

Supreme Court No. 93916-1
Court of Appeals No. 47727-1-II
Consolidated With Court of Appeals No. 47367-4-II

STATE OF WASHINGTON
SUPREME COURT

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FEB 13 2017
Washington State
Supreme Court

DALE E. ALSAGER, D.O., Ph.D.,

PETITIONER,

v.

BOARD OF OSTEOPATHIC MEDICINE AND SURGERY;
et al.,

RESPONDENTS.

DALE ALSAGER'S REPLY BRIEF ADDRESSING NEW ISSUES
RAISED BY RESPONDENTS IN THEIR ANSWER
RAP 13.4(d)

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Additional Authorities

The Seattle Times, “Washington state AG files lawsuit in immigration battle,” at p. A6, January 31, 2017. 3

I. REPLY TO NEW ISSUES RAISED

Pursuant to RAP 13.4(d), Dr Alsager presents this very brief Reply to the newly raised issue of waiver presented by Respondents in their Answer to Dr Alsager's Petition for Discretionary Review.

In their Counterstatement Of The Issues, in fn.1 at p. 3, Respondents contend that Dr Alsager waived his Issues Presented For Review #4 and #5 asserting that he "does not address them in his briefing."

RAP 13.4(c)(5) states only that a petition for review *should* contain "a concise statement of the issues presented for review" which, when read in light of RAP 13.7(b), limits this Court's review after acceptance to "only the questions raised in . . . the petition for review . . . unless the Supreme Court orders otherwise." Here there are two cases consolidated for review on appeal that comprise the subject of the Court of Appeals decision and Dr Alsager's Petition to this Court. The issues set forth in Dr Alsager's Petition are the same ones presented in his consolidated cases on appeal and as to each of which were fully briefed and argued. RAP 13.7(a) (briefs filed in the Court of Appeals are those that will be considered by this Court upon acceptance, unless supplemented pursuant to RAP 13.7(e)). The foregoing should also be read and applied in light of RAP 1.2(a) ("these rules will be liberally interpreted to promote justice . . . [and] issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands") and RAP 1.2(c) ("the appellate court

may waive or alter the provisions of any of these rules in order to serve the ends of justice”).

Not only did Dr Alsager properly raise and preserve for this Court’s review Issues #4 and #5 by expressly and specifically setting forth for each a “concise statement” thereof,¹ but he also sufficiently “addressed them in his briefing.”² *See* Dr Alsager’s Petition for Discretionary Review, at p. 5, fn.10; at p. 6, fn.11; at p. 6, fn.12; at p. 11 fns.17-19 (and related main text); at p. 14, fn.24; and at p. 20, fn.34.³

II. CONCLUSIONS

There is absolutely no surprise or prejudice to Respondents, or any new issues raised by Dr Alsager in his Petition that were not previously presented to and thoroughly briefed before the Court of Appeals. In his concise statement of the issues presented for review, Dr Alsager specifically identified Issues #4 and #5 and the legal grounds for the review thereof and, moreover, further addressed these issues elsewhere in his Petition.

¹ *State v. Coria*, 146 Wn.2d 631, 655 n.9, 48 P.3d 980 (2002) (Sanders, J., dissenting) (because under RAP 13.7(b) this Court considers only those issues raised in the petition for review, an issue is properly raised according to RAP 13.4(c)(5) if it is in the concise statement of issues and is specifically identified therein).

² The “briefing” includes as a matter of Rule all those briefs filed with the Court of Appeals by Dr Alsager in support of his consolidated appeals. RAP 13.7(a).

³ This is not so much a separate issue for review, but simply a restatement of the law that underscores the absolute necessity for a valid search warrant issued only on a competent showing of probable cause – which does not exist as a matter of law in the absence of pre-authorization by the Board to undertake an investigation in the first place. (Related to Issues # 1, #2, and #3.)

In light of RAP 1.2(a), RAP 1.2(c), RAP 13.4(c)(5), and RAP 13.7, this Court is respectfully asked to reject Respondents' waiver contention and allow the full consideration of Issues #4 and #5, together with Issues #1, #2, and #3, in its review of Dr Alsager's consolidated appeals and the very significant and fundamental constitutional issues presented for its considered and final determination. As so cogently recognized and acknowledged by the same official who is here so fervently intent on depriving and denying Dr Alsager his federal and State constitutional rights:

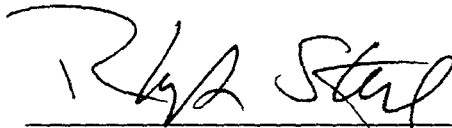
We are a country based on the rule of law. In a courtroom, it is not the loudest voice that prevails. It's the Constitution.

The Seattle Times, "Washington state AG files lawsuit in immigration battle," at p. A6, January 31, 2017 (quoting Washington State Attorney General Bob Ferguson). In light of these unequivocal words by one sworn to uphold and defend our constitutional rights, Dr Alsager's issues cannot sit in total silence; Dr Alsager must respectfully resist and persist; and Dr Alsager must prevail in this Court – fundamental constitutional rights are at stake and at risk (*see* Respondents' Counterstatement of the Issues).

DATED this 10th day of February, 2017.

Respectfully submitted,

RHYS A. STERLING, P.E., J.D.



Rhys A. Sterling, WSBA #13846
Attorney for Petitioner Dale E. Alsager

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RESPONDENTS.

DECLARATION OF SERVICE

RHYS A. STERLING, P.E., J.D.
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ORIGINAL

STATE OF WASHINGTON)) ss. DECLARATION OF RHYS A.
COUNTY OF KING)	

RHYS A. STERLING hereby says and states under penalty of perjury:

1. I am over the age of 21 and I am competent to testify regarding the matters herein described. I make this declaration on my own personal knowledge.

2. I am the attorney of record representing Petitioner Dale E. Alsager in the action captioned *Dale E. Alsager v. Board of Osteopathic Medicine and Surgery, et al.*, Court of Appeals No. 47727-1-II Consolidated With No. 47367-4-II, and Supreme Court No. 93916-1.

3. I received Respondents' Answer to Petition for Review in the mail on February 6, 2017.

4. By postage prepaid priority first class mail on February 10, 2017, I served on the other parties in this action, through their respective counsel of record, a copy of DALE ALSAGER'S REPLY BRIEF ADDRESSING NEW ISSUES RAISED BY RESPONDENTS IN THEIR ANSWER – RAP 13.4(d) and this DECLARATION OF SERVICE filed in this matter, by placing in the United States mail the same addressed to:

Kristin G. Brewer, AAG
 Thomas F. Graham, AAG
 Office of the Attorney General
 P.O. Box 40100
 Olympia, Washington 98504-0100
 Attorneys for Respondents

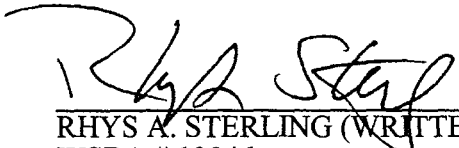
5. By postage prepaid priority first class mail on February 10, 2017, I filed in the Washington Supreme Court, the original and two (2) copies of DALE ALSAGER'S REPLY BRIEF ADDRESSING NEW ISSUES RAISED BY RESPONDENTS IN THEIR ANSWER – RAP 13.4(d), and the original and one (1) copy of this DECLARATION OF SERVICE in this matter, by placing in the United States mail the same addressed to:

Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, Washington 98504-0929

6. Pursuant to the provisions of RAP 13.4(d), 10.2(h), and 10.4(a)(1), Alsager's Reply in his Petition for Discretionary Review has been properly filed and all parties required to be served with a copy of both DALE ALSAGER'S REPLY BRIEF ADDRESSING NEW ISSUES RAISED BY RESPONDENTS IN THEIR ANSWER – RAP 13.4(d) and this DECLARATION OF SERVICE have been served as set forth above.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

February 10, 2017
DATE


RHYS A. STERLING (WRITTEN)
WSBA # 13846

Hobart, WA
PLACE OF SIGNATURE

Rhys A. Sterling
RHYS A. STERLING (PRINTED)

DECLARATION OF SERVICE
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