

FILED
SUPREME COURT
STATE OF WASHINGTON
11/21/2019 8:00 AM
BY SUSAN L. CARLSON
CLERK

Supreme Ct. No. 97433-1
Ct. of Appeal No. 78121-9-I

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

In re the Estate of:

SASSAN SANAI, MD

Deceased.

**AMENDED RESPONSE TO
CLERK'S LETTER OF
OCTOBER 28, 2019 AND
OBJECTION TO "MOTION TO
STRIKE SECOND REPLY ON
PETITION FOR REVIEW".**

This Amended Response to the Clerk's Letter of October 28, 2019 and Objection to "Motion to Strike Second Reply on Petition for Review" supersedes the October 31, 2019 version filed with this Court. It is being filed to clarify some points in the October 31, 2019 filing which are not as clear as they could have been. The ambiguity stems from the fact that in drafting the Objection, Petitioner referred to the Answer to the motion for attorney fees for which conditional leave was sought as a "reply" because that is what it was called in the embedded motion. But on further consideration, using the label supplied by Astrid is confusing.

On October 18, 2019 Respondent Astrid Sanai filed an answer to Petitioner’s motion for sanctions and for leave to file an answer to the request for sanctions or attorney fees embedded in Astrid’s Answer to the Petition for Review, and she embedded within her answer to the motion for sanctions and leave a “Motion to Strike Second Reply on Petition for Review.” The “Second Reply” that Astrid refers to is the Answer to the request for attorney fee for which conditional leave to file is sought.

Petitioner filed a timely Reply to the Answer to the Motion for Sanctions on October 23, 2019, and explained that the alternative Answer to Request for Attorney Fees—the document Astrid calls a “Second Reply”—a document which significantly overlapped the discussion of the issues in the Reply to the Answer to the Petition—was presented to the Court as a precaution to be read only if the Court decided to disallow the filing of the Reply to the Answer to the Petition for Review. The Court might do so, Petitioner speculated, because of Astrid’s withdrawal of her request for review of the denial of an award of attorney fees in the Answer to the Petition for Review that was made in her motion to strike the Reply to the Petition.¹ If the Reply to the Answer to the Petition for Review is not stricken and is considered by the Court, then the alternative Answer to the Request for Attorney Fees would not be necessary to review as a matter of both due process and proper application of the Rules of Appellate Procedure.

¹ Astrid in her subsequent pleadings argued that she was entitled to request attorney fees under RCW 11.96A.150 without having the denial of the fees at the trial court and Court of Appeals reviewed; it remains unclear whether she has made a request under RAP 18.9 in the Answer to the Petition for Review, as she did not cite the Rule, but instead cited RAP 18.1. As discussed previously, the Rules of Appellate Procedure foreclose her interpretation of RCW 11.96A.150; having lost on this issue twice, she does not get to put a request for fees in her Answer to the Petition for Review and obtain fees unless review is granted or she files a separate motion making her case and allowing a full response by Petitioner.

On October 28, 2019, the Clerk of the Court sent out a briefing letter regarding the “Motion to Strike Second Reply on Petition for Review” embedded in the Answer, explaining that the motion would be considered with everything else, and effectively disallowing an opposition.

Obviously, embedding yet another motion in an Answer was improper and Petitioner hereby objects to it. Astrid’s response should simply have been limited to opposing the conditional request for leave to file an Answer to her Request for Attorney Fees under RCW 11.96A.150.

But the Clerk’s letter also provides further support for why the Reply to the Answer to the Petition for Review should be considered by this Court and not stricken. Where the Clerk identifies an embedded motion in an answer, it sends out a briefing letter as a matter of practice. No such letter was sent out in respect of the request for attorney’s fees in Astrid’s Answer to the Petition for Review. It thus appears that it was interpreted by the Clerk the same way it was interpreted by the Petitioner—as a request for review of the Court of Appeals’ decision not to award Astrid attorney fees under RCW 11.96A.150. It was therefore proper to file the Reply to Answer to the Petition for Review. The fact that Astrid now seeks to withdraw that request for review, and recharacterize her request for fees into something different, does not alter the fact that the only way to interpret her request for fees as consistent with the Rules of Appellate Procedure, and the way it was interpreted at the time by the Clerk and Petitioner, was as a request for review of the Court of Appeals’ decision not to award Astrid attorney fees under RCW 11.96A.150. So interpreted, the Reply was proper.

It also buttresses the appropriateness of imposing sanctions on Astrid and her attorneys. In the very same document in which a motion to strike was embedded, Astrid cited to *O’Neill v. City of Shoreline*, 183 Wn. App. 15, 24, 332

P.3d 1099 (2014) which states that motions to strike are a waste of time, and should simply be replaced by objections. That decision cites to another decision of the Court of Appeal that motions to strike are inappropriate, as “in any event, a motion to strike is typically not necessary to point out evidence and issues a litigant believes this court should not consider.” *Engstrom v. Goodman*, 166 Wash.App. 905, 909 n. 2, 271 P.3d 959, *review denied*, 175 Wash.2d 1004, 285 P.3d 884 (2012), cited in *O’Neill, supra*. The practice of Astrid’s lawyer of embedding motions in opposition and reply documents creates additional work for both the Clerk (who has to review the embedded motion and decide whether it merits further briefing), this Court (which has now faced with more pages of argument arising from Astrid’s violation of RAP 18.1 than to the underlying issues in this case) and Petitioner, who has to ensure he does not lose his due process right to respond to Astrid’s continually shifting grounds for an award of attorney fees, and thus has to keep filing motions, answers, replies and objections.

As a matter of due process, Petitioner had a right to respond to the request for attorney fees under RCW 11.96A.150 in Astrid’s Answer to the Petition for Review, a request which had been denied by the lower courts. Astrid’s position, that no such right was permitted, and the repeated filing of documents demanding that all oppositions to her request for sanctions be stricken, is an abuse of the appellate process.

Dated this 20th of November, 2019


Cyrus Sanai

CYRUS SANAI - FILING PRO SE

November 20, 2019 - 5:43 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97433-1
Appellate Court Case Title: In the Matter of the Estate of Sassan Sanai, M.D.
Superior Court Case Number: 17-4-00826-1

The following documents have been uploaded:

- 974331_Other_20191120173443SC466179_9202.pdf
This File Contains:
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- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com

Comments:

This is an amended version of the document I filed on October 31, 2019 and replaces and supersedes it.

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