

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Dec 04, 2013, 12:12 pm
BY RONALD R. CARPENTER
CLERK

SUPREME COURT
STATE OF WASHINGTON

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KING COUNTY DISTRICT)	No. 89290-3
COURT, et al,)	
)	
Petitioners,)	
)	MOTION TO STRIKE
v.)	RESPONDENT'S ANSWER
)	
STATE OF WASHINGTON,)	
)	
Respondent.)	

1. IDENTITY OF PETITIONER

Petitioners, King County, et al, through counsel, ask for relief as designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Petitioners ask this Court to strike Respondent's pleading entitled, "State's Answer Opposing Discretionary Review In Response to Amicus Curiae Memorandum" filed with this Court on November 15, 2013.

3. FACTS RELEVANT TO MOTION

Counsel, Ryan B. Robertson, WSBA #28245, presents facts relevant to this motion, signed under RCW 9A.72.085:

Petitioners filed the present Petition for Review in the Court of Appeals on August 28, 2013, and served Respondent with a copy. In response, the Court of Appeals sent notice to the parties on September 10, 2013, to review RAP 13.4(d) in regards to filing any answer to the Petition.¹ This Court sent notice to the parties on September 23, 2013, providing the same information.² RAP 13.4(d) states in relevant part that any answer to a Petition should be filed no later than 30 days following service of the Petition. No answer was filed by the Respondent within this timeline.

The Washington Association of Criminal Defense Lawyers (WACDL) filed a motion to file an amicus curiae memorandum along with its amicus memorandum on October 23, 2013, and served the parties with a copy. In response, this Court sent notice to the parties on November 4, 2013, that any answers to the amicus memorandum were to be filed

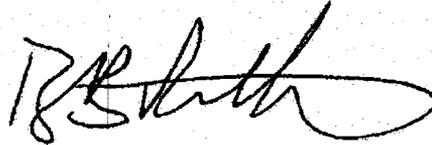
¹ Attached.

² Attached.

with this Court no later than November 15, 2013.³ Respondent filed a pleading entitled, "State's Answer Opposing Discretionary Review In Response to Amicus Curiae Memorandum" with this Court on November 15, 2013, and served Petitioners with a copy.

This Court has scheduled review of Petitioners' Petition for Review on December 10, 2013.

Signed the 4th day of December, 2013.



Ryan B. Robertson, WSBA #28245
Attorney for Petitioners

4. GROUNDS FOR RELIEF AND ARGUMENT

Petitioners move this Court to strike Respondent's pleading entitled, "State's Answer Opposing Discretionary Review In Response to Amicus Curiae Memorandum" This pleading purports to respond to the amicus curiae memorandum. However, after review of the pleading, it actually presents argument opposing the grant of discretionary review.

³ Attached.

This pleading therefore violates several appellate rules and prejudices the Petitioners before this Court.

RAP 13.4(d) states that any answer to a Petition for Review should be filed no later than 30 days after the Petition for Review is filed and served on the Respondent. Respondent was served the Petition on August 29, 2013. Therefore, it had until September 28, 2013, to file an answer. No reason is given why an answer could not be timely filed.

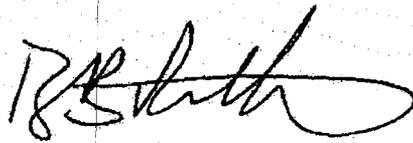
RAP 13.4(h) permits a party to file a response to an amicus curiae memorandum. This Court sent notice to the parties on November 4, 2013, that any response to the WACDL amicus memorandum had to be filed no later than November 15, 2013. This notice instructed the parties that “*any answers to this amicus memorandum should be filed not later than November 15, 2013.*” This notice did not give permission to file any answer in response to the original Petition filed in August.

Respondent’s answer fails to address any issue raised by the WACDL amicus memorandum, and the objections and arguments posited by the Respondent should have been filed under a pleading conforming to RAP 13.4(d). Most notably, Respondent asserts that Petitioners have erred in failing to seek review under RAP 13.5. Petitioners however, attempting to comply with the dictates of the November 4, 2013, letter from this

Court, as well as RAP 13.4(h), are not able to respond to the Respondent's assertions because Petitioners are limited to filing a memorandum only addressing the issues raised by the amicus party; not the Respondent. Had Respondent filed an answer under RAP 13.4(d), Petitioners would have the opportunity to file a reply memorandum. See RAP 13.4(d).

Regardless, Petitioners contend the Respondent's arguments are specious. But more importantly, rules are in place to regulate the filing of pleadings before this Court, and Respondent's answer to the WACDL amicus has been used to present objections to the granting of review by this Court that should have been filed much earlier. This end-run around RAP 13.4(d) should not be condoned, and Petitioners ask this Court to strike Respondent's pleading.

SUBMITTED the 4th day of December, 2013.



Ryan B. Robertson, WSBA #28245
Attorney for Petitioners

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
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September 10, 2013

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CASE #: 67456-1-1
King County District Court, Appellant v. State of Washington, Respondent

Counsel:

Page 2 of 2
Case No. 67456-1-I, KC v. State
September 10, 2013

A petition for review has been filed in the above case. It appears from the record that counsel has been served with a copy of the petition for review.

Counsel is advised to review RAP 13.4(d) in regard to the filing of an answer to the petition for review.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

emp

c: The Honorable Ronald R. Carpenter
Clerk of the Supreme Court

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



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OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

September 23, 2013

LETTER SENT BY E-MAIL ONLY

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Hon. Richard Johnson, Clerk
Division I, Court of Appeals
One Union Square
600 University Street
Seattle, WA 98101-1176

Re: Supreme Court No. 89290-3 - State of Washington v. Brett R. Ballow and Leslie P. Fausto
Court of Appeals No. 67456-1-I

Clerk and Counsel:

The Court of Appeals has forwarded the petition for review and related Court of Appeals case files in the referenced matter. The matter has been assigned the Supreme Court cause number indicated above.

The parties are directed to review the provisions set forth in RAP 13.4(d), regarding the filing of any answer to petition for review and any reply to answer.

The petition for review will be set for consideration without oral argument by a Department of the Court; see RAP 13.4(i). If the members of the Department do not



Page 2
No. 89290-3
September 23, 2013

unanimously agree on the manner of the disposition, consideration of the petition will be continued for determination by the En Banc Court.

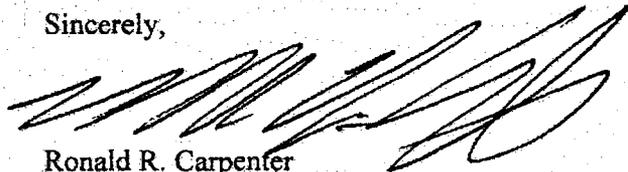
Usually there is approximately four months between receipt of the petition for review in this Court and consideration of the petition. This amount of time is built into the process to allow an answer to the petition and for the Court's normal screening process. At this time it is not known on what date the matter will be determined by the Court. The parties will be advised when the Court makes a decision on the petition.

It is noted that any amicus curiae memorandum in support of or in opposition to a pending petition for review should be served and received by this Court and counsel of record for the parties and other amicus curiae by not later than 60 days from the date the petition for review was filed; see RAP 13.4(h).

The parties are referred to the provisions of General Rule 31(e) in regards to the requirement to omit personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

It is noted that for attorneys, this office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory.

Sincerely,



Ronald R. Carpenter
Supreme Court Clerk

RRC:lm

STEVEN M. GOFF
COMMISSIONER

WALTER M. BURTON
DEPUTY
COMMISSIONER

THE SUPREME COURT
STATE OF WASHINGTON

TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA WA 98504-0929
(360) 357-2057



November 4, 2013

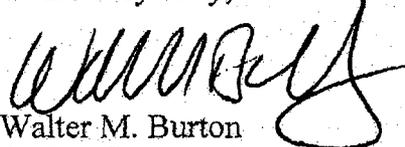
Suzanne L. Elliott
Attorney at Law
705 Second Avenue, Suite 1300
Seattle, WA 98104

RE: *State v. Ballow, et al.*, Cause No. 89290-3

Dear Ms. Elliott:

The Chief Justice has granted your motion to file an amicus curiae memorandum, on behalf of the Washington Association of Criminal Defense Lawyers, in support of the petition for review in this case. Your memorandum has therefore been filed. Counsel for the parties are informed by this letter that any answers to this amicus memorandum should be filed not later than November 15, 2013.

Yours very truly,


Walter M. Burton
Acting Commissioner

WMB:aw

cc: Theodore W. Vosk
Ryan B. Robertson
Margaret E. Nave
Celia A. Lee
Jessica M. Manca
Jacob R. Brown
Clerk

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, December 04, 2013 12:13 PM
To: 'Ryan Robertson'; Brown, Jacob; Ted Vosk; Scott Wonder
Subject: RE: Motion to Strike

Received 12/4/13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Ryan Robertson [mailto:ryan@robertsonlawseattle.com]
Sent: Wednesday, December 04, 2013 12:12 PM
To: OFFICE RECEPTIONIST, CLERK; Brown, Jacob; Ted Vosk; Scott Wonder
Subject: Motion to Strike

Good Afternoon,

Attached please find Petitioners' Motion to Strike Respondent's Answer which was filed with the Court on November 15, 2013.

Petitioners will serve counsel for the State with a hard copy via legal messenger service.

Thank you,

Ryan Robertson

--

ROBERTSON
LAW

Ryan Robertson

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