No. 96438-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Marriage of:

TATYANA MASON,

Appellant in this Court/ Respondent in the COA-II

and

JOHN MASON,

Respondent in this Court/Appellant in the COA-II.

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO STRIKE REPLY ON PETITION FOR REVIEW

Tatyana Mason, *pro se*

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INTRODUCTION

Petitioner pro-se Tatyana Mason respectfully submits this Response in Opposition to Respondents frivolous, overly aggressive Motion to Strike Reply on Petition for Review.

RESPONSE ARGUMENT

John Mason argues that Tatyana's Reply in support of her Petition for Review to this Court is disallowed under RAP 13.4(d) and should be stricken. He also uses an impropriate language's tactic and his ego to discredit and insult Tatyana and her Reply. This tactic of filing this type of motion to strike, John previously used in the court of appeals to escape from being found of committing misconduct in violation of RPC 3.3.

In the result of John attorney's misconduct in this case, the court of appeals issued unreasonable opinion dated July 31, 2018 with misstated facts of the case, added new findings and applied de-novo, instead of the proper standard of review CR60(b)(11). Also, the court of appeals provided an extremely poor legal advice to Tatyana in its order denying motion for reconsideration dated October 5, 2018 by poorly advising Tatyana to file a second motion to superior court to vacate the child support orders based on her damaged immigration status, which was already presented and considered at the 2016 trial court in front of Judge Wickham and which would be prevented by res-judicata doctrine right away at the superior court-

if Tatyana would follow the court of appeals' poor advise. This raises independent questions concerning violation of RCW 42.23.070(1) ("No court officer may use his or her position to secure special privileges or exemptions for himself, herself, or others"). The justice had not been reach in this case.

John's answer to Petition for Review is full of misstatements and untrue information which he is trying to escape from being find in committing misconduct, by filing his motion to strike Reply.

RPC 3.3 "Candor Toward the Tribunal ":

> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;
>
> (4) offer evidence that the lawyer knows to be false. RPC 3.3.

"A prosecutor, like any other attorney, has a duty of candor toward the tribunal which precludes it from making a false statement of material fact or law to such tribunal." **State v. Coppin,** 51 Wn. App. 866, 874 n. 4, 791 P.2d 228 (1990). *See* also RPC 8.4 (defining professional misconduct as, among other things, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Given a long history of the serious ethical issues in this case and the fact that John and his attorney had been sanction under CR11(a) by a trial judge already for promoting untrue information to the court in this case *See* (Appx.A 12/13/16 Order re: CR11(a)) and concerning a systematic failure of candor to the tribunal and potential violation of RCW 42.23.070(1), as well as the threat to the well-established doctrine of finality, the Court should consider the Reply and grant the Petition for Review pursuant to RAP 1.2(a).

Tatyana is allowed to have the "final say" to address the **falsehoods** and how John with help of his attorney misstated the facts of the case and:

(1) **Improperly limited the 2016 trial court to I-864**; ignored findings and ruling of the 2016 trial court re: Tatyana's damaged immigration status by John and by the 2013 order of child support, which prevented her from legally working and earns a living, which are the extraordinary circumstances under CR60(b)(11)

(2) **Improperly added a new 2017 case No.50009-4-II re: custody, which is currently pending on appeal and was not in front of the 2016 trial court.**

(3) Improper uses of an old argument from the 2013 trial court when the 2016 three day trial court review and considered new evidence and testimony in this case and found that **John fabricated the evidence** and in the result of this -the 2013 order of child support is "fundamentally wrong, unjust and should be vacated under CR60(b)(11)".

(4) Improperly stated the facts regarding "denied motions", when in fact on 01/15/16 **Judge Schaller** reversed commissioner's decision and **Judge Wickham** vacated commissioner's orders on 04/29/16 and 12/15/16. **Both Judges found commissioner's decision wrong.**

(5) Manipulated with the evidence of his Domestic Violence, when John's DV has a long record since 2001 to this day how John is deliberately damaging Tatyana's immigration status by using the court system and a language barrier to harass her. **The 2016 trial court found John's abuse affects Tatyana today through her immigration, because Tatyana cannot legally work and earn a living in the US and pay for reunification.**

(6) Manipulation with the obligations. When John failed and refuses to pay his I-864 obligation to Tatyana which is ($499,000) requires by the US government, but aggressively fighting for ($20,000) by using the children. Therefore Tatyana has no income and cannot pay for reunification until the 2013 order of child support will be vacated. This shows how John manipulates and destroyed a child-mother relationship through finance by using the court to control Tatyana.

The 2016 trial court specifically found the DV expert witness's an executive director-- Ms. Pontorollo's testimony credible that:

> "John is a perpetrator". "Manipulation of immigration status is extremely common". "It is a common utilization of control. Immigration status and threats of deportation are -- particularly when children are involved, are very common. It's a fear". RP 11/02/16 at 383-5 (Ms. Pontorollo's Testimony)

> **The US Government's requires the State Court vacate the orders of child support immediately in this case by stating:** "In order for Tatyana to receive her permanent resident status, green card and legal authorization to work, Tatyana needs to submit: Certified copy of dismissal from appropriate state child support office and court". Ex 38.

All of this and including the 2016 trial court's findings of John's domestic violence and his blabbing fabricated stories were in purpose to unnecessary increase cost of litigation, delay justice to harass in violation of CR11(a)(1)(2)(3) by a 2016 trial judge- are the extraordinary circumstances justified vacate the two orders of child support under CR60(b)(11).

Ironically, the court of appeal did not disagree with Judge Wickham's ruling regarding CR11 (a) sanction against John and his attorney for presenting untrue information to the court and "its remand for entry of specific oral findings incorporated into a written order re: CR11(a) to correct the clerical mistakes". Op.17-8.

CONCLUSION

For all the foregoing reasons, this Court should deny John's Motion to Strike and grant the Petition for Review.

RESPECTFULLY SUBMITED this 28 day of February, 2019

Tatyana Mason
Petitioner pro-se

APPENDIX A

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY
FAMILY & JUVENILE COURT

JOHN A MASON **Petitioner,** **and** **TATYANA IVANOVNA MASON** **Respondent.**	**NO. 07-3-00848-0** **ORDER GRANTING ATTORNEY FEES AND IMPOSING CR 11 SANCTIONS** ☐ **CLERK'S ACTION REQUIRED**

I. JUDGMENT SUMMARY

☐ No money judgment is ordered.

☒ *Summarize any money judgments from section 3 in the table below.*

Judgment for	Debtor's name *(person who must pay money)*	Creditor's name *(person who must be paid)*	Amount	Interest
Money Judgment			$	$
Fees and Costs	John Mason	Tatyana Mason	$8,533	$
Other amounts *(describe)*: CR11 Sanctions	John Mason	Tatyana Mason	$4,267	$
Yearly Interest Rate: ____% *(12% unless otherwise listed)*				
Lawyer *(name)*: LAURIE ROBERTSON		represents *(name)*: JOHN MASON		
Lawyer *(name)*:		represents *(name)*:		

THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT
Mail: 2000 Lakeridge Dr SW Olympia WA 98502
Location: 2801 32nd Ave SW, Tumwater WA 98512
Phone: (360) 709-3201 - Fax: (360) 709-3256
CLERK'S OFFICE: (360) 709-3260

II. BASIS

THIS MATTER having come before the Court this date on the Respondent's Motion for Attorney's Fees and Costs and for Sanctions under Civil Rule 11, the Court having heard the argument of counsel and Ms. Mason, having reviewed the records and files herein, and being otherwise fully advised, NOW, THEREFORE, it is hereby

III. ORDER

IT IS ORDERED that:

The Respondent is awarded Attorney's Fees and Costs against Petitioner in the amount of $8,533 based on the respective financial circumstances of the parties and in accordance with RCW 26.09.140; and

IT IS FURTHER ORDERED

That Respondent is awarded additional Costs against Petitioner in the amount of $4,267 based on Petitioner and his counsel's violation of Civil Rule 11.

DATED this on this the 13th day of December, 2016.

JUDGE CHRIS WICKHAM

THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT
Mail: 2000 Lakeridge Dr SW Olympia WA 98502
Location: 2801 32nd Ave SW, Tumwater WA 98512
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CLERK'S OFFICE: (360) 709-3260

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
FAMILY AND JUVENILE COURT

In re the Matter of:	)	
	)	
JOHN MASON,	)	THURSTON COUNTY
	)	NO. 07-3-00848-0
Petitioner,	)	
	)	
vs.	)	
	)	
TATYANA MASON,	)	
	)	
Respondent.	)	
	)	

TRANSCRIPTION OF AUDIO RECORDING

BE IT REMEMBERED that on December 9, 2016, the above-entitled matter came on for hearing before the HONORABLE CHRIS WICKHAM, Judge of Thurston County Superior Court.

Reported by: Aurora Shackell, RMR CRR
Official Court Reporter, CCR# 2439
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shackea@co.thurston.wa.us

APPEARANCES

For the Petitioner: LAURIE GAIL ROBERTSON
Law Offices of Jason S. Newcombe
10700 Meridian Ave. N, Ste. 107
Seattle, WA 98133-9008

For the Respondent: TATYANA MASON
(Appearing Pro Se)

not what I was required to file and so I did not complete or file the document." And then later on that page, "Respondent claims that I would have had to complete I-864 as part of the fiancee visa application, but that is not true." And then on page three, "Respondent's representation that I had to have filed the I-864 form is simply not true."

Those statements raise the issue of the existence of the I-864, which is what required this court to have a three-day trial over whether or not that document existed. Now, clearly clients are entitled to aggressive advocacy, but I believe the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation. And I believe that that is a violation of the portion of CR 11 which says that the signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion or legal memorandum and that, to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1), it is well grounded in fact; (2), it is warranted by existing law or a good faith argument; (3), it is not interposed for any improper purpose such as to harass

the other makes no sense to me, and so I think it has to be considered.

Now, there was some question raised by Ms. Seifert and by John that the I-864 affidavit was no longer operable. And as we heard, it terminates on the death of the sponsor, which is not applicable here; if the sponsor becomes a U.S. citizen, which has not happened here; or if the sponsored immigrant is credited with 40 quarters of gainful employment in excess of 125 percent of the poverty level.

The *Davis vs. Davis* case stands for the proposition that a spouse's quarters are credited to the quarters of the person being sponsored during the marriage, even after a decree of separation. In this case, however, we don't have a decree of separation. We have a decree of divorce, and the section that speaks to crediting spousal quarters requires the parties to be married at the time the determination of 40 quarters is made.

In this case, according to my calculation, I have to believe it comes to 29 quarters, and the social security record of Tatyana shows essentially she had one quarter earnings during the marriage. She's had a number of quarters of earnings since, but, during the marriage, she had one. Even crediting John's

John's attorney misapplied Davis case to support her argument.

if you'll recall, because I was concerned about the issues that you and your client had raised, and I felt there was no way that I could resolve those issues without a trial with witnesses in person. That trial was unnecessary, and it was raised solely because of the allegations that were made that were baseless.

This is the end of this hearing. Ms. Mason, if you have an order to present, I will sign it this morning after Ms. Robertson takes a look at it.

MS. MASON: Yes, I do.

THE COURT: You need to show it to Ms. Robertson first.

--oOo--

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

1. I received the electronic recording from the trial court conducting the hearing;

2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;

3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this 18th day of March, 2017.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

APPENDIX C

When the trial court imposes CR 11 sanctions, it must state the basis for the sanctions in its CR 11 order. *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994). In *Biggs*, the Supreme Court stated:

> [I]n imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct *in its order*. The court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose.

Id. (emphasis added) (additional emphasis omitted). The court remanded because there were no such findings. *Id.* at 201-02.

This court cited *Biggs* in requiring findings supporting the imposition of sanctions in the trial court's CR 11 order:

> [T]he court must make explicit findings as to which pleadings violated CR 11 and as to how such pleadings constituted a violation of CR 11. The court must specify the sanctionable conduct in its order.

N. Coast Elec. Co. v. Selig, 136 Wn. App. 636, 649, 151 P.3d 211 (2007). Written findings are not necessarily required as long as comprehensive oral findings are expressly incorporated into the court's CR 11 order. *Johnson v. Mermis*, 91 Wn. App. 127, 136, 955 P.2d 826 (1998).

Here, the trial court explained its ruling orally, stating that John improperly represented facts regarding filing the I-864 affidavit in a declaration statement. But the court's order imposing sanctions did not state the basis for the sanction or incorporate its oral ruling. Therefore, the trial court's sanction award was insufficient under *Biggs* and *North Coast Electric* and we vacate the trial court's CR 11 order.

E. ATTORNEY FEES ON APPEAL

Both parties request attorney fees on appeal. John requests fees based on Tatyana's alleged intransigence. Tatyana requests attorney fees and costs under RCW 26.09.140 based on

her financial need and because John's appeal is frivolous. We decline to award attorney fees to either party.

CONCLUSION

We reverse the trial court's order vacating the 2013 child support order, reverse the trial court's December 2016 order vacating the October 13, 2015 order that prospectively modified Tatyana's child support obligation, and reinstate the October 13, 2015 order. We affirm the trial court's award of expert fees to Tatyana under RCW 26.09.140. And we vacate the trial court's order imposing CR 11 sanctions on John and remand either for entry of specific findings supporting the award of CR 11 sanctions that are included or incorporated in the court's CR 11 order or a determination that CR 11 sanctions are not warranted.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, C.J.
MAXA, C.J.

We concur:

Worswick, J.
WORSWICK, J.

Lee, J.
LEE, J.

PRO-SE

February 28, 2019 - 9:25 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	96438-6
Appellate Court Case Title:	In the Matter of the Marriage of John Mason and Tatyana Mason
Superior Court Case Number:	07-3-00848-0

The following documents have been uploaded:

- 964386_Answer_Reply_20190228212215SC390342_0079.pdf
  This File Contains:
  Answer/Reply - Answer to Motion
  The Original File Name was 96438-6 Response to Motion to Strike Reply..pdf

A copy of the uploaded files will be sent to:

- ken@appeal-law.com
- laurier@washingtonstateattorneys.com
- paralegal@appeal-law.com

Comments:

Sender Name: Tatyana Mason - Email: tatyanam377@gmail.com
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