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No. 97882-4
SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION I
No. 78025-5-I

RICHARD L. FERGUSON,

Petitioner,

vs.

BAKER LAW FIRM, P.S., *et al.*

Respondents.

**RESPONDENT BAKER LAW FIRM'S ANSWER TO PETITION'S
MOTION FOR LEAVE TO FILE OVER-LENGTH AND
UNTIMELY AMENDED PETITION FOR REVIEW**

Mark A. Thompson, WSBA No. 29370
Kimberly A. West, WSBA No. 48204
Mix Sanders Thompson, PLLC
1420 Fifth Avenue, Ste. 2200
Seattle, WA 98101
Tel: 206-521-5989
Fax: 888-521-5980

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I. INTRODUCTION AND RELIEF REQUESTED

Respondents Baker Law Firm, P.S., Gary L. Baker, Darcy Baker, Brenda Chavez, Kelly Matheson, and Richard Matheson (hereinafter referred to together as “Respondents Baker,” by and through their counsel of record, Mark A. Thompson of Mix Sanders Thompson, PLLC, answer Petitioner Ferguson’s Motion for Leave to File Over-Length and Untimely Amended Petition for Review.

Respondents Baker respectfully request that this Court deny Petitioner’s Motion for Leave to File Over-Length and Untimely Amended Petition for Review, and decide the Petition on its merits based upon the record before the Court. Respondents also request this Court impose appropriate sanctions on Petitioner for Respondents’ costs and fees incurred in responding to Petitioner’s meritless motion.

II. ISSUE PRESENTED

1. Whether Petitioner’s Request for leave to file an over-length and untimely Amended Petition should be denied?

2. Whether Petitioner's Motion is frivolous entitling Respondents to attorney's fees for opposing the motions under RAP 18.9(a)?

III. STATEMENT OF RELEVANT FACTS

To save the time and resources of this Court, Respondents ask the Court to incorporate Respondents Baker's Statement of Facts contained within their Answer to Petitioner's first Petition to this Court within Respondents' Answer to Petitioner's present Motion.

Petitioner Richard L. Ferguson's claims have failed before both the Superior Court as well as the Court of Appeals. Consistently, Petitioner's allegations against Respondents and his cries of court error have been deemed meritless. Yet, Petitioner continues to waste this Court's time and resources, as well as the time and resources of Respondents, with baseless appellate efforts.

Petitioner now files his Motion seeking leave to file an over-length and untimely Amended Petition for review. Notably, this Motion now marks the fourth request from Petitioner for an extension to file an Amended Petition following his earlier requests filed on January 22, 2020,

March 3, 2020, March 19, 2020, and April 8, 2020. Moreover, Petitioner does not provide the Court with any argument as to why an Amended Petition is justified nor why he was unable to comply with the Court's rules regarding brief lengths and timing that are very clear.

Petitioner's request to file an overlength and untimely Amended Petition should be denied and the Court should award Respondents their fees and costs incurred in responding to Petitioner's meritless Motion.

IV. LEGAL ARGUMENT

1. Ferguson Provides No Legal Basis to File An Amended Petition.

Petitioner Ferguson does not explain within his Motion why the contentions and arguments in his Amended Petition could not have been raised in the first Petition. Nor does Petitioner cite to any rule or justification permitting him to file an overlength and untimely Amended Petition. Indeed, this is because the rules do not permit his efforts.

Although not presented in this Motion, Petitioner's earlier requests for time extensions have noted a desire to "reply to Respondents' briefs," relief to which he is not entitled pursuant to RAP 13.4(d).

The present Motion is simply an attempt to file a second brief when the rules do not permit Petitioner to file additional arguments to support his request for review.

As with all litigants, Petitioner must state the grounds for discretionary review within his Petition, which is limited to 20 pages per RAP 17.4(g). *RAP 17.4(g)*. His request for an untimely, over-length Amended Petition should be denied.

2. Ferguson’s Requested Continuance is Not Warranted.

Pursuant to RAP 18.8., the Appellate Court may lengthen or shorten time within which an act must be done “in order to serve the ends of justice.” *RAP 18.8(a)*. This rule provides that extensions are only to be granted under limited circumstances. “The appellant court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section.” *RAP 18.8(b)*.

Petitioner’s request to file an untimely, over-length Amended Petition should be denied for a number of reasons. First, the original Petition, which includes the same issues and seeks the same relief as his proposed “Amended Petition,” was filed on November 21, 2019, prior to

the current COVID-19 outbreak. As discussed above, Petitioner provides no reason nor justification as to why this Court should consider any additional argument beyond what was set forth within this first Petition. Nor does Petitioner explain why he was unable to file an amended petition in the three months that passed subsequent to when his Petition was filed in November prior to the COVID-19 outbreak, which began in March.

Second, Petitioner fails to adequately argue how COVID-19 has impacted his ability to pursue his claims more than every other litigant currently operating under these exact conditions. Litigants in the State of Washington are currently operating under Governor Jay Inslee's "Stay Home Stay Safe" Order. Respondents Baker are also operating under this same order and amidst this same pandemic. Respondents have had no issue with the deadlines as currently set by the Court, especially where the deadlines to file a Petition and Answer passed long before the imposition of the Governor's Order.

Finally, the fact that Petitioner has chosen not to retain counsel throughout his litigation efforts should not require Respondents to continually respond to meritless briefs that do not abide by the Court's

rules. In Washington, a *pro se* litigant is held to the same rules of procedural and substantive law as an attorney. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997). Moreover, Petitioner has extensive legal experience having worked as a longtime paralegal. He should be required to comply with the same rules regarding the timing, lengths, and content of briefs as any other attorney pursuing an appeal with this Court.

3. Attorney's Fees Are Warranted Under RAP 18.9 For Filing Frivolous and Meritless Motions.

Petitioner Ferguson continues to abuse the legal process by filing meritless motions at every level of his seemingly never-ending appellate efforts. While doing so, Petitioner has continually failed to abide by the Court Rules and procedural requirements that are imposed on every litigant in Washington State, regardless of whether they are represented by counsel.

The purpose of sanctions orders is to deter, to punish, to compensate, and to educate. *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 690, 132 P.3d 115 (2006). As a result of Petitioner's conduct, Respondents have been forced to incur unnecessary additional costs and fees, the cost

of which Respondents should not be made to bear. Accordingly, Respondents Baker request the Court issue sanctions pursuant to RAP 18.9. *RAP 18.9.*

Based upon the foregoing, Respondent respectfully requests the Court deny Petitioner's request to file an untimely and over-length Amended Petition and award Respondents their costs and fees incurred in responding to Petitioner's Motion.

RESPECTFULLY SUBMITTED this 24th day of April, 2020.

MIX SANDERS THOMPSON PLLC

/s/ Mark A. Thompson

Mark A. Thompson, WSBA No. 29370

Kimberly A. West, WSBA No. 48204

MIX SANDERS THOMPSON, PLLC

1420 Fifth Avenue, Ste. 2200

Seattle, WA 98101

Tel: 206-521-5989

Fax: 888-521-5980

Email: mark@mixsanders.com

kim@mixsanders.com

Attorney for Plaintiff/Respondent

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury under the law of the State of Washington that on April 24, 2020, I caused the foregoing RESPONDENT BAKER LAW FIRM'S ANSWER TO PETITION'S MOTION FOR LEAVE TO FILE OVER-LENGTH AND UNTIMELY AMENDED PETITION FOR REVIEW to be e-filed with the Washington State Supreme Court, and a true and correct copy of the following below:

Richard L. Ferguson
20012 72nd Dr. SE
Snohomish, WA 98296
Pro Se Plaintiff

U.S. Mail
 E-mail to ferg099@comcast.net

Gary L. Baker
1802 Grove Street
Marysville, WA 98270-4330
 E-mail to
garybaker@grovestreetlaw.com

Patrick N. Rothwell
Keith M. Liguori
Davis Rothwell Earle &
Xochihua, PC
520 Pike St., Suite 2500
Seattle, WA 98101
*Attorney for Defendant Daniel
Laurence, Esq.*

U.S. Mail
 E-mail to
prothwell@davisrothwell.com
kliguori@davisrothwell.com

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DATED this 24th day of April, 2020, at Seattle, Washington.

/s/ Mark A. Thompson

Mark A. Thompson, WSBA No. 29730

MIX SANDERS THOMPSON, PLLC

1420 Fifth Avenue, Ste. 2200

Seattle, WA 98101

Tel: 206-521-5989

Fax: 888-521-5980

Email: mark@mixsanders.com

*Attorney for Respondents Baker Law Firm,
P.S., Bakers, Chavez, and Matheson*

MIX SANDERS THOMPSON, PLLC

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- prothwell@davisrothwell.com
- sgriffin@davisrothwell.com
- tpowells@davisrothwell.com
- twhitney@davisrothwell.com

Comments:

Sender Name: Courtney Levitsky - Email: courtney@mixsanders.com

Filing on Behalf of: Mark Augustus Thompson - Email: mark@mixsanders.com (Alternate Email:)

Address:
1420 Fifth Ave Suite 2200
Seattle, WA, 98101
Phone: (206) 521-5989

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