

A. IDENTITY OF PETITIONER

Pierce County, defendant in the above-entitled action, moves to strike Plaintiff/Respondent Joyce Kelley's untimely, overlength Answer to Petition for Review.

B. COURT OF APPEALS DECISION

Defendant Pierce County has petitioned this Court to review the partially published opinion of Division Two of The Washington State Court of Appeals, in *Kelley v. Pierce County*, __ Wn.App. __, 319 P.3d 74 (2014), which converted on appeal the County's CR 12(b)(6) motion to dismiss into a CR 56 summary judgment motion and then affirmed the refusal to dismiss a guardian *ad litem* and his employer because it found absolute quasi-judicial immunity does not apply if sexual harassment is alleged.

C. ISSUE PRESENTED FOR REVIEW

Where respondent without permission or prior motion submits an untimely, overlength Answer to a Petition for Review, should the Answer be stricken or petitioner allowed to file a Reply of a length reflecting that page disparity? *See* RAP 13.4(d); RAP 13.4(f); RAP 18.9.

D. STATEMENT OF THE CASE

On March 24, 2014, Pierce County filed its Petition for Review of the decision by Division Two of the Washington State Court of Appeals in

Kelley v. Pierce County, ___ Wn.App. ___, 319 P.3d 74 (2014). *See* 3/24/14 Petition. Almost two months later, on May 16, 2014, respondent Joyce Kelley submitted both a 27-page "Respondent's Answer to Petition for Review" and submitted for the first time a "Motion for Extension of Time to File Answer to Petition for Review."

The County has filed an Answer objecting to respondent's untimely motion to extend the time for filing her similarly untimely Answer. It hereby also moves to strike the Answer on the ground of its overlength.

E. ARGUMENT

In addition to untimely filing her answer to Pierce County's Petition, *see* RAP 13.4(d) ("Any answer should be filed within 30 days after the service on the party of the petition"), respondent's 27-page Answer is overlength by almost a third. *See* RAP 13.4(f) ("The petition for review, answer, or reply should not exceed 20 pages, double spaced, excluding appendices"). Respondent, however, has never sought permission for such a deviation from this Court's rules on length.

Pierce County drafted its petition in compliance with the rules – including those on length – and is harmed by respondent exceeding the page limitations by almost a third. Indeed, it is especially disadvantaged in that seven pages of content in that overlength answer discusses issues not raised by the County's Petition. *Compare* 3/24/14 Pet. *with* 5/16/14

Answer at 20-27. The Court has authority under RAP 18.9 to sanction a party for "failure to comply with these rules" by "condition[ing] a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award"

F. CONCLUSION

If respondents' untimely answer to the petition for review is accepted for filing over Pierce County's objection, the County respectfully requests respondent's answer be stricken and resubmitted in a form that complies with the Court's rules on length and content or, alternatively, that the County be allowed to file a reply of seven pages to compensate for the page disparity. *See, e.g., Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wn.App. 350, 362, 944 P.2d 1093 (1997) (denying "belated request for leave to file its overlength brief" and striking brief in part). *C.F. Burton v. Twin Commander Aircraft, LLC*, 148 Wn.App. 606, 621 n. 13, 221 P.3d 290 (2009)

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(trial "court granted Twin Commander's motion to file an overlength reply brief but allowed Burton to file a surreply").

Respectfully submitted this 23rd day of May, 2014.

MARK LINDQUIST
Prosecuting Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO STRIKE UNTIMELY OVERLENGTH ANSWER was delivered this 23rd day of May, 2014, by electronic mail and to ABC-Legal Messengers, Inc., with appropriate instruction to forward the same to the following:

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OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, May 23, 2014 11:45 AM
To: 'Christina Smith'
Cc: Dan Hamilton; PCPATVECF; Thaddeus Martin; 'ckeay@jgkmw.com'
Subject: RE: 90054-0 Kelley v. Pierce County - Motion to Strike / Answer to Motion for Extension of Time

Rec'd 5-23-14

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: Christina Smith [mailto:csmith1@co.pierce.wa.us]
Sent: Friday, May 23, 2014 11:39 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Dan Hamilton; PCPATVECF; Thaddeus Martin; 'ckeay@jgkmw.com'
Subject: 90054-0 Kelley v. Pierce County - Motion to Strike / Answer to Motion for Extension of Time

Clerk of the Court,

You will please find attached the following documents:

- Answer to Respondent's Motion for Extension of Time
- Motion to Strike Untimely Overlength Answer

These documents are being sent for filing in the matter of Joyce Kelley v. Pierce County, et al., Washington Supreme Court Case No. 90054-0. All parties of record have been cc'd on this email.

Thank you.

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