

**Supreme Court
of the State of Washington**

Patricia Landes,
Petitioner,

v.

Patrick Cuzdey,
Respondent.

No. 97724-1

COA No. 51841-4-II

**Reply in Support of Motion to
Strike Declaration of Drew
Mazzeo**

1. Identity of Moving Party

Respondent, Patrick Cuzdey, makes this Reply in support of his motion to strike the late-filed declaration of Drew Mazzeo.

2. Reply Argument

The declaration improperly addresses the legal arguments in Cuzdey's motion after Cuzdey filed his reply. It seeks to get in the last word when the rules require that Cuzdey gets the last word.

Even though Landes filed her answer to the motion early, that does not excuse her failure to file any supporting papers with the answer. As soon as the answer was filed and served on Cuzdey, the rules gave Cuzdey only three days to prepare his

reply. Landes had still not filed any supporting documents within those three days. Cuzdey's reply, filed on the last possible day under the rules, called the court's attention to this fact. Reply in Supp. of Mtn. to Disqualify at 4 ("although Mr. Mazzeo denies having possession of Cuzdey's file, he does not sign a sworn declaration to that effect").

Only after being called out on this failure did Mr. Mazzeo prepare, sign, and file his declaration. This can be seen in the first paragraph of the declaration, where Mr. Mazzeo specifically addresses the comment from Cuzdey's reply. Decl. of Attorney Drew Mazzeo at ¶ 1 ("The facts stated in Mrs. Landes' Response to the Motion to Disqualify, are true and correct, including the fact that I do not have Mr. Cuzdey's client file"). It can only be presumed that the declaration was drafted **after the reply** and in a specific attempt to rebut the arguments in the reply.

Such a "sur-reply" is entirely improper under the Rules of Appellate Procedure. The needs of justice do not require consideration of the declaration. Had the declaration been limited to Paragraph 1, attesting to the facts set forth in the answer to the motion, that could perhaps be a different story. But the declaration goes beyond attesting to the facts supporting the answer and proceeds to express Mr. Mazzeo's personal opinion of and experiences with Cuzdey's counsel (in ¶¶ 2-4) and to address the merits of Cuzdey's arguments (from ¶ 4 through

the end). These comments are irrelevant at best, and at worst a deliberate attempt to subvert the rules of procedure in hopes of giving his client an improper advantage.

Even if the Court deems the first paragraph worth saving in the interests of justice, the remaining paragraphs serve no worthy purpose and should be stricken.

3. Conclusion

This Court should strike the Declaration of Attorney Drew Mazzeo, filed October 28, 2019.

DATED this 22nd day of November, 2019.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on November 22, 2019, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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DATED this 22nd day of November, 2019.

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