

SUPREME COURT OF THE STATE OF WASHINGTON

ABUBACARR WAGGEH,

Petitioner,

v.

THE STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS,
and MIKE OBENLAND, and DANIEL
W. WHITE, SUPERINTENDENT OF
SPECIAL OFFENDER
UNIT/INTENSIVE MANAGEMENT
UNIT,

Respondents.

RESPONDENTS'
ANSWER TO MOTION
TO STRIKE

I. INTRODUCTION

Petitioner's motion to strike should be denied. RAP 10.4(a)(2) provides that appellate briefs "must appear double spaced" and use specified fonts in 12 point type or larger. The Department of Correction's brief met these requirements. Nothing in the rules specifies "Microsoft Double spacing" in order to "appear double spaced." And many courts that require double-spaced briefs refer to 24 pt. spacing, even requiring briefs to be submitted on numbered pleading paper specifically formatted to 24 point spacing. The Department's brief thus "appeared double spaced" according to the ordinary meaning of those terms.

Petitioner also demonstrates no prejudice that would warrant striking the Department's Answer. If the Department had understood that to "appear double spaced" required using Microsoft double spacing, it could readily have revised its brief without substantive impact or sought an extension of the page limits from this Court. Such motions are often granted and not generally viewed as prejudicing the other opposing party. Petitioner's motion to strike should be denied.

II. ARGUMENT

Petitioner interprets RAP 10.4 as requiring Microsoft double spacing. But RAP 10.4 (a)(2) states only that briefs must "appear double spaced." The Department's brief meets this requirement.

Contrary to Petitioner's claim, the ordinary meaning of "double spaced" is simply to type leaving a full space between lines. Twenty-four point spacing falls within this ordinary meaning. And, indeed, many courts that require double-spaced briefs refer to 24 point spacing. For example, Thurston County Superior Court requires briefs to be "double spaced" and briefs to that court are routinely submitted with 24 point spacing. Thurston County Local Rule 10. <https://www.thurstoncountywa.gov/sc/Pages/court-rules-detail.aspx?ID=14>. Similarly, the Ninth Circuit Court of Appeals requires briefs to be "double spaced," and briefs are routinely submitted to that Court with 24 point spacing. *See* FRAP 27(d)(1)(D). Contrary to

Petitioner's claim, the term "double spaced" can include – but does not necessarily require – Microsoft double spacing.

Further, contrary to Petitioner's unsupported assertions, the Department had no intention of gaining an unfair advantage: it simply understood that 24 point spacing was permitted under the applicable rules. *See* Heintz Decl. ¶¶ 3-5. If it had been understood otherwise, the Department could have filed a motion to submit an over-length brief. Such motions are often granted without the perception of prejudice to the opposing party.

Should this Court determine that RAP 10.4 requires Microsoft double spacing, the Department respectfully requests that Petitioner's motion to strike be denied due to good faith error and lack of prejudice. Alternatively, the Department requests an opportunity to submit a brief conforming to clarified spacing requirements.

III. CONCLUSION

For the reasons stated above, Petitioner's motion to strike should be denied.

RESPECTFULLY SUBMITTED this 22nd day of March, 2021.

ROBERT W. FERGUSON
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s/Andrew Biggs

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DECLARATION OF
TERA M. HEINTZ

1. I, Tera M. Heintz, declare that the following is true and correct, that I am over 18 years of age, and that I am competent to testify to the matters stated below.

2. I am a Deputy Solicitor General with the Washington State Attorney General's Office. I reviewed the Answer of the Department of Corrections to the Petition for Review in this case. I make this declaration in support of Respondents' Answer to Petitioner's Motion to Strike.

3. I began practicing in Washington State in 2019. Before I moved to Washington, I practiced in many courts throughout the country and primarily in California. Every state and federal court in which I have practiced requires double-spaced briefs. And the standard practice in most of those courts was to submit briefs with 24 point spacing. Many of those

courts even required briefs to be submitted on numbered pleading paper specifically formatted with 24 point spacing.

4. When I came to the Washington Attorney General's Office, I reviewed all of the Rules of Appellate Procedure, including RAP 10.4, and also reviewed briefs previously submitted by the Solicitor General's Office to the Washington Supreme Court. I noted numerous briefs with 24 point spacing. Based on my reading and review, I understood that RAP Rule 10.4 permitted 24 point spacing.

5. Because of my prior practice of always using 24 point spacing, briefs that do not use 24 point spacing tend not to look quite right to me and so my preference is always to use 24 point spacing. I have submitted briefs to the Washington Supreme Court with 24 point spacing based on my understanding that such spacing was permitted.

6. If I had understood that 24 point spacing was not permitted, I am confident I could have helped edit the Department's brief to conform to Microsoft double spacing requirements with little substantive impact on the arguments. Or, the Department could have filed a motion to submit an over-length brief.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 22nd day of March 2021.

ROBERT W. FERGUSON

Attorney General

/s/ Tera M. Heintz

TERA M. HEINTZ WSBA No. 54921

Deputy Solicitor General

PROOF OF SERVICE

I certify that on the date below I caused to be electronically filed the foregoing RESPONDENTS' ANSWER TO PETITIONER'S MOTION TO STRIKE with the Clerk of the Court using the electronic filing system which will serve the document to the following case participants as indicated below:

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assistant@tal-fitzlaw.com
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 22nd day of March, 2021, at Marysville, WA.

s/ Danielle Garrett
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OFFICE OF THE ATTORNEY GENERAL

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