

FILED
SUPREME COURT
STATE OF WASHINGTON
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CLERK

No. 97395-4

IN THE SUPREME COURT FOR THE
STATE OF WASHINGTON

SANDRA FERGUSON and THE FERGUSON FIRM, PLLC,

Petitioners,

vs.

LAW OFFICE OF BRIAN J. WAID, PLLC, *et al*,

Respondents.

PRO SE RESPONDENT'S ANSWER TO PETITIONER'S MOTION
FOR LEAVE OF COURT TO FILE A MOTION FOR SECOND
AMENDED PETITION FOR REVIEW, AND REQUEST FOR
SANCTIONS PURSUANT TO RAP 1.1(d) AND RAP 18.9(a)

Brian J. Waid
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Respondent/*Pro Se* Plaintiff-in-
Counterclaim in Trial Court

I. Relief Requested

Unbelievably, Petitioner Sandra Ferguson continues her brazen abuse of this Court and its procedural rules with a pleading entitled “Petitioner’s Motion for Leave of Court to File a Motion for Second¹ Amended Petition.” Petitioner’s motion follows the Court’s July 26, 2019 order that rejected Ms. Ferguson’s two (2) previously-filed Amended Petitions for Review and her August 1 re-filing of her original Petition for Review (to which she added page numbers). Respondent requests that the Court deny Ferguson’s motion as unauthorized and untimely, and impose sanctions against her pursuant to RAP 1.1(d) and RAP 18.9(a), or RAP 18.8(d).

II. Identity of Respondent

Respondent Brian J. Waid was the defendant and plaintiff-in-counterclaim in the trial court, and the respondent/cross-appellant in the Court of Appeals.

III. Statement of the Case

Ms. Ferguson filed her Petition for Review on July 8, 2019 (the last possible date for filing). The Petition consisted of five (5) pages, single-spaced, and identified three issues for review: (1) whether the Court of Appeals should have considered Waid’s appeal of the trial court

¹ This is actually Ferguson’s *fourth* attempt at filing an Amended Petition for Review.

denial of summary judgment on his account stated cause of action; (2) whether *res judicata* precluded Waid's counterclaim for fees, and; (3) whether partial summary judgment is appropriate on an account stated cause of action when the former client has alleged contingent, unliquidated claims against the attorney. The original Petition for Review did not cite a specific section of RAP 13.4 that would warrant review.

On July 15, 2019, Respondent filed his Answer to Ferguson's original Petition for Review. The Answer asks for sanctions against because Ferguson's original Petition was frivolous and is [Ans. pp. 15-17]:

. . .replete with errors that include misspellings, odd spacing, violations of RAP 10.4(a),² and an incomplete sentence (p. 4) that reads "The effect of the Court of Appeals Decision is to _____." Furthermore, the copy of the Petition for Review, at least as served on Respondent, also fails to include the Appendix required by RAP 13.4(c)(9) and, as of this writing, Petitioner has not paid the filing fee for the Petition for Review.

The next day, July 16, 2019, this Court's Clerk granted Ms. Ferguson until July 24, 2019 in which to pay the filing fee for the Petition

² Ferguson's original Petition for Review also violates RAP 10.4(a)(2) in that it is not double-spaced, and RAP 13.4(c)(2) in that it does not include the Tables required by that Rule. Respondent cannot determine whether the Petition meets that Rule's margin and font requirements. The pages are not numbered. Ferguson is an experienced attorney who has appeared in this Court on many occasions. Her RAP 10.4(a) and RAP 13.4 violations provide further support for the conclusion that Ferguson filed the Petition to delay resolution of Respondent's counterclaims on remand to the trial court and to further her campaign of harassment against Respondent. Appendix, Ex. C at *9.

for Review³ *and* directed her to “add page numbers” to her original Petition and re-file it. The Court Clerk did *not* grant Ms. Ferguson carte blanche authority to file an entirely new petition.

On July 24, 2019, Ms. Ferguson filed a 50-page *first* “Amended Petition” which identifies the following issues presented for review:⁴ (1) “are the lower courts still bound by the *Ross* rule requiring them to narrowly construe the attorney-lien statute, regardless of the 2004 amendments?” and; (2) whether partial summary judgment is appropriate on an account stated cause of action when the former client has alleged contingent, unliquidated claims against the attorney.

Incredibly, overnight on July 24, 2019, Ferguson filed a *second* “Amended” Petition for Review, consisting of sixty-six (66) pages of text.⁵ This second “Amended” Petition for Review identified four (4) Issues Presented for Review.

On July 26, 2019 **the Court rejected Ms. Ferguson’s two Amended Petitions for Review**, noting that it had only authorized

³ Respondent is unaware whether Ms. Ferguson paid the filing fee on time.

⁴ Ms. Ferguson uses approximately a full page to identify each of the “Issues Presented for Review.” Respondent has therefore tried to succinctly state the two issues purportedly presented; however, as stated the second issue is virtually indecipherable.

⁵ Although the extent of revisions between Ferguson’s 50-page first “Amended” Petition and her 66-page second “Amended” Petition are not readily identifiable, they do *not* appear limited to just correcting the erroneous margins contained in the first “Amended” Petition for Review

Ferguson to add page numbers and re-file the Petition.

On August 1, 2019, Ferguson re-filed her *original* Petition for Review, with page numbers, which consisted of five (5) pages of single-spaced text and omission of the Tables required by RAP 13.4(c)(2).

On August 5, 2019, Ferguson filed the current Motion, purporting to ask leave to file the “*Third* Amended Petition for Review attached to her Motion. This *Third* Amended Petition for Review raises only one issue for review relating to whether the validity of Respondent’s attorney-fee lien—an issue which was decided in a prior appeal in a different case and for which this Court denied review in **2014**. 3rd Am. Petition, p. 4.

IV. Issues Presented for Review

1. Should the Court deny Ferguson’s Motion for leave to file a Third Amended Petition for Review, after Respondent has already answered Ferguson’s Petition for Review, as unauthorized and untimely?

Answer: Yes.

2. Should the Court impose sanctions against Petitioner, including monetary and non-monetary sanctions (to protect the Court and its staff as well as Respondent and other litigants), pursuant to RAP 18.9(a) and RAP 1.1(d), considering that her first and second “Amended” Petitions for Review were previously stricken, frivolous on multiple grounds, violate RAP 13.4 and RAP 10.4 in multiple respects, and (d)

were filed for the improper purposes of furthering Petitioner’s campaign of harassment of Respondent,⁶ and to delay enforcement of the Division I mandate relative to Respondent’s counterclaims? **Answer: Yes.**

IV. ARGUMENT

1. The Court Has Not Authorized Ferguson’s First and Second “Amended” Petitions for Review, Both of Which Violate RAP 13.4(a) and 13.4(d)

RAP 1.2(a) provides that most of the Rules of Appellate Procedure be “liberally interpreted. . . .**subject to the restrictions of rule 18.8(b).**” (Emphasis added). Thus, although RAP 18.8(a) allows the Court to extend time limitations, RAP 18.8(b) provides that “the appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file. . . .a petition for review.”

Here, Ms. Ferguson requests, in essence, a four-week extension of time, in which to file her *Third* Amended Petition for Review—*after* Respondent filed his Answer to her original Petition. Ferguson cites no extraordinary circumstances; she instead concedes that she “amended her petition to better inform the Court of the legal issues that are being decided by Division I. . .” Ferguson Mot., p. 4. Petitioner thus fails to

⁶ See, *Ferguson v. Waid*, 2019 WL 6040174 (W.D. Wash. 11/19/2018). Respondent’s Appendix includes a copy of that Court’s Findings of Fact and Conclusions of Law.

establish any “extraordinary circumstances” or gross miscarriage of justice that justify her failure to timely file her Petition in proper form. Indeed, if Ferguson is correct, then every Petitioner will feel entitled to file a skeletal Petition initially, wait for the Respondent to Answer, and then file a “corrected” or “amended” Petition weeks later.

Furthermore, on July 16, after Respondent had filed his Answer to Ferguson’s original Petition for Review, the Court Clerk authorized Ms. Ferguson to number the pages of her original Petition for Review and re-file it. The Court Clerk did not authorize her to file an entirely new Petition for Review. After Respondent answered the Petition for Review, Ms. Ferguson tried to file a 50-page Amended Petition for Review, followed hours later by a 66-page Second Amended Petition for Review. The Court rejected both “amended” Petitions for Review.

Ferguson’s current motion seeks to effectively circumvent and nullify the RAP 13.4(a) requirement that Petitions for Review must be filed within 30 days. Furthermore, to allow an “amended” Petition for Review *after* the Respondent has filed the Answer to the Petition also circumvents and nullifies RAP 13.4(d) which does *not* allow a reply in support of a Petition for Review except to respond to *new* issues raised in the Answer to the Petition.

Ferguson’s practice is also fundamentally unfair to Respondent

considering that he had properly filed his Answer to Ferguson’s original Petition for Review. Significantly, Ms. Ferguson is an experienced attorney, who has frequently resorted to “amended” or “corrected” pleadings in this Court and the Court of Appeals. See, Respondent’s Mot. to Strike Ferguson’s Amended Pet. for Review, p. 7 n. 9.

2. The Court Should Sanction Ferguson for Her Abusive Procedural Practices.

RAP 18.9(a) authorizes an appellate court to impose terms or compensatory damages against a party who files a frivolous appeal. RAP 18.9(a) applies to the Petition for Review in this Court. RAP 1.1(d).

More specifically, the Federal Court found, after trial, that Ms. Ferguson’s attorney (Emily Sharp Rains) promised that Ferguson’s goal was “dragging Mr. Waid’s name through the mud.” Resp. Ans., Appendix C, p. 024 (FOF 37). Ferguson also told Respondent that he “deserved to suffer” and “this is not over, Brian.” *Id.* (FOF 39). Ferguson also posted “client reviews” on the internet, which the Federal Court found to be untrue and defamatory. *Id.* at p. 025-028 (FOF 45-46; COL 3-13). The Federal Court further found that “[o]ver the past four years, Ms. Ferguson has engaged in a course of conduct specifically aimed at harassing Mr. Waid.” *Id.* at p. 027-028 (COL 14-21).

Although the Federal Court did not enjoin Ms. Ferguson from

filing the Petition for Review in this pending case, that does not prevent this Court from imposing sanctions against her for having filed a frivolous Petition for Review, followed by a patently improper 50-page *first* “Amended” Petition for Review, which she followed within hours with a 66-page *second* “Amended” Petition for Review.

Beyond its lack of merits, Ferguson’s original Petition for Review was replete with errors. See, Resp. Ans., p. 16 and n. 11. Ferguson’s *first* “Amended” Petition for Review similarly omitted the requisite Tables [RAP 13.4(c)(2)] and Appendix [RAP 13.4(c)(9)]. Both the *first* and *second* “Amended” Petitions for Review also argue at great length⁷ that Division I erred in *The Ferguson Firm v. Teller & Associates*, 178 Wn. App. 622, 316 P.3d 509 (2013). However, this Court denied review of *The Ferguson Firm v. Teller & Associates* in July **2014**. Supreme Court case no. 90140-6.

Here, Ferguson’s sole issue presented for review relates to that 2013 decision, in a completely separate case, which has been final for approximately five (5) *years*. Accordingly, Ferguson’s assignment of error to, and her extended discussion of, that purported issue is therefore

⁷ Ferguson asserts that Division I erred in its 2013 decision as the *first* “Issue Presented for Review” in both her first and second “Amended” Petitions for Review. See further, *e.g.*, pp. 1-4 of Ferguson’s second “Amended” Petition.

completely irrelevant to this appeal and frivolous.⁸

VI. CONCLUSION

For these reasons, Respondent requests that deny Petitioner's Motion for Leave of Court to File a Motion for Second Amended Petition for Review." Ferguson's conduct in this Court requires severe sanctions. In addition to monetary sanctions, Respondent suggests that the Court consider non-monetary sanctions in the form a vexatious litigant (or similar such) designation to protect not only Respondent and other litigants, but to protect this Court and its staff from similar abusive conduct by Ms. Ferguson in the future.

DATED: August 5, 2019.

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⁸ RAP 18.8(d) also authorizes the Court to impose terms.

PROOF OF SERVICE

I hereby certify that on this 5th day of August, 2019, I caused a copy of the foregoing Respondent's Motion to Strike and for other relief to be delivered to Petitioners and Respondents, through their attorneys on the following in the manner indicated below:

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Dated: August 5, 2019

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
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WAID LAW OFFICE

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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97395-4
Appellate Court Case Title: Sandra L. Ferguson et al. v. Law Office of Brian J. Waid et al.

The following documents have been uploaded:

- 973954_Answer_Reply_20190805152101SC032862_5765.pdf
This File Contains:
Answer/Reply - Answer to Motion
The Original File Name was Waid.Answer to Ferguson Mot for LV to file 4th Amended for Review.pdf

A copy of the uploaded files will be sent to:

- fergusonsandra459@gmail.com
- kathleen.nelson@lewisbrisbois.com
- mail@emilyrains.com
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