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Court of Appeals No. 45756-3-II

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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MIKE BELENSKI,

Petitioner,

v.

JEFFERSON COUNTY,

Respondent.

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PETITIONER'S RESPONSE TO  
RESPONDENT'S MOTION TO STRIKE REPLY TO  
ANSWER TO PETITION FOR REVIEW

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Mike Belenski, Petitioner Pro Se  
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ORIGINAL

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Petitioner Mike Belenski (“Petitioner”) hereby provides his Response to Respondent’s Motion to Strike Reply to Answer to Petition for Review by Respondent Jefferson County (“County”) as follows:

**I. INTRODUCTION**

The County filed its Answer to the Petition for Review on September 30, 2015. Petitioner filed his Reply to Answer to Petition for Review on October 15, 2015, asserting that the County raised at least 3 new issues in its Answer (Reply, pg 1).

A party may file a reply brief to the opposing party’s answer to a petition for review only if the answer has raised new issues not addressed in the original petition. RAP 13.4(d).

On October 20, 2015, the County filed “Respondent’s Motion to Strike Reply to Answer to Petition for Review” stating that because the Answer did not seek review of additional issues, there is nothing for the Petitioner to reply to. (Motion, pg 2).

In a letter dated October 21, 2015, sent as an attachment to an email dated the same day, the Court advised Petitioner that any answer to the Motion to Strike should be filed by November 6, 2015.

## II. ARGUMENT

The County improperly exceeded the scope of an Answer to a Petition for Review and seeks to create an unfair advantage. Knowing that Petitioner would have no opportunity to respond to the County's Answer unless it presented issues for review pursuant to RAP 13.4(c)(5), in a precise statement, the County chose to try and circumvent the rule, and raised these new issues in the argument portion of its Answer.

Petitioner's Reply addressed these new issues relating to the interplay between the statutes of limitations, and the knowledge and conduct of the Petitioner. And stands by those arguments as briefed.

The new issues were not argued or briefed before the lower courts, nor raised in the Petition for Review, making a Reply to the Answer to the Petition for Review appropriate. The County improperly exceeded the scope of an Answer by including issues and arguments that were not presented to the lower courts, which effectively denied Petitioner of the opportunity to respond. Additionally, the Reply also highlighted factual inaccuracies in the Answer unsupported by the record.

The County claims Petitioner's Reply points only to arguments raised as to why the Petition for Review should not be granted. (Motion, pg 1). This is incorrect. Petitioner was responding to new issues raised by the County. Each is an important question that is in dispute and must be settled.

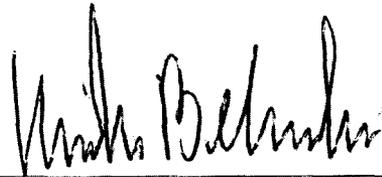
Granting the County's Motion to Strike would deny Petitioner a fair opportunity to respond to the County's arguments involving these new issues.

With regard to Petitioner failing to file proof of service for his Reply to Answer to Petition for Review, proof of service was filed electronically on October 20, 2015. The Reply was filed in person at the Clerk's Office on Thursday, October 15, 2015 and a paper copy put in the USPS mail the same day to DPA David Alvarez, and an electronic copy was emailed to both DPA Alvarez and associate counsel Jeff Myers the next day. There has been no showing by the County that it was prejudiced by the minor delay in filing the proof of service.

### III. CONCLUSION

A reply was appropriate. Petitioner respectfully requests that this Court deny the Motion to Strike, and to consider Petitioner's Reply in consideration of the Petition for Review.

Respectfully submitted this 10<sup>th</sup> day of November, 2015.



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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date specified below, I served a copy of the following document upon Respondent, via e-mail per service agreement of the parties:

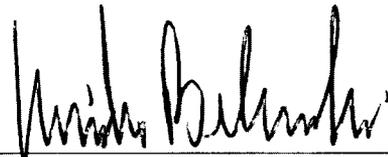
PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO STRIKE REPLY TO ANSWER TO PETITION FOR REVIEW

As follows:

Mr. David Alvarez, Chief Civil DPA  
Jefferson County Courthouse  
P.O. Box 1220  
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Mr. Jeff Myers, Associate Counsel  
Law, Lyman, Daniel, Kamerrer and Bogdanovich, P.S.  
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[jmyers@lldkb.com](mailto:jmyers@lldkb.com)

Dated this 6<sup>th</sup> day of November, 2015 at Mats Mats, Washington.

  
\_\_\_\_\_  
Mike Belenski

**OFFICE RECEPTIONIST, CLERK**

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**To:** Mike Belenski; 'Michele Earl-Hubbard'; 'Jeff Myers'; 'David Alvarez'  
**Subject:** RE: Petitioner's Response to Respondent's Motion to Strike Reply to Answer to Petition for Review

Received on 11-06-2015

Supreme Court Clerk's Office

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**From:** Mike Belenski [mailto:mbelenski@gmail.com]  
**Sent:** Friday, November 06, 2015 12:41 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; 'Michele Earl-Hubbard' <michele@alliedlawgroup.com>; 'Jeff Myers' <jmyers@lldkb.com>; 'David Alvarez' <DALvarez@co.jefferson.wa.us>  
**Cc:** mbelenski@gmail.com  
**Subject:** Petitioner's Response to Respondent's Motion to Strike Reply to Answer to Petition for Review

Attached for filing is:

1. Petitioner's Response to Respondent's Motion to Strike Reply to Answer to Petition for Review
2. and proof of service appended to the end of the document.

Respectfully,

Mike Belenski