*, RAP 3.1 at 405 (6th ed. 2004). He is not required to bring a separate lawsuit against Ferguson to adjudicate the lien.

c. Ferguson should be sanctioned for bringing a frivolous motion

RAP 18.9(a) permits the Court to impose sanctions where a party uses the rules for delay or for an improper purpose. A party that files a groundless motion may also face sanctions. *Rich v. Starczewski*, 29 Wn. App. 244, 247-48, 628 P.2d 831 (1981) (awarding fees under RAP 18.9 where van driver filed a plethora of motions, uniformly devoid of legal grounds for requested relief, and employed the appellate rules for purposes of harassment and delay).

Here, Ferguson's motion is frivolous. Even a cursory review of the law would have revealed that: (1) the attorney lien statute does not require the adjudication of the lien in a separate action; (2) the order setting aside the attorney lien is effectively a final order; and (3) Waid is

an aggrieved party. Ferguson and its counsel should have known better. Sanctions under RAP 18.9 are therefore appropriate.

(2) The Court Should Reinstate Waid's Attorney Lien

With respect to the merits of Waid's appeal, Ferguson first argues that both of the trial court's orders should be affirmed because Waid does not challenge the disbursement of the disputed funds from the court registry by assigning error to the order denying his motion to stay. Br. of Resp't at 17-18. It then erroneously concludes that the order and the disbursement should stand. *Id.* at 18.

Ferguson's argument is both illogical and unsupportable. By extension, Ferguson would appear to advocate that an aggrieved party cannot appeal from an adverse judgment if he or she opts to pay the judgment during the appeal rather than to supersede it. The court rules are not so restrictive in that situation nor should they be in this instance. *Spahi v. Hughes-Northwest, Inc.*, 107 Wn. App. 763, 27 P.3d 1233 (2001). *See also, In re Sims Estate*, 39 Wn.2d 288, 297, 235 P.2d 204 (1951) (holding that an appellant is not obligated to supersede a judgment or a decree appealed from). Waid was not required to move to stay the trial court's disbursement order or to appeal the subsequent order denying the requested stay to preserve his right to challenge the underlying order invalidating his attorney's lien. RAP 2.2(a)(1). If he prevails on appeal,

then his lien will be reinstated and he will be entitled to payment from the funds that remain on deposit in the court registry. The cases upon which Ferguson relies to suggest otherwise are inapposite. Br. of Resp't at 18. *Res judicata* has no application here.

Ferguson mistakenly asserts that if Waid wants to collect from it, then he must file a separate lawsuit to do so. Br. of Resp't at 18 n.viii. Waid was not required to file a separate lawsuit to collect his fee from Ferguson. As he noted in his opening brief, he had the option of initiating a separate lawsuit to recover his unpaid fees or of filing an attorney's lien. Br. of Appellant at 15 (citing *Ross v. Scannell*, 97 Wn.2d 598, 605, 647 P.2d 1004 (1982) and RCW 60.40.010(1)). He chose the latter option to secure payment from Ferguson of the fees owed.

Ferguson contends that Waid's lien is not authorized by RCW 60.40.010(1)(d)[9] because it did not receive any "proceeds" through services that Waid performed on its behalf to which the lien could attach.[10] Br. of Resp't at 21. Ferguson's argument is unavailing because it fails to

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[9] RCW 60.40.010(1) provides in pertinent part that an attorney has a lien for his or her compensation:

> (d) *Upon an action,* including one pursued by arbitration or mediation, *and its proceeds after the commencement thereof* to the extent of the value of any services performed by the attorney in the action[.]

(Emphasis added.)

[10] To some extent, Ferguson conflates her arguments on RCW 60.40.010(1)(d) and (e). *Compare* Br. of Resp't at 24, 26 *with* Br. of Resp't at 30-31.

acknowledge that "proceeds" means "any monetary sum received in the action." RCW 60.40.010(5).

Here, Ferguson received a monetary sum when the action Waid commenced against Teller concluded and the trial court disbursed a portion of the funds then held in the court registry. Ferguson received those funds because of the services that Waid performed in the action. Ferguson does not dispute that Waid successfully defended Teller's efforts to limit Ferguson's recovery, CP 68-70, 103-05, 119, 169-70, 248-77, or that he succeeded in getting Teller's counterclaim dismissed. CP 13-18, 76, 170, 175, 444. As a result, Ferguson received "proceeds" in an action commenced by Waid to which Waid's lien could properly attach. *See generally, Price v. Chambers*, 148 Wash. 170, 172, 268 P. 143, 144 (1928) (noting that funds secured were originally held in relation to another case).

As Ferguson acknowledges, *Wilson v. Henkle*, 45 Wn. App. 162, 170, 724 P.2d 1069 (1986) and *Suleiman v. Cantino*, 33 Wn. App. 602, 604, 656 P.2d 1122 (1983) interpreted the *pre-2004* version of the attorney's lien statute. Br. of Resp't at 25. As this Court previously acknowledged, the 2004 amendments significantly changed the statute:

> The 2004 amendments designated the introductory paragraph of the former statute as subsection (1) of the amended statute and redesignated former subsections (1) through (3) as new subsections 1(a) through 1(c).

> Subsection 1(d) is new. Former subsection (4) is new subsection (1)(e). Subsections (2) through (6) are new.

Smith, 145 Wn. App. at 469 n.13.

Despite this change, Ferguson continues to insist on a statutory interpretation based on the former rather than the current statute. Br. of Resp't at 25-28. Its arguments are thus misplaced. *State v. Stribling*, 164 Wn. App. 867, 878, 267 P.3d 403 (2011) (noting defendant's argument, and State's concession, were misplaced where they relied on the wrong version of the statute). More to the point, while the *Ross* Court held that an attorney's lien, as a statutory creation, is in derogation of the common law and must be strictly construed, 97 Wn.2d at 605, that is no longer the case. When the Legislature amended the attorney lien statute in 2004, it unequivocally stated:

> The purpose of this act is to end double taxation of attorneys' fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract. *Through this legislation, Washington law clearly recognizes that attorneys have a property interest in their clients' cases* so that the attorney's fee portion of an award or settlement may be taxed only once and against the attorney who actually receives the fee. *This statute should be liberally construed to effectuate its purpose.*

Laws of 2004, ch.73, § 2 (emphasis added); *see also*, S.B. Rep. 6270, 58th Leg., Reg. Sess. (Wash. 2004); Final Bill Report on ESSB 6270, 58th Leg., Reg. Sess. (Wash. 2004) (discussing these policies).

Ferguson contends, again without authority, that Waid's lien did not attach automatically to the fee dispute and its proceeds because the attorney lien statute "says no such thing." Br. of Resp't at 22. The statute does not require any affirmative acts to establish an attorney's lien for an attorney representing a plaintiff in a lawsuit other than commencing the lawsuit. *Smith*, 145 Wn. App. at 470. Here, Waid's lien arose when he filed the lawsuit to recover funds on Ferguson's behalf in May 2011. It automatically attached to the action. Any monetary sum that Ferguson received at the conclusion of that action is therefore subject to Waid's lien.

Ferguson next argues that Waid's lien is not authorized by RCW 60.40.010(1)(e)[11] because the funds that Ferguson recovered in the instant action were not obtained by a "judgment" entered against Teller. Br. of Resp't at 27-33. But it fails to define the term "judgment," self-servingly concluding that the definitions provided by Waid support a ruling in its favor because he is not a party. *Id.* at 31. Ferguson misses a critical point – Waid did not have to be a party prior to filing his attorney's lien. In any event, that the trial court did not call the pleading resolving

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[11] RCW 60.40.010(1)(e) states that an attorney has a lien for his or her compensation:

> *[u]pon a judgment* to the extent of the value of any services performed by the attorney in the action[.]

(Emphasis added.)

the fee dispute a "judgment" is irrelevant. The trial court entered a "judgment" because it finally determined the rights and obligations of Ferguson and Teller to the disputed funds. Black's Law Dictionary (9th ed. 2009). *See also, Samuel's Furn., Inc. v. Dep't of Ecology*, 147 Wn.2d 440, 452, 54 P.3d 1194, 63 P.3d 764 (2002) (noting a judgment is considered final on appeal if it concludes the action by resolving the plaintiff's entitlement to the requested relief). That Ferguson appealed that order as a final judgment is further evidence that Waid's lien was proper as a matter of law.

Finally, Ferguson complains that it did not have ample time to prepare for the hearing on its motion to set aside Waid's lien or to present evidence pertaining to the amount of that lien. Br. of Resp't at 34-35. As a result, this Court cannot resolve that issue on appeal. *Id.* at 34. Ferguson's complaint is disingenuous to say the least. Ferguson was given the same amount of time to reply to Waid's opposition papers as would be given to any other moving party.

Ferguson noted the motion to set aside Waid's attorney lien for hearing on July 25, 2012. CP 134-35. Under Local Rule ("LR") 7(b)(4)(D), Waid had until 12:00 noon on July 23, 2012 to file his response. Ferguson admits that Waid timely filed his opposition. Br. of Resp't at 35. Thereafter, it had until 12:00 noon on the court day before

the hearing to file its reply. LR 7(b)(4)(E). Although Ferguson filed a reply, it did not challenge the fees or charges that Waid claimed it owed. It simply objected generally to the lien. CP 326-31. If Ferguson needed additional time to reply, it could have re-noted its motion for hearing on a later date. It did not. The evidence that Waid produced to support the validity and the amount of his lien was therefore *undisputed.* By failing to respond to Waid's claims, Ferguson *conceded* them. *See, e.g., American Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991). If Ferguson is dissatisfied with the amount of time allowed under the rules for briefing a motion in the superior courts, then it should take up that issue with the rules committee. Its argument has no relevance here.

This Court should resolve the amount of fees to which Waid is entitled under his lien based upon the undisputed evidence before it in the interest of judicial economy. Alternatively, it should direct the trial court to consider and resolve the issue on remand.

D. CONCLUSION

The Court should deny Ferguson's last-ditch effort to dismiss Waid's appeal and sanction Ferguson for filing a frivolous motion. Waid's appeal is proper.

Ferguson is unable to overcome the basic legal proposition that Waid's attorney lien was valid and enforceable and that the trial court

erred by invalidating it. Accordingly, this Court should reverse and reinstate Waid's lien. Costs on appeal should be awarded to Waid.

DATED this 6th day of June, 2013.

Respectfully submitted,

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DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the following document: Reply Brief of Appellant Attorney Lien Claimant Brian J. Waid d/b/a/ Law Office of Brian J. Waid in Court of Appeals Cause No. 69220-8-I to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 7, 2013, at Tukwila, Washington.

Paula Chapler
Talmadge/Fitzpatrick