

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/5/2019  
BY SUSAN L. CARLSON  
CLERK

SUPREME COURT No. 97395-4

COURT OF APPEALS No. 79173-7-I

**WASHINGTON SUPREME COURT**

---

SANDRA FERGUSON, ET AL.,

Petitioners/Appellee/Plaintiffs,

v.

BRIAN J. WAID, ET AL.,

Respondent/Appellant/Defendants.

---

**Petitioners' Motion For Leave of Court to File a Third Amended Petition  
For Discretionary Review**

Sandra Ferguson  
Pro See Petitioner  
600 First Avenue  
Seattle, Washington 98104  
sandra@slfergusonlaw.com  
206-624-5696

## **A. RELIEF REQUESTED**

The Pro Se Petitioner, Sandra L. Ferguson hereby moves this Court for leave to file the Second Amended Petition submitted herewith. Ferguson hereby requests that the Court accept this Second Amended Petition and grant Respondent leave to file an amended response to the Response Waid filed on July 15, 2019, in case Waid wishes to provide an amended response to any of the contents of this Second Amended Petition.

## **B. FACTS**

On July 8, 2019, the Petitioners timely filed a 5-page petition for review with the Court. On July 15, 2019, Respondent Brian Waid, et al, filed a Response opposing Ferguson's Petition. On July 24, 2019, Ferguson filed an "AMENDED PETITION OF SANDRA L. FERGUSON, ET AL" which was 48 pages long. On July 26, 2019, Ferguson filed another AMENDED PETITION OF SANDRA L. FERGUSON. Both of Ferguson's amended petitions were overlength. Therefore, the Court rejected them. See letter dated July 26, 2019. The Court instructed Ferguson to add page numbers omitted from the original 5-page petition. Ferguson filed the 5-page petition with page numbers on August 1, 2019. Waid filed a MOTION TO STRIKE PETITIONER'S UNAUTHORIZED FIRST AND SECOND "AMENDED" PETITIONS FOR REVIEW, IMPOSE SANCTIONS ON PETITIONER PURSUANT TO RAP 1.1(d) and RAP 18.9(a), AND EXTEND THE DUE DATE FOR RESPONSENT TO FILE AN ANSWER TO THE AMENDED PETITION UNTIL AFTER THE COURT DECIDES THIS MOTION". Both of Ferguson's amended petitions were rejected and the Court held that for that MOTION FOR LEAVE TO FILE PETITIONER'S THIRD AMENDED PETITION PURSUANT TO RAP 13.4(b)

PAGE-2

reason, Waid's motion to strike was rendered "moot". See July 26, 2019 letter. On July 30, 2019, Ferguson filed a Reply to Respondent's Answer to the 5-page Petition. On July 30, 2019, the Court issued a letter denying Ferguson's motion to file the overlength amended Petitions. On August 1, 2019, the Court confirmed by letter that it received the Ferguson's 5-page petition with page numbers added in compliance with the Court's instructions in its letter dated July 26, 2019. Ferguson files PETITIONER'S THIRD AMENDED PETITION with this MOTION. The Petition submitted herewith complies with the 20-page limit set forth in RAP 13.4(f). Ferguson asks the Court to accept it and give Waid the opportunity to answer it, or amend his previous Answer, if Waid wants to respond to the contents of the petition filed herewith.

### **C. SUMMARY OF ARGUMENT**

If a party submits a brief that fails to comply with requirements of Title 10 of these rules, the appellate court, on its own initiative... may (1) order the brief returned for correction or replacement...." RAP 10.7 Here, the Court contacted Ferguson and instructed her to make non-substantive changes to her timely-filed petition. While making the corrections, Ferguson made substantive changes to the petition as well, in order to provide the Court with a better understanding of the issues raised in her original petition (filed on July 8, 2019) and to explain more fully the need for this Court's review of Division I's opinions in this attorney-lien case.<sup>1</sup> According to RAP 18.8 "the appellate court may, .... waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in subsections (b) and (c)." "The

---

<sup>1</sup> Ferguson also cured the defects with her petition that are identified by Waid in his Motion to Strike (e.g. omitted tables and authorities, incorrect margins, problems with spacing).

appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file...a petition for review. RAP 18.8(b). In deciding whether to grant an extension of time for filing, the Court weighs the desirability of finality of decisions with a litigant's request for an extension of time. Here, because Ferguson *timely* filed her petition for review, there is no need for the Court to weigh the desirability of finality of decisions with Ferguson's request for additional time, since Ferguson timely filed her petition and is only asking the Court for additional time to file this amended petition. Moreover, knowing that petitions are rarely granted by this Court, Ferguson amended her petition to better inform that Court of the legal issues that are being decided by Division I, inconsistently with *Ross v. Scannell* and by the Court of Appeals (Divisions I and II) because, if left unresolved, Division I's opinions judicially expanding the attorney-lien statute have the enormous potential of causing grave harm to the public and to the legal profession, giving the appearance that Washington courts are issuing biased decisions designed to favor an attorney's interest over that of a non-attorney's interest. Predictably, the Respondents will argue that Ferguson should not be granted leave of court or additional time to file this third amended petition because doing so would prejudice Waid. But, this is not correct, since there is a limited basis upon which review is granted, and either Ferguson has met the standard for review or she hasn't. In other words, the only material argument that Waid can make is that Ferguson has not met her burden and explain why he believes this to be so. Ferguson's original brief raises the same issues raised in the original petition filed by Ferguson on July 8, 2019, Waid received timely notice of the issues and an opportunity to address them. Moreover, beyond the personal dispute between the parties, there is a greater societal need to resolve the issues raised in Ferguson's petition because failing to do

so will likely result in grave injury to the public and to attorneys in their use of liens to litigate and collect fees from their clients. If the Respondents wish to respond to this third amended petition (the petition Ferguson wants the Court to consider in deciding whether review will be granted), Petitioners are amenable to the Court awarding the Respondent time to supplement his answer. This should not necessitate an entirely new answer by Respondent, but merely a supplement to his original response brief, to address any arguments he thinks warrant denial of Ferguson's petition. In other words, the answer filed by Waid on July 15, 2019 was not futile since he addresses the issues raised by Ferguson which have not changed in either of the "amended" petitions. Therefore, Waid need only supplement his answer if he feels compelled to address the additional discussion points contained in Ferguson's second amended petition.

"The brief of the appellant... should not exceed 20 pages." RAP 13.4(f). "For compelling reasons, the court may grant a motion to file an overlength brief." *Id.*; see *Tamosaitis v. Bechtel Nat., Inc.*, 182 Wn.App. 241, 255, *footnote no. 2*, 327 P. 3d 1309 (2014)(citing RAP 10.4(b) the companion rule to RAP 13.4(f)(see RAP 13.4(e)). The complicated nature of a case may be adequate justification for the Court to grant a motion to file an overlength brief. *Id.* Under RAP 18.8, this Court is afforded broad discretion waive or alter the provisions of any of these rules... in a particular case in order to serve the ends of justice" and to prevent a gross miscarriage of justice (*see discussion supra*). Here, there is an extensive procedural history that led to, or culminated in the unpublished opinion of April 15, 2019 and thus, the need for Ferguson' overlength petition.<sup>2</sup> This procedural history spans from 2011 to April 15, 2019 and involves

---

<sup>2</sup> The relevant history encompasses three lawsuits (*Endres v. Safeway*, 10-2-06166-4 SEA, *Ferguson v. Teller*, 11-2-19221-1 SEA, and *Ferguson v. Waid*, 14-2-29265-1 SEA) and two appeals (i.e., Ferguson's and Waid's "linked" appeals from the *Ferguson v. Teller* case which MOTION FOR LEAVE TO FILE PETITIONER'S THIRD AMENDED PETITION PURSUANT TO RAP 13.4(b) PAGE-5

three different cases and two successive appeals from the decisions of two different trial courts addressing issues regarding Waid's lien and his rights to attach his client's personal property under the attorney-lien statute. The convoluted procedural history of this attorney-lien case required a lengthy summary of relevant procedural and historical facts culminating in the Court of Appeals opinion of April 15, 2019 (appeal # 79173-7-I). In addition, Petitioner's brief needed several pages to discuss the Supreme Court's and Courts of Appeals opinions that are in conflict with both of Division I's opinions issued in this attorney-lien case. Because the issues involved with this petition are so important to the public interest, Ferguson has worked diligently to shorten the petition to 20 pages so that the Court will have the information it needs when it considers whether to grant this Petition.

### CONCLUSION

Due to the importance of this issue to the public and the legal profession, the Court should grant this motion for relief and accept Petitioner's Third Amended Petition submitted herewith.

DATED August 5, 2019.

By: /s/Sandra Ferguson  
Sandra Ferguson, Pro Se Petitioner

---

resulted in Division I's published opinion of December 30, 2013, reversing the trial court's order invalidating Waid' lien and its unpublished opinion affirming summary judgment in favor of Teller, and Waid's appeal from *Ferguson v. Waid* which resulted in Division I's April 15, 2019 unpublished opinion which is the subject of this petition for review). Both of Waid's appeals involved the same attorney's fee claim against his former client, Ferguson, for the same underlying representation of Ferguson in *Endres v. Safeway* and *Ferguson v. Teller*. Both Waid's appeals resulted in Division I opinions that judicially expanded the interpretation of the attorney-lien statute and declared that this Court's opinion in *Ross v. Scannell* was effectively overruled or superseded by the Legislature's 2004 amendments to RCW 60.40.

MOTION FOR LEAVE TO FILE  
PETITIONER'S THIRD AMENDED  
PETITION PURSUANT TO RAP 13.4(b)  
PAGE-6

**PROOF OF SERVICE**

I hereby certify that on this 5th day of August, 2019, I caused a copy of the foregoing MOTION TO LEAVE TO FILE THIRD AMENDED PETITION FOR REVIEW, THIRD AMENDED PETITION AND APPENDIX THERETO.

to be delivered to Pro Se Respondents,  
in the manner indicated below:

**Pro Se Respondent**

Brian J. Waid by ECF Delivery

bjwaid@waidlawoffice.com

**Counsel for Respondents:** ( ) U.S. Mail

Kathleen A. Nelson ( ) Hand

Sarah Demaree Macklin (X) ECF Delivery

Lewis Brisbois Bisgaard & Smith, LLP

2101 Fourth Avenue, Suite 700

Seattle, Washington 98121

Kathleen.Nelson@lewisbrisbois.com

**Original e-filed with:**

**Washington Supreme Court**

P.O. Box 40929

Olympia, Wash. 98504-0929

Dated: July 15, 2019

BY: /s/Sandra L. Ferguson

SANDRA L. FERGUSON

**THE FERGUSON FIRM**

**August 05, 2019 - 1:27 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97395-4  
**Appellate Court Case Title:** Sandra L. Ferguson et al. v. Law Office of Brian J. Waid et al.

**The following documents have been uploaded:**

- 973954\_Motion\_20190805132431SC656840\_0982.pdf  
This File Contains:  
Motion 1 - Amended Brief  
*The Original File Name was Motion and Attachments.pdf*

**A copy of the uploaded files will be sent to:**

- bjwaid@waidlawoffice.com
- kathleen.nelson@lewisbrisbois.com
- mail@emilyrains.com
- sarah.macklin@lewisbrisbois.com
- tami.foster@lewisbrisbois.com
- vicki.milbrad@lewisbrisbois.com

**Comments:**

---

Sender Name: Sandra Ferguson - Email: sandra@slfergusonlaw.com

Address:

600 FIRST AVENUE  
SEATTLE, WA, 98104  
Phone: 206-624-5696

**Note: The Filing Id is 20190805132431SC656840**