

FILED
SUPREME COURT
STATE OF WASHINGTON
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CLERK

SUPREME COURT
OF THE STATE OF WASHINGTON

JENNIFER CORINNE
ANDERSON [EMERY],

Respondent,

vs.

LOREN HEATH ANDERSON,

Appellant.

No. 98821-8

**RESPONDENT
JENNIFER (ANDERSON)
EMERY'S
REPLY
IN SUPPORT OF
MOTION TO STRIKE**

This Court routinely grants parties' motions to strike unauthorized reply briefs to a petition for review filed in violation of RAP 13.4(d). *See, e.g., Chevron U.S.A., Inc. v. Puget Sound Growth Management Hearings Bd.*, 156 Wn.2d 131, 139, 124 P.3d 640 (2005); *Nova Contracting, Inc. v. City of Olympia*, 413 P.3d 565, 566 (Sup. Ct. Order, 2017); *Belenski v. Jefferson County*, 92161-0 (Sup. Ct. Order, Jan. 5, 2016); *In re Estate of Sanai*, 97433-1 (Sup. Ct. Order, Dec. 3, 2019); *Chen v. Migita*, 451 P.3d 323 (Sup. Ct. Order, 2019). The fact that the Supreme Court Clerk also routinely successfully moves *sua sponte* to strike unauthorized reply briefs indicates that this Court requires parties' adherence to the provisions in RAP 13.4(d). *In re Escarcega and Barrett*, 452 P.3d 1238, 1238 (Sup. Ct. Order, 2019). *See also, e.g., Dowdney v. Howard*, 98352-6 (Sup. Ct. Order, Aug. 4, 2020); *Conner v. Harrison Med. Ctr.*, 98288-1 (Sup. Ct. Order, Jul. 7, 2020).

Jennifer did not seek review of any “new issues.” RAP 13.4(d); *Escarcega* at 1238. Heath’s unauthorized reply to the petition for review is merely more argument; he discusses, at length, issues he has already discussed in his Petition for Review and attempts to refute Jennifer’s arguments in her Answer.¹ Reply to Answer to Petition for Review at pp. 1-6. Any confusion about the criteria in his Petition for Review stems from Heath’s failure to cite or discuss any other provisions than RAP 13.4(b)(1), despite listing *Court of Appeals* authority he claims conflicts with the Opinion at issue and briefly discussing, also without citing to any provision of RAP 13.4, potential constitutional issues and/or issues he newly claims in his Reply brief also involve a substantial public interest.² Petition for Review at 1, 7-11.

Heath’s unauthorized reply brief should be stricken.

Attorney Fees for this Motion

As Jennifer stated in her Motion to Strike, courts impose sanctions under RAP 10.7 and RAP 18.9 on a party or counsel who files a brief that

¹ Heath cannot claim, nor does he, that his Reply brief was limited to the issue of attorney fees or correcting a scrivener’s error. *See* Reply brief.

² Heath misconstrues RPC 3.3(a)(1), which applies to correcting a false statement of material fact or law made *by that lawyer*. Heath did not need to violate RAP 13.4 to address a scrivener’s error made by opposing counsel. This Court is no doubt aware that there are only four available criteria for a petition for review, RAP 13.4(b)(1)-(4). Jennifer correctly cited and quoted those provisions verbatim in her Answer at pages 4-5 and elsewhere. In his reply brief, Heath’s counsel did *not* address or correct the misstatements of law in his Petition for Review, e.g., the authority the Court of Appeals held was inapplicable.

fails to comply with the RAP Rules. *See, e.g., Kelley v. Pierce County*, 179 Wn.App. 566, 578 ¶34, 319 P.3d 74 (2014) (imposing \$500 sanction under RAP 10.7 and RAP 18.9 for filing a brief that raised improper arguments);

As evidenced in his reply to this motion, Heath's counsel's apparent unfamiliarity with RAP 10.7 and 13.4, and the authority applying them, strengthens Jennifer's request for attorney fees for having to move to strike Heath's unauthorized Petition for Review reply brief.

CONCLUSION

This Court should strike Heath's improper Reply and sanction Heath and/or his counsel in the amount of \$600 or an amount the Court deems appropriate, even if a portion of Heath's reply is permitted.

Respectfully submitted this 18th day of September 2020.

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Transmittal Information

Filed with Court: Supreme Court
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Appellate Court Case Title: In the Matter of the Marriage of: Jennifer Corinne Anderson and Loren Heath Anderson

The following documents have been uploaded:

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