

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/3/2019 2:58 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Ct. No. 97433-1  
Ct. of Appeal No. 78121-9-I

**SUPREME COURT OF THE STATE OF  
OF THE STATE OF WASHINGTON**

In re the Estate of:  
  
SASSAN SANAI,MD  
  
Deceased.

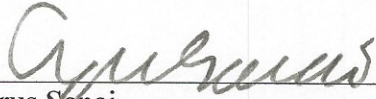
**MOTION FOR SANCTIONS  
PURSUANT TO RAP 18.9(a);  
MOTION TO FILE ANSWER  
TO REQUEST FOR ATTORNEY  
FEES IN ANSWER.**

---

TO: The Clerk of the Supreme Court, Philip Talmadge and Astrid Sanai

Petitioner Cyrus Sanai (“Petitioner”) hereby moves this Court for an order imposing sanctions on Astrid Sanai and her attorney Philip Talmadge for the filing of a completely frivolous motion to strike Petitioner’s reply and request for sanctions; for violating RAP 18.1(j) by including a request for attorney fees upon dismissal of a petition for review where Astrid had been DENIED attorney fees by the Court of Appeals; and moves for leave to file the accompanying “Answer to Request for Attorney Fees in Answer.

DATED this Third day of October, 2019.

A handwritten signature in cursive script, appearing to read "Cyrus Sanai", is written over a horizontal line.

Cyrus Sanai  
433 North Camden Drive #600  
Beverly Hills, CA 90210

## **MOTION**

### **I. IDENTITY OF PARTY**

I, Cyrus Sanai, Petitioner, hereby request the relief set forth in Part II.

### **II. RELIEF REQUESTED**

I request an order imposing monetary sanctions on Astrid Sanai and her attorney, Philip Talmadge, for filing a motion to strike a reply and for sanctions (a) based on the manifestly false contention that her Answer requested “sanctions”, when it in fact requested attorney fees under RCW 11.96A.150 (b) admitting she violated of RAP 18.1(j) and RAP 17.1(a) by including a request for attorney fees in her Answer that did not meet the prerequisite of RAP 18.1(j)—obtaining an award of fees in the Court of Appeals—and thus which was required to be made by motion under RAP 17.1(a).

I also request, if necessary, an order allowing filing of an opposition to Astrid’s request for attorney fees in her Answer, which she now claims was something different: a request for sanctions.

### **III. ISSUES PRESENTED**

1. Should this Court impose sanctions on Astrid Sanai and her counsel for filing a motion to strike the reply and for sanctions based on the manifestly false contention that “The Estate's answer ...merely sought sanctions” when in fact it sought an award of attorney fees under RCW 11.96A.150 which could only be presented to this Court in an Answer if it sought review of the Court of Appeals denial of such motion?
2. Should this Court impose sanctions on Astrid Sanai and her counsel for including in her Answer a request for attorney fees in violation of

RAP 18.1(j) and RAP 17.1(a) which could only be presented to this Court in an Answer to the Petition if it sought review of the Court of Appeals denial of such attorney fees?

3. May Petitioner, as a matter of right, now file an opposition to the request for attorney fees in Astrid's Answer, given the mendacious flip-flopping of Astrid and her counsel as to the scope and grounds for her request for attorney fees in her Answer, and if not, should this Court grant leave to do so?

#### IV. FACTS

Astrid Sanai filed an Answer which included the following request for relief:

- (3) The Estate Is Entitled to Fees under TEDRA

The Estate requests that the Court award the Estate its reasonable attorney fees in connection with Cyrus's petition. RAP 18.1; RCW 11.96A.150. See Appendix. **The Estate recognizes that Division I exercised its discretion and declined to award fees in connection with its review, but that does not foreclose this Court from awarding TEDRA fees.**

RCW 11.96A.150 authorizes a court in its discretion to award reasonable attorney fees for "any and all factors that it deems to be relevant and appropriate ..." and "in such amount and in such manner as the court deems to be equitable." Fees may be awarded on appeal in will contest proceedings. *In re Estate of Muller*, 197 Wn. App. 477, 490, 389 P.3d 604 (2016). Cyrus's present petition, including its newfound constitutional argument, is meritless.

Answer at 13-14.

The Answer clearly acknowledged the Court of Appeals opinion denying an award of fees under RCW 11.96A.150 and requested this Court to override that portion of the opinion.

Astrid appeared to be raising a new issue for this Court to review—whether the denial at the trial court and Court of Appeals levels of fees under RCW 11.96A.150 was correct or not—so Petitioner filed a reply to that issue

and every factor which would be addressed in awarded fees under the statute.

As Petitioner pointed out in the first page of his reply:

Because the statute states that that “in exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved”, in opposing the request for review of the decision by the Court of Appeal and an award of fees in this proceeding, Petitioner may raise any and all “factors” that a court might consider “relevant and appropriate”. RCW 11.96A.150.

Reply at 1.

Astrid does not address the language or the logic. Instead, Astrid filed on October 1, 2019 a motion to strike the reply and for sanctions based on the manifestly false representation that she did not request attorney fees under RCW 11.96A.150, but rather “sanctions.” Her attorney, former Washington State Supreme Court Justice Philip Talmadge, writes that:

The Estate's answer did not raise new issues; it did not seek cross review, raising added issues for this Court to address upon granting review. It merely sought sanctions

Motion to Strike at 2

That contentions is a direct lie to this Court. Astrid’s Answer did not request or argue for sanctions, which are awardable under RAP 18.9(a). What Mr. Talmadge wrote in the Answer that: “The Estate requests that the Court award the Estate its reasonable attorney fees in connection with Cyrus's petition. RAP 18.1; RCW 11.96A.150.” Answer at 13.

## **V. ARGUMENT**

### **A. Astrid’s Motion for Sanctions and to Strike the Reply has Three Glaring, Fatal Flaws.**

Astrid’s argument—that the reply to the answer is frivolous because she

never requested review of the portion of the Court of Appeal opinion denying her attorney fees under RCW 11.96A.150 has three glaring flaws, each of which is fatal to the motion and render it sanctionable.

**1. Astrid Did not Request Sanctions in her Answer.**

First, Astrid's Answer did not request or argue for sanctions, which are awardable under RAP 18.9(a). Indeed RAP 18.9(a) is not cited anywhere in the Answer to the Petition. She explicitly asked for attorney fees under RCW 11.96A.150, and cited RAP 18.1. She, through her attorney, is therefore lying to this Court about the plain language of her Answer.

**2. Astrid Was Barred from Requesting Attorney Fees Under RCW 11.96A.150 in Her Answer under RAP 18.1(j) Because She Was Not Awarded Any by the Court of Appeal.**

The rule governing a request for attorney fees for opposing a petition for review is the following:

**If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals**, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review. A party seeking attorney fees and expenses should request them in the answer to the petition for review. The Supreme Court will decide whether fees are to be awarded at the time the Supreme Court denies the petition for review.

RAP 18.1(j) (bold emphasis added).<sup>1</sup>

RAP 18.1(j) only permits a request for fees in an answer for petition for review “[if] attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals”; here, they were denied by the Court of Appeals. The

---

<sup>1</sup> Under RAP 18.1(b), a party may request fees in its opening brief; but the Answer is not an opening brief.

reason that a request for fees in an answer is only permitted if the Court of Appeals awarded fees should be obvious: due process. If the Court of Appeals awards fees, the issue has been finally determined in state court as a matter of due process UNLESS this Court grants review. However, if the Court of Appeals DENIED attorney fees, then the issue has been finally determined as a matter of due process unless the party filing the Answer requests review; if there are some different grounds for awarding fees to a party answering a petition for review, a petitioner must be given the opportunity to oppose the request for fees if they are different from the grounds previously rejected by the Court of Appeals. Thus a separate pleading, motion, is required, where the Court of Appeals has not awarded attorney fees.

Thus, to summarize, if the party filing the answer who was denied attorney fees by the Court of Appeals wants fees on the same grounds as asserted to the Court of Appeals, then awarding fees necessarily involves review of the Court of Appeals opinion as far as it denied fees and the issue can be raised in the answer to the petition for review, giving a right of reply; if the party filing the answer who was denied attorney fees by the Court of Appeals wants fees awarded under a different basis, then the fees must be separately requested by motion, as to which an answer may be filed.

Because Astrid LOST on this issue before the Court of Appeals, Astrid could not request attorney fees in her Answer unless it was by way of seeking review of the portion of the Court of Appeals opinion denying her attorney fees. For this reason, and because of the plain language of Astrid's request in her Answer, Petitioner interpreted the request as a new issue for cross-review. C. Sanai Decl. ¶2 For this reason, and because the Court's Clerk did not set a date for filing an opposition to a Motion, Petitioner filed a Reply. C. Sanai Decl. ¶2. Now that she has clarified that she did not request cross-review, it is manifest

that her request for attorney fees violated RAP 18.1(j).

**3. Astrid's Request for Fees Outside the Scope of Review  
Could only be Legally Made by Separate Motion.**

Astrid now denies the plain language of her request for fees under RCW 11.96A.150 made in her Answer and instead asks that her briefing in her Answer be read as a request for sanctions. This is the third glaring defect in her October 1, 2019 motion. She is not permitted to make a request for sanctions in her Answer to the Petition for Review. RAP 18.1(j) only allows a request for attorney fees in an answer if attorney fees were awarded by the Court of Appeals to the prevailing party. As for sanctions, RAP 18.9(a) states that:

(a) Sanctions. The appellate court .... **on motion of a party** may order a party or counsel.... who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

RAP 18.9(a) (bold emphasis added).

Sanctions cannot be requested in an answer to a petition for review; they must be requested by separate motion. The reason sanctions must be requested by motion in this context is that if they are buried in the answer to the petition for review, the petitioner, as a matter of due process, would have the right to file an opposition to the request for sanctions by way of reply. Since an opposition to sanctions necessarily must address the merits, any motion for sanctions would automatically allow for further argument on the merits in a reply. Because the Rules of Appellate Procedure are designed to limit replies to answers to petitions for review only to new matters, in order to prevent a sanctions request from automatically triggering a reply on due process grounds, RAP 18.9(a) **requires** that a request for sanctions be put into a motion. The answer to the motion for sanctions can then be read or not read by the Court if it deems it necessary, but



need not be considered in granting or denying the petition for review. This point is reiterated by RAP 18.1(j), which states that a request for attorney fees may only be included in the answer if fees were awarded by the Court of Appeals and on the same basis.

**B. The Court Should Grant Leave to File an Opposition to the Recharacterized Request for Fees in the Answer if Leave is Necessary.**

Astrid's efforts to rewrite the procedural history of this case force Petitioner to make two separate opposition. First, will have to file a separate opposition to the October 1, 2019 motion to strike the reply and for sanctions by the deadline set in the October 2, 2019 letter from the Clerk. In that motion, she denies that the above-referenced language requested review of the Court of Appeals order denying her attorney fees, and instead contends that she was not asking for attorney fees, but rather for sanctions.

Second, Petitioner has to file an opposition to the revisionist request for attorney fees in the Answer to protect himself if this Court treats the motion for sanctions as some kind of post-facto amendment of the request for fees in the Answer.

Under RAP 17.4(e), an answer to a motion is due ten days after service, and may be up to 20 pages under RAP 17.4(g). Astrid now seeks to rewrite both the contents and procedural form of her request for fees set out in her Answer to the Petition by way of a supplementary motion for sanctions. As she has sought to recharacterize the contents of her Answer as a request for sanctions, Petitioner submits that he has a right to file an opposition to the newly noticed request for fees in the Answer, which is now claimed to be outside the scope of review under RAP 17.4(e).

If leave is necessary, this Court should grant leave to file the answer to the request for attorney fees filed herewith to the extent it is necessary. Petitioner filed a reply to the Answer to the Petition because the plain language suggested that review of the Court of Appeals ruling was requested, and perhaps more important, a request for fees could be included in the answer under RAP 18.1(j) and RAP 17.1(a) ONLY if review of the Court of Appeals order was requested; otherwise attorney fees had to be requested by separate motion, which was not filed. C. Sanai Decl. ¶¶2-3. It was entirely reasonable and proper for Petitioner to believe that Astrid's attorney, a former justice of the Washington State Supreme Court, would make the proper procedural choice between including a request for fees in an Answer to the Petition for Review and a separate motion, and interpret the request for fees in light of RAP 18.1(j).

**B. The Court Should Award Petitioner Sanctions Against Astrid Sanai and her Attorney For Violation of RAP 18.1(j), RAP 18.9(a), and RAP 17.1(a).**

Astrid filed a request for attorney fees in her answer as follows:

(3) The Estate Is Entitled to Fees under TEDRA

The Estate requests that the Court award the Estate its reasonable attorney fees in connection with Cyrus's petition. RAP 18.1; RCW 11.96A.150. See Appendix. **The Estate recognizes that Division I exercised its discretion and declined to award fees in connection with its review, but that does not foreclose this Court from awarding TEDRA fees.**

RCW 11.96A.150 authorizes a court in its discretion to award reasonable attorney fees for "any and all factors that it deems to be relevant and appropriate ..." and "in such amount and in such manner as the court deems to be equitable." Fees may be awarded on appeal in will contest proceedings. *In re Estate of Muller*, 197 Wn. App. 477, 490, 389 P.3d 604 (2016). Cyrus's present petition, including its newfound constitutional argument, is meritless.

Answer at 13-14 (bold emphasis added).

Astrid's attorney cited to RAP 18.1 and RCW 11.96A.150 as the sole grounds for awarding fees in the Answer.

If Astrid was requesting review of the denial of fees by the Court of Appeals, then she could properly include this new issue for review in the Answer, but such fees could only be granted if review was granted. However, RAP 18.1(j) explicitly barred her from requesting fees in the Answer premised on a **denial of review** unless she had been awarded fees in the Court of Appeals, as it allows attorney fee requests in the answer only "[i]f attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals." RAP 18.1(j). If the request for relief is unrelated to consideration of the merits, RAP 17.1 requires that the request for fees be made by motion: "A person may seek relief, other than a decision of the case on the merits, by motion as provided in Title 17." RAP 17.1.

Astrid has now renounced any request for review by this Court of the denial of fees by the Court of Appeals. Since she was not awarded any fees by the Court of Appeals, this means she violated RAP 18.1(j) by including a demand for attorney fees in the Answer. Instead, if her request for relief did not relate to a determination of the merits of the Petition, she was required under RAP 17.1 to make the request for fees, under any basis, by motion.

The rule would be no different than if Astrid had requested appellate sanctions. RAP 18.9(a), the rule governing appellate sanctions, clearly states that a request for sanctions may only be made by motion:

(a) Sanctions. The appellate court . . . . **on motion of a party** may order a party or counsel . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

RAP 18.9(a) (bold emphasis added).

Astrid's motion to strike the reply and her request for sanctions are explicit concessions that she and her attorney violated RAP 18.1(j) and RAP 17.1(a). These violation cause damage to Petitioner because he must expend otherwise billable time to filing a reply to the Answer, an opposition to the motion to strike, an opposition to the recharacterized request for attorney fees, and this motion. Astrid and her attorney should be required to pay for this time, plus whatever sanction the Court finds appropriate for seeking to mislead it about the original grounds for the request for attorney fees in the Answer.

Astrid's sanctionable conduct also buttresses why review should be granted. As discussed in the Petition for Review, the Reply to the Answer, and the Answer to the request for attorney fees in the Answer filed herewith, due process required Astrid to notify Petitioner of an address at which she could be personally served to file a will contest; provide explicit notice of the identity of the agent for service of process; and that she continue to keep an agent for service of process in Washington State engaged. Astrid did none of those things, thereby materially impairing the due process rights of claimants against the Estate. Her making a request for fees in the Answer, which could only be made in that document if she was requesting review of the Court of Appeals' opinion denying her fees, followed by her renunciation of this language and misrepresentation of what she actually moved for, is a complicated but manifestly dishonest effort to prevent Petitioner from opposing her twice-rejected request for attorney fees. Under the view espoused by Astrid, she had no obligation to provide an address for service of process on her, the exact identity of her agent for service of process, or the continued services of the agent; in this proceeding, she demands sanctions for exercising the due process right of responding to her request for attorney fees in her Answer.

## VI. CONCLUSION

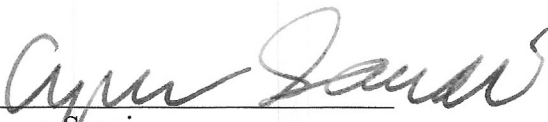
Petitioner should be granted leave to file the opposition to the request for attorney fees in the Answer to the Petition for Review if it is necessary.

The Court should authorize compensatory damages or terms, calculated as lost billable attorney fee time, jointly and severally on Astrid Sanai and her attorney Philip Talmadge for including a request for attorney fees premised on denial of the Petition for Review in her Answer in violation of RAP 18.1(j). Astrid was not allowed to place her request for fees in her Answer if she was not seeking review of the Court of Appeals' denial of attorney fees under the statute.

The Court should also impose whatever extra sanctions it believes are appropriate for having to address these additional issues, all of which arise from the fact that Mr. Talmadge put a request for attorney fees on grounds rejected by the Court of Appeals in the Answer, in breach of RAP 18.1(j), then lied about what he wrote in a motion filed on October 1, 2019.

It is particularly appropriate to impose sanctions on Mr. Talmadge, as he is a former justice of the Washington State Supreme Court. Here therefore has no excuse of lack of familiarity with the rules specific to Washington State Supreme Court practice such as RAP 18.1(j).

Dated this third day of October, 2019

  
Cyrus Sanai

## **DECLARATION**

1. I am a California attorney and an English solicitor, though non-practicing. I am very familiar with the procedural law and practice in Washington State Courts. I have an active legal practice.

2. When I reviewed the request for attorney fees in the Answer, I reread the Rules of Appellate Procedure to determine if such a request had to be put in a separate motion, or could be included in the Answer. I read RAP 18.1(j), which only allows a request for attorney fees to be put in an Answer if attorney fees and expenses were awarded by the Court of Appeal. I already read RAP 17.1(a) which states that requests for relief not related to the merits of the case must be put in a separate motion. Based on these rules and the language of Astrid's Answer—particularly the reference to the Court of Appeals' decision denying her attorney fees—I interpreted her Answer as raising the issue of an award of attorney fees to preserve that right if review was granted but I lost on the merits. In addition, the fact that I did not receive a letter for the Clerk setting a deadline for filing a response to her request for attorney fees led to me to believe that I could not file an Answer to a motion which did not exist. Accordingly, the based on the clear language of the RAP and the language in Astrid's Answer, the only way to exercise my due process right to respond to her request for attorney fees that had been denied by the lower courts was to file a Reply to her Answer, which I did.

3. If Astrid had filed a motion for sanctions or for attorney fees, I would not have filed a reply to her Answer to the Petition for Review, but would instead have filed an Answer to her Motion by the deadline set by the Clerk of the Supreme Court. I am simultaneously filing such Answer with this motion.

I hereby state under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Executed this Third Day of October, 2019 in Beverly Hills CA

  
\_\_\_\_\_  
Cyrus Sanai

**CYRUS SANAI - FILING PRO SE**

**October 03, 2019 - 2:58 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97433-1  
**Appellate Court Case Title:** In the Matter of the Estate of Sassan Sanai, M.D.  
**Superior Court Case Number:** 17-4-00826-1

**The following documents have been uploaded:**

- 974331\_Motion\_20191003143719SC660433\_9194.pdf  
This File Contains:  
Motion 1 - Sanctions  
*The Original File Name was sanctions motion 3.pdf*
- 974331\_Other\_20191003143719SC660433\_1696.pdf  
This File Contains:  
Other - Answer to Request for Attorney Fees in Answer  
*The Original File Name was Opposition to Motion for Attorney fees.pdf*

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

- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com

**Comments:**

The Answer is to the Request for Attorney Fees in the Answer to the Petition; Astrid has filed a motion claiming she did not ask for review of the Court of Appeals order denying her fees, and has filed a motion to strike the reply to the Petition. The Answer filed herewith is the answer to the request for fees assuming it was an improperly filed motion. See RAP 18.1(j); RAP 17.1(a).

---

Sender Name: Cyrus Sanai - Email: cyrus@sanaislaw.com  
Address:  
433 North Camden Drive  
#600  
Beverly Hills, CA, 90403  
Phone: (310) 717-9840

**Note: The Filing Id is 20191003143719SC660433**