

Supreme Court No. 93601-3

SUPREME COURT
OF THE STATE OF WASHINGTON

ROLFE GODFREY and KRISTINE GODFREY, husband
and wife and their marital community composed thereof,

Plaintiffs-Respondents,

v.

STE. MICHELLE WINE ESTATES, LTD. dba
CHATEAU STE. MICHELLE, a Washington Corporation;
and SAINT-GOBAIN CONTAINERS, INC.,

Defendants-Petitioners,

AND

ROBERT KORNFELD,

Additional Appellant.

**PETITIONERS' REPLY TO ISSUE RAISED IN THE JOINT
ANSWER**

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The Petitioners submit this reply to the Godfrey Respondents' request that, if this Court grants review of the issue raised by the Petitioners, this Court should also review what the Godfreys state was a sanctions ruling of the trial court. The entirety of the Godfreys' request is found in a footnote to the "Conclusion" section of the Respondents' Joint Answer, located at the bottom of the last page of that submission. That footnote states:

In the unlikely event this Court accepts review and reverses the Court of Appeals, this Court, or the Court of Appeals on remand, should nonetheless reverse the judgments below on the alternative ground that the trial court erred in excluding nearly all of Mr. Godfrey's liability evidence (as well as his expert testimony based on that evidence) as a sanction for failing to file a "separate" Joint Statement of Evidence. RAP 13.7(b). Respondents raised these issues in the Court of Appeals but that court did not address them because the trial court erred in failing to recuse under RCW 4.12.050. (*See* Godfrey App. Br. 25-38; Kornfeld Br. 2).

Joint Answer at 17, n.6.

Putting a request for review in a footnote to the "conclusion" section of an answer to a petition for review is not a proper way to raise an issue for review. This Court comprehensively reviewed the requirements for properly raising an issue most recently in *State v. Korum*, 157 Wn.2d 614, 141 P.3d 13 (2006). There, the State of Washington had raised an issue only in the argument section of its petition. *See* 157 Wn.2d at 64 ("We note that the state did 'raise' the merger issue in the argument section of the petition for review."). In granting a motion to strike the portion of the State's supplemental brief addressing the issue raised only in the argument section, this Court explained:

RAP 13.7(b) provides that “the Supreme Court will review only the questions raised in ... the petition for review and the answer, unless the Supreme Court orders otherwise” See *Denaxas v. Sandstone Court of Bellevue, L.L.C.*, 148 Wn.2d 654, 671, 63 P.3d 125 (2003) (an issue first raised in a supplemental brief is not within the scope of review). {T}he State did not list the issue of whether the kidnapping charges merged in its concise statement of issues presented for review. RAP 13.4(c)(5) directs petitioners to include “[a] concise statement of the issues presented for review.” See *State v. Collins*, 121 Wn.2d 168, 178–79, 847 P.2d 919 (1993) (holding that a petitioner had not properly raised a right to bear arms issue in his petition for review because he broached it only in his argument section, not in his petition's statement of issues as directed by RAP 13.4(c)(5)); *Clam Shacks of Am., Inc. v. Skagit County*, 109 Wn.2d 91, 98, 743 P.2d 265 (1987) (holding that “RAP 13.4(c)(5) requires a concise statement of the issues presented for review” and that RAP 13.7(b) limits review only to those issues properly raised in the petition as directed in RAP 13.4(c)(5)); see also *State v. Coria*, 146 Wn.2d 631, 655 n. 9, 48 P.3d 980 (2002) (Sanders, J., dissenting) (reasoning that according to RAP 13.7(b), this court must consider issues only raised in the petition for review, and that issues are only properly raised according to RAP 13.4(c)(5) if they are in the concise statement of issues and set forth with specificity, and it is not sufficient if they are only raised in the petition's argument section). We conclude that the State only referenced the merger of the kidnapping charges in its concise statement of issues presented for review in relation to prosecutorial discretion and did not clearly raise the issue of whether the kidnapping charges were incidental to the robberies. Therefore, *we grant Korum's motion to strike and decline to consider the merger issue because the State did not properly “raise” the issue **within the meaning of RAP 13.7(b) and 13.4(c)(5).***

157 Wn.2d at 624-25 (emphasis added).

The Godfreys similarly have not properly raised the trial court's sanctions ruling, as an issue "within the meaning of RAP 13.7(b) and 13.4(c)(5)." The 2006 amendment to RAP 13.4(d) clarified that a respondent that wants this Court to review an issue raised in the Court of

Appeals, but not resolved by that court, must do so by raising that issue in the respondent's answer. The requirements of RAP 13.4(c)(5), delineated in the decisions of this Court interpreting those requirements, must be satisfied by respondents as well as petitioners. This means, at a minimum, setting forth that issue in a "concise statement" and not presuming to raise it in some other section of the answer (e.g., the argument section).

The Godfreys have failed to satisfy these requirements. They have set forth no concise statement of the issue they want reviewed. They have instead presumed to raise the issue only in a footnote to the conclusion of the Joint Answer. And even in that footnote, they don't actually raise an *issue*. Instead, they only indicate their dissatisfaction with a sanctions *ruling* by the trial court, with no analysis as to why this ruling warrants review under the criteria set forth in RAP 13.4(b)(1). Accordingly, this Court should make clear, in any order granting review of the issue raised by the Petitioners, that the only issue being reviewed is the attorney disqualification issue raised in the petition, and that the trial court's sanctions ruling is not before the Court.

Respectfully submitted this 29th day of November, 2016.

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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 *Answer to Motion for Extension of Time for Answer to Petition for Review* on the below-listed attorney(s) of record by the method(s) noted:

Email and first-class United States mail, postage prepaid, to the following:

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DATED this 29th day of November, 2016.



Patti Saiden, Legal Assistant

CARNEY BADLEY SPELLMAN

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