

SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL AMES,

Petitioner,

vs.

PIERCE COUNTY,

Respondent.

No. 93428-2

RESPONSE TO
MOTION TO FILE
LATE ANSWER
TO BRIEF OF
AMICI CURIAE

1. Introduction

Petitioner Ames has filed a motion to extend the time to file his response to amici. The motion should be denied, because what his counsel characterizes as mere incompetence is actually an attempt to file an improper reply to Pierce County's answers to the petition for review and to the brief of amici.

2. Relevant Facts

Ames' counsel admits she filed and served on this office her proposed answer many hours after Pierce County's answer to amici was filed, and well after this Court's filing deadline. Pierce County's answer was filed and served by 3:40 p.m. on the due date. Tribe decl. ex. A. Ames' answer was filed and served almost four hours later. Tribe decl. ex. B.

Response to Motion to File Late
Answer to Brief of Amici Curiae - 1

Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

ORIGINAL

filed via
PORTAL

Counsel claims that the late filing was due to her failure to communicate the deadline to her staff, and her busy schedule. Motion at 2. She admits that even after she had missed the deadline, she was working on the brief, although she claims this was only to “finalize” it. *Id.*

However, the brief Ames seeks to file is really a reply to Pierce County’s response to the petition for review and answer to amici, rather than merely answering amici’s arguments. The brief is laden with references to Pierce County’s “answer” and the arguments the County has made. Proposed Answer to Amici at 3 n.15, 5, 6 n.24, 7.

Ames does not always specify in his proposed answer whether he is referring to Pierce County’s Answer to the Petition for Review or Answer to Amici. Compare Proposed Answer to Amici at 24 (citing the County’s Answer to Petition for Review) and 7 (quoting directly from the County’s Answer to Petition for Review and the County’s Answer to Amici, but not supporting the quotation with any citation). However, under RAP 10.3(f) either would be improper, as they are not “new” matters raised by amici.

The proposed brief reveals that Ames is abusing court rules, apparently to gain tactical advantage.

3. Argument

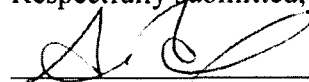
The proposed late answer should be rejected for violating two appellate rules. First, briefs must be filed timely on the date fixed by this Court. RAP 10.2(g). They are also to be limited “solely to the new matters raised in the brief of amicus curiae.” RAP 10.3(f).

Waiver of the rules is permitted, if it “serves the end of justice.” RAP 1.2(c). However, the ends of justice are not threatened by declining to accept a late answer to an amicus brief that is actually an improper reply to a petition for review or response to amici, rather than a true answer to amici.

If this Court allows such rule violations in this case without consequence, it invites further abuses. Pierce County respectfully requests that this Court decline to accept Ames’ tardy and improper response to the brief of amici.

DATED this 16th day of November, 2016.

Respectfully submitted,



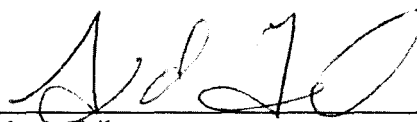
Sidney C. Tribe, WSBA #33160
Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
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(206) 574-6661
Attorneys for Respondent
Pierce County

DECLARATION

I, Sidney Tribe, declare as follows:

1. I am over the age of 18, competent to be a witness, and personally knowledgeable about the facts in this declaration.
2. Attached hereto as Exhibit A is an email reflecting the 3:40 p.m. time of electronic service of Pierce County's Answer to Brief of Amici and accompanying motion for over-length answer.
3. Attached hereto as Exhibit B is an email reflecting the 7:39 p.m. time of electronic service of Ames Answer to Brief of Amici and accompanying motion for extension of time.

I swear the foregoing to be true under penalty of perjury under the laws of the State of Washington. Executed at Seattle, Washington, this 16th day of November, 2016.



Sidney Tribe

EXHIBIT A

Matt Albers

From: matt@tal-fitzlaw.com
Sent: Monday, November 14, 2016 3:40 PM
To: jcline@clinelawfirm.com; joan@3brancheslaw.com; map@pattersonbuchanan.com; Matt Albers; misty@3brancheslaw.com; Phil Talmadge; Matt Albers
Subject: Electronic Filing - Document Upload
Attachments: 20161114152933SC694955-trans_ltr.pdf

Court: Supreme Court
Case Number: 93428-2
From: Matt Albers
Organization: Talmadge/Fitzpatrick/Tribe
Filed on Behalf of: Philip Albert Talmadge

This is to inform you that the file(s) listed below were electronically filed for the above mentioned case by Matt Albers from Talmadge/Fitzpatrick/Tribe, filed on behalf of Philip Albert Talmadge.

Below is a link to each of the document(s) which have been filed with the court.

- [934282_20161114152933SC694955_6674_Answer_Reply.pdf](#)
- [934282_20161114152933SC694955_2200_Motion.pdf](#)

Attached is a copy of the Transmittal Letter sent to the court.

This court will treat this email as proof of service on you.

If you have any questions, please contact virginia.neal@courts.wa.gov and reference Filing Id 20161114152933SC694955.

EXHIBIT B

Phil Talmadge

From: Joan Mell <joan@3brancheslaw.com>
Sent: Monday, November 14, 2016 7:39 PM
To: Phil Talmadge; James Cline
Subject: Fwd: Answer to Amici Brief and Motion For Extension of Time To File Answer To Amici Brief
Attachments: ANSWER TO AMICI.pdf; Ames Motion for leave of Time copy.pdf

Joan K. Mell
III Branches Law, PLLC
1019 Regents Blvd. Ste. 204
Fircrest, WA 98466
253-566-2510 (p)
281-664-4643 (f)
joan@3brancheslaw.com

Begin forwarded message:

From: Joan Mell <joan@3brancheslaw.com>
Subject: Answer to Amici Brief and Motion For Extension of Time To File Answer To Amici Brief
Date: November 14, 2016 at 7:20:17 PM PST
To: Supreme@courts.wa.gov

Case Name: MICHAEL AMES v. PIERCE COUNTY, By and Through, PIERCE COUNTY PROSECUTING ATTORNEY MARK LINDQUIST.
Case No. 93428-2

From: Joan K. Mell, WSBA #21319
(253)-566-2510
joan@3brancheslaw.com

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the Response to Motion to File Late Answer to Brief of Amici Curiae in Supreme Court Cause No. 93428-2 to the following parties:

Joan K. Mell
III Branches Law, PLLC
1033 Regents Blvd., Suite 101
Fircrest, WA 98466

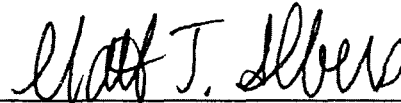
Michael Patterson
Patterson Buchanan Fobes & Leitch PS
2112 3rd Avenue, Suite 500
Seattle, WA 98121

James M. Cline
Cline & Casillas
520 Pike Street, Suite 1125
Seattle, WA 98101

Original E-filed with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: November 16, 2016, at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK/TRIBE

November 16, 2016 - 11:31 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 93428-2
Appellate Court Case Title: Michael Ames v. Pierce County

The following documents have been uploaded:

- 934282_20161116112942SC260305_2740_Answer_Reply.pdf
This File Contains:
Answer/Reply - Other
The Original File Name was Response to Motion to File Late Answer to Brief of Amici Curiae.pdf

A copy of the uploaded files will be sent to:

- map@pattersonbuchanan.com
- joan@3brancheslaw.com
- phil@tal-fitzlaw.com;matt@tal-fitzlaw.com
- jcline@clinelawfirm.com
- sidney@tal-fitzlaw.com
- matt@tal-fitzlaw.com
- misty@3brancheslaw.com

Comments:

Response to Motion to File Late Answer to Brief of Amici Curiae

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

Filing on Behalf of: Sidney Charlotte Tribe - Email: sidney@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:
2775 Harbor Avenue SW
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Seattle, WA, 98126
Phone: (206) 574-6661

Note: The Filing Id is 20161116112942SC260305