

CERTIFICATE OF SERVICE

I certify that I served a copy of this document and any attachments on October 22, 2014, upon Noah Davis, Attorney at Law, IN PACTA, PLLC, LAWYERS, 801 2nd Ave, Suite 307, Seattle, WA 98104, by mail, postage prepaid, and by email sent to nd@inpacta.com.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Oct 22, 2014, 5:00 pm
BY RONALD R. CARPENTER
CLERK


Helmut Kah, WSBA # 18541
Attorney for Petitioner

RECEIVED BY E-MAIL *bjh*

**IN THE SUPREME COURT OF THE
STATE OF WASHINGTON**

ESTATE OF GARY FILION,
Respondent,
vs.
JULIE JOHNSON, et al.,
Petitioner.

CASE # 90507-0

COURT OF APPEALS No. 69830-3-1

ANSWER TO RESPONDENT'S
MOTION TO SUBSTITUTE
ANSWER TO PETITION FOR
REVIEW WITH THE
AMENDED ANSWER TO THE
PETITION FOR REVIEW

I. IDENTITY OF ANSWERING PARTY

Petitioner Julie Johnson, by and through counsel of record, Helmut Kah, hereby answers RESPONDENT'S MOTION TO SUBSTITUTE ANSWER TO PETITION FOR REVIEW WITH THE AMENDED ANSWER TO THE PETITION FOR REVIEW.

For the sake of brevity and clarity, this answer refers to petitioner Julie Johnson by her last name "Johnson" and to the respondent Estate of Gary Filion as "Filion".

II. ANSWER TO STATEMENT OF RELIEF SOUGHT

Johnson agrees it is appropriate and necessary that respondent correct the repeated false assertions regarding Johnson's filing of an amended answer in the

trial court.

III. FACTS RELEVANT TO THIS ANSWER

Upon reviewing Filion's answer to Johnson's petition for review, it became apparent that the answer contains a number of material misrepresentations regarding the content of the record below. Because section 2 of the Filion's answer does not raise new issues for review, a reply to the answer appears to be precluded by RAP 13.4(d). Therefore, after seeking guidance on the appropriate method of bringing this to the court's attention, I detailed these concerns in an email sent to the court and opposing counsel on Tuesday, October 7, 2014. (copy attached)

To his credit, Filion's counsel filed the present motion to allow filing of an amended answer which corrects the false assertion that Johnson filed an amended answer in the trial court.

Johnson is disappointed that Filion has not corrected the following material false representation that appears in footnote 9 at page 11 of the Filion's September 5, 2014, answer to the petition for review:

"In addition, Johnson states that her claim was tried in arbitration (Johnson Br. Pg. 5-6), but there is no such ruling by the Arbitrator and there is no record to support that finding. * * * ."

In fact, Johnson's defense of absolute immunity under RCW 4.24.510 was tried on the merits in mandatory arbitration. The arbitrator's ruling in Johnson's favor is based on her RCW 4.24.510 immunity defense. But the arbitrator improperly denied Johnson recovery of her expenses, reasonable attorney fees, and statutory damages.

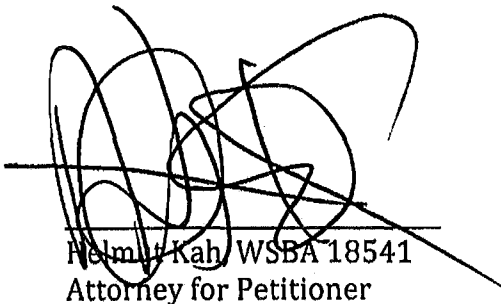
Filion's statement that "there is no such ruling by the Arbitrator" is false.

Johnson will have to address Filion's failure to correct these other misstatements by way of a separate motion which will be filed shortly.

IV. CONCLUSION

Johnson does not oppose correction of Filion's answer, but Filion should but has not corrected the remaining material misrepresentations contained the answer as well.

Respectfully submitted this ~~20~~^{22nd} day of October, 2014.



Helmut Kah, WSBA 18541
Attorney for Petitioner

Helmut Kah

From: Helmut Kah <helmut.kah@att.net>
Sent: Tuesday, October 07, 2014 11:02 PM
To: 'Supreme@courts.wa.gov'
Cc: Noah Davis (nd@inpacta.com)
Subject: Estate of Gary Filion, Respondent, v. Julie Johnson, Petitioner No. 90507-0
Attachments: DOCKET Filion v Johnson, 07-2-06353-6 SEA _ Sub No. 1 – 185 02-21-2007 to 09-13-2013.pdf

Case Name: Estate of Gary Filion, Respondent, v. Julie Johnson, Petitioner
Court of Appeals case no.: 69830-3-I
Supreme Court case no.: 90507-0
This email and attachments submitted by:

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I am bringing the following concerns to your attention via this email because filing a reply to respondent's answer to the petition for review is precluded by the last sentence of RAP 13.4(d), because the answer does not raise new issues.

Respondent's answer includes material misrepresentations regarding the record of this case as described below. In this email I mention only those misrepresentations that are of greatest concern to the petitioner.

Respondent's position was, is, and continues to be that despite Johnson's repeated assertion below of the RCW 4.24.510 immunity defense and the parties' litigation of that defense, as described in the petition for review, the immunity defense was waived because it was not expressly stated within the four corners of a document labeled "Answer". In support of his waiver argument on this petition for review, respondent falsely states, at least four times, that Johnson filed an amended answer to Filion's complaint in the trial court and that such amended answer does not assert an "anti-SLAPP" defense.

In fact, Johnson did not file an amended answer in the trial court.

Attached is an up-to-date docket of the trial court proceedings which shows that Johnson did not file an amended answer. Johnson's *pro se* answer is listed at docket sub-no. 10.

The answer listed at docket sub no. 21 is that filed by Johnson's dissolution lawyer Mark D. Olson, Olsen & Olsen PLLC, in response to Filion's claims against him and his law firm.

Filion's answer to the petition for review contains at least four false references to the filing of an amended answer by Johnson as follows (emphasis in **bold** added):

At Filion's ANSWER at p. 7 states:

"But she didn't plead this defense. Despite the multitude of opportunities to plead this defense by way of an amended answer or a motion to amend the answer, Johnson failed to do so. **She did file an amended answer with the assistance of counsel** but even then makes no mention of or reference to the anti-SLAPP defense or statute. * * * ."

At Filion's ANSWER beginning at the last sentence on page 9 states:

“ * * * Because she failed to preserve the anti-SLAPP statute by pleading it in her Answer (or her amended answer), as either an affirmative defense or counterclaim * * * .”

At Filion's ANSWER at the first full paragraph beginning on page 10 states:

“ * * * Johnson was precluded from asserting her purported anti-SLAPP defense because she had twice plead but failed to preserve that defense (in either her original or her amended Answer) * * * .”

At Filion's ANSWER in the second full paragraph beginning on page 12 states:

“And, even had Johnson pleaded the anti-SLAPP statute in her Answer (or Amended Answer since she had filed that Answer with her attorney but without the anti-SLAPP affirmative defense), * * * .”

It is worth keeping in mind that Filion's papers consistently conflate and confuse the differences between the immunity against damage claims provided by RCW 4.24.510 with that under RCW 4.24.525 by generically referring to both as an “anti-SLAPP” defense.

Some other misstatements regarding the record:

Filion's ANSWER at bottom of page 4 to top of page 5 states:

“After being charged with violating the restraining order, Mr. Filion's criminal defense attorney was able to provide the omitted information to the prosecutor and have the charge dismissed. (CP 5 – 6 First Amended Complaint; CP 236 Criminal Docket Report)”

CP 236 is the King County District Court docket which makes the bare statement that “CITY MOVES TO DISMISS IN THE INTERESTS OF JUSTICE – GRANTED” There is no support in the record for respondent's spin that “Mr. Filion's criminal defense attorney was able to provide the omitted information to the prosecutor”.

Filion's ANSWER at footnote 9 on page 11 states:

“In addition, Johnson states that her claim was tried in arbitration (Johnson Br. Pg. 5-6), but there is no such ruling by the Arbitrator and there is no record to support that finding. * * * .”

Filion's statement that “there is no such ruling by the Arbitrator” is false. In fact, there is such a ruling by the arbitrator and both Filion and his former and current counsel know it. A copy of that ruling is attached to Johnson's motion for reconsideration filed in the Court of Appeals which is part of the record on this petition for review. Filion's current counsel has had a copy of it since shortly after it was issued in 2009 when he was substituted in as Filion's attorney of record.

I have submitted the foregoing by email as I know of no other way to do so per the RAP.

This email is cc'd to opposing counsel.

Respectfully submitted,
/s Helmut Kah

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Thank You.

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, October 22, 2014 5:02 PM
To: 'Helmut Kah'
Cc: Noah Davis
Subject: RE: Estate of Gary Filion, Respondent, v. Julie Johnson, Petitioner No. 90507-0

Received, 10-22-14 at 4:59 p.m.

From: Helmut Kah [mailto:helmut.kah@att.net]
Sent: Wednesday, October 22, 2014 4:59 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Noah Davis
Subject: Estate of Gary Filion, Respondent, v. Julie Johnson, Petitioner No. 90507-0

Case Name: Estate of Gary Filion, Respondent, v. Julie Johnson, Petitioner
Court of Appeals case no.: 69830-3-I
Supreme Court case no.: 90507-0
This email and attachments submitted by:

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Attached is petitioner Julie Johnson's ANSWER TO RESPONDENT'S MOTION TO SUBSTITUTE ANSWER TO PETITION FOR REVIEW WITH THE AMENDED ANSWER TO THE PETITION FOR REVIEW

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