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SUPREME COURT No. 97395-4
COURT OF APPEALS No. 79173-7-I

WASHINGTON SUPREME COURT

SANDRA FERGUSON, ET AL.,

Petitioners/Appellee/Plaintiffs,

v.

BRIAN J. WAID, ET AL.,

Respondent/Appellant/Defendants.

**Reply to Respondent's Response to Petitioner's Motion For Leave of Court to
File a Third Amended Petition
For Discretionary Review**

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Waid's response to Ferguson's Motion to File Amended Petition asks the Court to deny Ferguson's motion and not consider the Third Amended Petition because he has already answered the original petition. However, Waid is not prejudiced by Ferguson's Third Amended Petition for Review, although he would prefer that the Court leave the law of Washington on attorney's liens in its present state of conflict and confusion because that decision would favor him in this particular dispute. This Court has discretion to accept the Third Amended petition. It should exercise that discretion for the public good and therefore, should grant Ferguson's motion to amend so that it does not miss the opportunity to resolve an important issue for the benefit of the public, the legal profession, and the courts.

Waid asks the Court to impose sanctions on Petitioner for filing an amended brief that was overlength, and after her motion to file the overlength brief was denied, shortening the petition to the 20 pages required by the rules, and filing another motion to amend, along with the 20-page proposed amended petition. Ferguson should not be sanctioned. Ferguson has worked diligently to provide this Court with a petition so that the Court has the opportunity to address this issue. The public interest at stake is very real and very substantial. After her motion to file an overlength brief was denied on July 30, 2019, Ferguson reduced the [proposed] amended petition to 20 pages to comply with RAP 13.4(f). In

doing so, she distilled the issues set forth in the original petition to their essence. In the 20-page brief, she discusses the evolution of Division I's views on the attorney's lien statute expressed in *Smith v. Moran*, *Ferguson v. Teller*, and in its opinion from *Ferguson v. Waid*, filed on April 15, 2019. In all three of these opinions, Division I focuses on the Legislature's intent behind the 2004 amendments and the changes the amendments supposedly were intended to make to the attorney's lien state and the power of the attorney's lien to attach property before there is a judgment in favor of the attorney for the alleged fees. This power of the lien has been judicially expanded, contrary to this Court's directive in *Ross*. Ferguson is not deserving of sanctions. On the contrary, she has worked hard to bring this very important issue to the attention of the Court so the Court has an opportunity to resolve a conflict with Division I's post-2004 decisions and its decision in

There is an appeal pending between these parties in the Ninth Circuit. Waid has mentioned his insurance defense attorney's perjury several times in bringing this case to the attention of this Court. Other than Waid opening that door, the federal case is unrelated to the issues before this Court on this Petition. *See Ferguson's Reply to Waid's Answer to Petition For Review.*

Waid has been permitted to appeal from adverse decisions of the trial court, twice. The parties, subject matter, and underlying representation are identical. Ferguson has been prevented from

proceeding to trial so that Waid could pursue his appeal first. The result of Waid's second appeal on the same subject is that the April 15, 2019 opinion gave this Court an opportunity to consider and resolve one simple, very important question:

Are Washington courts still bound by the strict-construction rule of *Ross v. Scannell* when considering the attorney-lien cases that come before them, or were the 2004 amendments to the attorney-lien statute intended to allow the courts to expand the power of the attorney's lien to give attorneys rights no other lienholders have, including the right to attach their clients' money or property and litigate their fee-claim more than once, even though the attorney has not obtained a judgment or settlement for the client and there are no fruits of the attorney's labor to which the lien can attach?

In *Ross*, the Court stated very clearly that the charging lien provisions of the attorney-lien statute must be strictly construed and are not to be judicially expanded. Nevertheless, in a line of cases after 2004, including *Smith v. Moran*, *Ferguson v. Teller*, and *Ferguson v. Waid*, Division I has judicially expanded the statute. Division I justifies its disobedience to *Scannell* by reasoning that the purpose of the Legislature when it enacted the 2004 amendments was to allow for judicial expansion and grant special legal rights to attorneys, their liens, and their right to attach the property of client-citizens without first obtaining a judgment for the debt they allege. And without obtaining a judgment or settlement favorable to

the client. Division I's interpretation of the legislative history and its drastic departure from Supreme Court precedent requires review by the Supreme Court to resolve the conflicts created by Division I. This new interpretation of the attorney's lien has great potential for abuse, as the facts of this case so clearly illustrate.

CONCLUSION

Contrary to Waid's ad hominem attacks, Ferguson's intent was not to "abuse" or inconvenience Mr. Waid, the Court, its staff, or the Justices of the Supreme Court. Ferguson cares about having the Court review the new law of attorney's liens that has been created by Division I. Ferguson is still standing after the mishandling of her funds, Waid's lien on her property, and five years of litigation. The non-lawyer client would have been forced to give up the struggle for fairness long ago. The public trust is at stake. The Supreme Court should give guidance to members of the profession, the general public, and the lower courts, regarding the proper standard to apply when deciding attorney-lien cases.

DATED August 6, 2019.

By: /s/Sandra Ferguson
Sandra Ferguson, Pro Se Petitioner
WSBA 27472.

THE FERGUSON FIRM

August 05, 2019 - 9:47 PM

Transmittal Information

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