SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Estate of: SASSAN SANAI, MD, Deceased.	No. 97433-1 REPLY IN SUPPORT OF MOTION TO STRIKE REPLY ON PETITION FOR REVIEW

1. Introduction

In accordance with this Court's October 2, 2019 letter, the respondent Astrid Sanai, personal representative of the Estate of Sassan Sanai, M.D. ("Estate"), provides this reply in support of the Estate's motion to strike Cyrus Sanai's ("Cyrus") inappropriate reply to his own petition for review. The Estate asks this Court to strike his reply on his petition for review and award the Estate its fees for its efforts in this Court.

2. Argument in Reply

(A) The Reply Should Be Stricken Because the Estate Did Not "Seek Review of Issues Not Raised in the Petition for Review"

The question presented by this motion is quite simple: Does a petitioning party have the right to file a reply where the answering party does not seek review of issues not raised in the petition for review? The

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

answer under the plain language of RAP 13.4(d) is no. As explained in the Estate's motion to strike, the Estate did not seek cross review of any issues that it asked the Court to decide *upon granting review*. Mot. to strike at 1-2. It did seek to revisit or review the fee award denied in the Court below, despite Cyrus's misrepresentation in his inappropriate reply. Rather, the Estate merely sought fees for its time *in this Court* as a sanction for having to respond to Cyrus's baseless petition for review. Ans. to pet. at 14 (requesting fees "in connection with this baseless petition for review"). Cyrus was not entitled to file a reply, certainly not the voluminous briefing that he has submitted including his responses to the several cross-motions that have resulted in past few weeks.

In his 20-page response, Cyrus raises three "fatal flaws" with the Estate's motion, none of which holds any water. First, Cyrus argues that the Estate did not seek fees as a sanction in its answer. Ans. to mot. at 3. Not true. The Estate plainly sought fees for having to respond to his baseless arguments, specifically citing caselaw discussing that the rules "allow[] courts to *sanction* lawyers who do not know when to stop." Ans. to pet. at 14 (citing *Watson v. Maier*, 64 Wn. App. 889, 891, 827 P.2d 331, *review denied*, 120 Wn.2d 1015 (1992)) (emphasis added).

Second, Cyrus argues that RAP 18.1(j) limits requests for attorney fees to cases where the party answering a petition for review was awarded

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

fees in the Court of Appeals. Ans. to mot. at 2-3. Again, not true. Nowhere in RAP 18.1(j) does the rule say that a party can *only* request fees in an answer to a petition for review if it was awarded fees below. Rather, RAP 18.1(j) expands the scope of attorney fee requests to ensure that parties who were awarded fees below are also compensated for their time answering a petition for review. It does not foreclose a litigant from seeking fees under some other applicable source of law.

Here, the Estate sought fees for its efforts answering the petition for review as a sanction for Cyrus's ongoing, meritless litigation against the Estate. This request was made under applicable sources of law beyond just RAP 18.1(j). The TEDRA statues clearly permits "the superior court *or any court on an appeal* may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party." RCW 11.96A.150 (emphasis added). Appellate courts have broad discretion to award such fees in TEDRA cases, and "may consider whatever factors [the court] deem[s] appropriate, including an appeal's merits or lack thereof." *In re Estate of Muller*, 197 Wn. App. 477, 490, 389 P.3d 604 (2016). Likewise, RAP 18.9(a) permits the appellate court to award sanctions against a party who utilizes the Courts of Appeal for purposes of delay, for filing frivolous appeals, or for otherwise failing to comply with the rules. RAP 18.1(j) does not limit the availability of these separate sources of authority

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

for awarding fees.

Finally, Cyrus argues that a fee request had to be made by separate motion. Ans. to mot. at 4-5. Again, this is incorrect. Cyrus cites no authority for his contention that sanction requests must be made by *separate* motion, nor does RAP 18.9(a) state that a sanction request must be made by separate motion. To the contrary, courts have warned litigants against filing separate motions, where a party has an opportunity to include a request within a brief or other filing. *E.g.*, *O'Neill v. City of Shoreline*, 183 Wn. App. 15, 24, 332 P.3d 1099 (2014) (discussing motions to strike portions of a brief and a request for sanctions) ("So long as there is an opportunity (as there was here) to include argument in the party's brief, the brief is the appropriate vehicle for pointing out allegedly extraneous materials—not a separate motion to strike.").

In this case the Estate's answer was an appropriate place to include a request for fees for time spent answering Cyrus's baseless petition for review. Even if this Court deems that Cyrus should have had an opportunity to respond to the Estate's two-page argument on fees, he did not have the right to submit an 18-page reply repeating his baseless arguments on the merits of the case.[1] The court should strike that

[1] The Estate fully expects Cyrus to repeat many of these arguments in his upcoming reply to his own motion for sanctions, due on the 25th of this month. While the Estate has focused its pleadings, Cyrus has burdened the Estate and this Court with

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

inappropriate filing.

(B) The Court Should Ignore Cyrus's Repetitive and Irrelevant Briefing

Cyrus's only answer highlights the fact that the Estate's fee request was reasonable. His response to the instant motion far exceeds the scope of the narrow issues raised by the Estate in its motion to strike. His 20-page response continues to repeat issues related to the merits of the case, including such irrelevant issues as the *Pullman* abstention doctrine under his continued threat of further litigation against the Estate in federal court if he does not get his way. These arguments do not merit a substantive response. However, they show Cyrus's true goal of tying up the Estate in protracted and unnecessary litigation for as long as possible to the Estate's detriment. The Estate was justified in seeking fees, and the Court should award them for all the reasons already stated. *See* Ans. to pet. at 13-14 (citing, *e.g.*, *Watson*, 64 Wn. App. at 891 (former Chief Justice Gerry Alexander observing that the rules "allow[] court to sanction lawyers who do not know when to stop.").

3. Conclusion

The Estate respectfully requests that the Court strike Cyrus's improper reply to his petition for review. Fees for the Estate's efforts in

---

excessive briefing in violation of the rules. The Estate's fee request is proper. RAP 18.9(a).

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

this Court are merited.

Dated this 23rd day October, 2019.

Respectfully submitted,

Philip A. Talmadge, WSBA #6973
Aaron P. Orheim, WSBA #47670
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Respondent
Astrid Sanai, as personal representative of
the Estate of Sassan Sanai, M.D.

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Reply in Support of Motion to Strike Reply on Petition for Review*** in Supreme Court Case No. 97433-1 to the following:

Cyrus Sanai
433 North Camden Drive #600
Beverly Hills, CA 90210

Original filed with:
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: October 23, 2019, at Seattle, Washington.

Sarah Yelle, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

October 23, 2019 - 4:20 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_Answer_Reply_20191023161438SC696166_7692.pdf
  This File Contains:
  Answer/Reply - Reply to Answer to Motion
  The Original File Name was Reply Motion to Strike Second Reply on Petition for Review.pdf

A copy of the uploaded files will be sent to:

- aaron@tal-fitzlaw.com
- assistant@tal-fitzlaw.com
- cyrus@sanaislaw.com
- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com

Comments:

Reply in Support of Motion to Strike Reply on Petition for Review

---

Sender Name: Sarah Yelle - Email: assistant@tal-fitzlaw.com
Filing on Behalf of: Aaron Paul Orheim - Email: Aaron@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

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

Note: The Filing Id is 20191023161438SC696166