

NO. 90458-8  
SUPREME COURT OF THE STATE OF WASHINGTON

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Aug 01, 2014, 4:09 pm  
BY RONALD R. CARPENTER  
CLERK

---

E CRF  
RECEIVED BY E-MAIL

JILL E. LANE *et al.*,

Appellant,

v.

MARK VON DER BURG *et al.*,

Respondent.

---

MARK VON DER BURG'S MOTION TO STRIKE APPELLANT'S  
UNTIMELY REPLY TO ANSWER AND RESPONSE TO MOTION TO  
STRIKE

---

Hunter M. Abell, WSBA #37223  
Daniel A. Brown, WSBA #22028  
WILLIAMS, KASTNER & GIBBS PLLC  
Attorneys for Respondent Mark Von der  
Burg

Two Union Square  
601 Union Street, Suite 4100  
Seattle, WA 98101  
(206) 628-6600

### I. IDENTITY OF MOVING PARTY

Respondent Mark Von der Burg (“Respondent”) respectfully moves for the relief specified in Part II of this Motion to Strike.

### II. STATEMENT OF RELIEF SOUGHT

Respondent respectfully moves that the Court strike Appellant Jill Lane’s (“Appellant”) Reply to Answer and Response to Motion to Strike. Respondent also moves that this Court award reasonable attorneys’ fees and costs associated with responding to the untimely and improper brief. If the Court is disinclined to strike the brief and award the requested fees and costs, Respondent moves that this Court condition Appellant’s continued participation in the review on compliance with an order requiring payment of reasonable attorneys’ fees and costs pursuant to RAP 18.9(a).

### III. FACTS RELEVANT TO MOTION

On June 16, 2014, Appellant filed a Petition for Discretionary Review. On July 16, 2014, Respondent Mark Von der Burg filed an Answer to Petition for Review and a Motion to Strike. The Motion to Strike requested that this Court strike select portions of the Appellant’s Statement of the Case as being unsupported by the record, and to strike Appendix Exhibit A-5 as having not been offered at the trial court level.

On July 17, 2014, the Supreme Court Deputy Clerk informed the parties by mail that any answer to the Motion to Strike must be filed no later than July 30, 2014. On July 31, 2014, Appellant filed a Reply to Answer and Response to Motion to Strike.

#### IV. GROUND FOR RELIEF AND ARGUMENT

Unfortunately, the Appellant has repeatedly demonstrated a disregard for the rules governing the timing and filing of documents throughout this litigation. *See e.g.* CP 145, CP 191, CP 429 (“Not only is the Response untimely – it is untimely and without excuse.”) The Appellant’s Reply to Answer and Response to Motion to Strike is in accordance with that pattern.

RAP 13.4(d) specifies that a party may file a reply to an answer to petition for review “only if the answering party seeks review of issues not raised in the petition for review.” Any such reply must be filed within fifteen days after the service on the party of the answer. Similarly, the Supreme Court Deputy Clerk’s letter of July 17, 2014 stated that any answer to the Respondent’s Motion to Strike must be filed by July 30, 2014.

The Appellant’s Reply to Answer and Response to Motion to Strike should be struck in its entirety for two reasons: 1) To the extent it claims to reply to Respondent’s Answer to Petition for Review, it is

impermissible because the Respondent's Answer does not seek review of issues not raised in the Appellant's Petition for Review; and 2) To the extent it claims to respond to the Respondent's Motion to Strike, it is untimely in that it was filed on July 31, 2014, instead of July 30, 2014. As the Court possesses broad authority to enforce its own orders, the Appellant's Reply to Answer and Response to Motion to Strike should be struck in its entirety and reasonable costs and fees awarded.

If the Court is disinclined to strike the Appellant's Reply to Answer and Response to Motion to Strike in its entirety, then Respondent moves that the Court order terms under RAP 10.2(i) and RAP 18.9 for failure to timely file and serve a brief, including issuance of an order conditioning further participation in this review on payment of such terms. This is particularly appropriate as Mr. Von der Burg was harmed by the necessity of researching and responding to an untimely and improper brief that should not have been filed under the applicable Rules of Appellate Procedure.

#### V. CONCLUSION

For all the reasons identified above, the Respondent's Motion to Strike should be granted and Respondent should be awarded reasonable fees and costs. Alternatively, the Respondent should be awarded reasonable fees and costs and continued participation in this review by the

Appellant should be conditioned on payment of such fees and costs.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of August, 2014.

WILLIAMS, KASTNER & GIBBS PLLC

By   
Hunter M. Abell, WSBA #37223  
Daniel A. Brown, WSBA #22028  
Attorneys for Respondent Mark Von der Burg

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 1<sup>st</sup> day of August, 2014, I caused a true and correct copy of the foregoing document to be delivered in the manner indicated below to the following counsel of record:

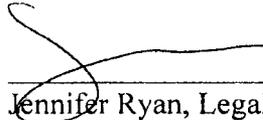
Andrew Magee  
1001 Fourth Avenue Plaza  
44<sup>th</sup> Floor  
Seattle, WA 98154  
Email: [amagee@mageelegal.com](mailto:amagee@mageelegal.com)  
*Attorney for Appellants*

SENT VIA:  
 Fax  
 ABC Legal Services  
 Express Mail  
 Regular U.S. Mail  
 E-mail

Alexander S. Kleinberg  
Chad E. Arceneaux  
EISENHOWER CARLSON, PLLC  
1201 Pacific Avenue, Suite 1200  
Tacoma, WA 98402  
Email: [AKleinberg@Eisenhowerlaw.com](mailto:AKleinberg@Eisenhowerlaw.com)  
[Carceneaux@Eisenhowerlaw.com](mailto:Carceneaux@Eisenhowerlaw.com)  
*Attorneys for Respondent First-Citizens Bank  
& Trust Company*

SENT VIA:  
 Fax  
 ABC Legal Services  
 Express Mail  
 Regular U.S. Mail  
 E-mail

DATED this 1<sup>st</sup> day of August, 2014, at Seattle, Washington.

  
\_\_\_\_\_  
Jennifer Ryan, Legal Assistant

**OFFICE RECEPTIONIST, CLERK**

---

**To:** Levitin, Dena  
**Subject:** RE: LANE, et al v. VON der BURG, et al-WA Supreme Court Case No. 90458-8

Received 8-1-14

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:** Levitin, Dena [mailto:DLevitin@williamskastner.com]  
**Sent:** Friday, August 01, 2014 4:08 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Abell, Hunter; Brown, Daniel; Bulis, Diane  
**Subject:** LANE, et al v. VON der BURG, et al-WA Supreme Court Case No. 90458-8

**On behalf of Hunter M. Abell, attorney for Respondent Mark Von der Burg in the *LANE, et al. v. VON der BURG, et al.* Case No. 90458-8, please find attached Mark Von Der Burg's Motion to Strike Appellant's Untimely Reply to Answer and Response to Motion to Strike.**

**We request that these documents be filed with the Supreme Court of the State of Washington. Please confirm upon filing. Additionally, please do not hesitate to contact us with any related concerns. Thank you in advance.**

Sincerely,

**Jen Ryan  
Legal Assistant  
Williams Kastner  
601 Union Street Suite 4100  
Seattle, WA 98101-2380  
Main: 206-628-6600  
Direct: 206-233-2996  
Fax: 206-628-6611  
[jryan@williamskastner.com](mailto:jryan@williamskastner.com)  
[dlevitin@williamskastner.com](mailto:dlevitin@williamskastner.com)**