No. 97882-4
SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION I
No. 78025-5-I

RICHARD L. FERGUSON,

Petitioner,

vs.

BAKER LAW FIRM, P.S., *et al.*

Respondents.

RESPONDENTS DANIEL R. LAURENCE'S, ANNE MARIE JACKSON LAURENCE'S, AND STRITMATTER, KESSLER, WHALEN, KOEHLER, MOORE, KAHLER'S ANSWER TO PETITIONER'S MOTION FOR LEAVE TO FILE OVER-LENGTH AND UTIMELY AMNEDED PETITION FOR REVIEW

Keith M. Liguori
Davis Rothwell Earle & Xochihua
520 Pike Street
Suite 2500
Seattle, WA 98101
Telephone: (206) 622-2295

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Table of Cases — Page

Statutes

Rules

I. IDENTITY OF THE INTERESTED PARTIES

Comes now Respondents Daniel Laurence, Anne Marie Jackson Laurence, and Stritmatter Kessler, Whalen, Koehler, Moore, Kahler[1] (hereinafter referred to together as "Laurence Respondents"),[2] by and through undersigned counsel of record, and answer Petitioner's motion for leave to file over-length and untimely amended petition for review.

II. RELIEF REQUESTED

Laurence Respondents respectfully request that this Court deny Petitioner's motion to file an over-length and untimely amended petition for review and, rather, decide the Petition on its merits based upon the record before the Court on March 27, 2020.

III. STATEMENT OF THE RELEVANT FACTUAL RECORD

Petitioner Richard L. Ferguson first filed his "preliminary petition for review" 155 days ago, on November 21, 2019. The "preliminary petition" made references in every section that the brief would be supplemented; however, Petitioner did not file a motion for leave to file an incomplete petition nor a motion for leave to supplement the petition.

---

[1] Now "Stritmatter Kessler Koehler Moore."

[2] Remaining respondents hereinafter referred to together as "Baker Respondents."

Notably, although lacking as to proper form, the "preliminary petition" filled 19 of the 20 pages permitted by RAP 13.4(f), and includes extensive explanation of Mr. Ferguson's issues with the Court of Appeals' rulings.

Petitioner did not initially pay the filing fee for his petition nor request an extension to do so. The Court gave Petitioner an extension to December 27, 2019 to pay the fee and postponed the answer deadline until the fee was paid. Baker Respondents timely filed their Answer on December 23, 2019. Petitioner paid the filing fee on December 26, 2019, but did not seek leave to amend his initial petition. The Court then set the answer deadline of January 30, 2020. *See* Letter from the Supreme Court Clerk (January 3, 2020).

On January 22, 2020, over two months after filing his initial petition, and only eight days before respondents' answers were due (Baker Respondents' answer having already been filed), Petitioner first requested time to amend his petition. Petitioner did not include a proposed amended brief, nor an explanation as to why he had not used the prior two months to amend his petition. This Court gave Petitioner until February 21, 2020 to do so. *See* Letter from the Supreme Court Deputy Clerk (January 24, 2020).

On January 30, 2020, Laurence Respondents timely filed their Answer to the only filed version of the petition, the November 21, 2019 "preliminary petition."

On March 3, 2020, eleven days after Petitioner's proposed amended petition was due, he filed his second request for more time to amend his petition. Petitioner specifically mentioned that he wanted this time to "reply to Respondents' briefs," a briefing opportunity to which he is not entitled per RAP 13.4(d). The Court extended the deadline to March 18, 2020. *See* Letter from the Supreme Court Deputy Clerk (March 11, 2020).

On March 19, 2020, one day after that deadline, Petitioner filed his third request for more time to amend his petition. The Court extended the deadline to March 27, 2020. *See* Letter from the Supreme Court Clerk (March 27, 2020).

On April 7, 2020, eleven days after the latest deadline, Petitioner finally filed his amended petition. The untimely, over-length petition is more polished in appearance. However, the petition raises the same issues and seeks the same relief as the "preliminary petition."

On April 8, 2020, the Clerk of this Court issued a letter advising Petitioner that his amended petition was untimely and over-length, and that

the Department would consider whether to accept the petition. *See* Letter from the Supreme Court Clerk (April 8, 2020). Only after this admonishment did Petitioner seek the present relief, including a (retroactive) fourth extension of time. *See* Letter from the Supreme Court Deputy Clerk (April 14, 2020).

IV. STATEMENT OF GROUNDS AND SUPPORTING ARGUMENT

A. Granting the Relief Petitioner Seeks Would Not Serve the Ends of Justice.

This Court has authority to waive rules and/or extend deadlines under RAP 18.8; however, the authority is reserved for instances where the waiver or extension "serve[s] the ends of justice." In the present instance, the ends of justice would not be served by such an exercise of the Court's authority.

This Court has already exercised its RAP 18.8 authority to the benefit of the Petitioner on numerous occasions since the "preliminary petition" was filed 155 days ago. This Court allowed the initial incomplete petition, extended the payment deadline, and granted Petitioner more time to amend his petition in three previous instances.

Unfortunately, Petitioner has rewarded the Court's generosity only with continued abuse of the procedural rules. Notably, Petitioner's four requests for extensions of time were all filed after the deadline he sought to extend, with his latest request for an extension coming only after the Clerk of Court filed a letter admonishing Petitioner as to his RAP violations.

Petitioner has not provided a sufficient basis to show that justice would be served by excusing his violations and accepting the late amended petition. Laurence Respondents have no specific reason to doubt that Petitioner's concerns for his own health and that of his family are legitimate. However, Petitioner has been citing many of his same purported grounds for extension since his "preliminary petition" was filed in November.

Moreover, Petitioner has never provided a sufficient connection between COVID-19 or his other purported grounds and his inability to timely file a revised petition that he had over four months to complete and that was "nearly finished" on March 19, 2020, per Petitioner's own letter. He has not even attempted to explain how his purported grounds justify his continuous inability to even seek extensions until deadlines have already passed. In all this time, Petitioner has not submitted any medical record or a declaration from a health care provider that describes the severity of these

conditions or that otherwise supports a conclusion that health issues prevented him from complying timely with the Court's deadlines.[3]

Petitioner has made continual reference to his pro se status. However, the State of Washington does not excuse pro se parties from following court rules.[4] Accordingly, Petitioner is not excused from violating the RAPs due to his pro se status.

Even if Petitioner's pro se status could justify some leniency on *timely* requested relief under RAP 18.8(a), that leniency is not unbound. Petitioner has extensive experience in the legal field and with legal writing, having been a longtime paralegal. So, Petitioner is more sophisticated than a typical pro se. And Petitioner has extensively briefed similar or related issues as he presents now to two previous courts. Accordingly, though Petitioner may need some additional time to prepare a petition, he has not sufficiently shown that justice requires giving almost 150 days to revise the first draft of his petition.

---

[3] Petitioner continues to suffer from the same flawed belief that has led him to drag Laurence Respondents through three levels of Washington Court arguing the same frivolous claims: the belief that 'Petitioner can cure any problem or satisfy any evidentiary burden by submitting a conclusory declaration from himself.'

[4] *See In re Connick*, 144 Wn.2d 442, 28 P.3d 729 (2001), *as amended* (Aug. 6, 2001) ("Although functioning pro se through most of these proceedings, Petitioner—not a member of the bar—is nevertheless held to the same responsibility as a lawyer and is required to follow applicable statutes and rules.").

Finally, Petitioner contends that his continuous delays do not prejudice the Respondents. Petitioner is accurate that Respondents have counsel. However, it is notable that Petitioner did not even seek leave to amend his petition at all until eight days prior to Respondents' answer deadline, when Baker Respondents had answered and Laurence Respondents had to have substantially briefed their answer to be ready to timely file. While any burden must be balanced with the interests of justice, Respondents would certainly be burdened in having to prepare entirely new answers and in further delay of the finality they have been seeking since the Superior Court's initial rulings.

B. Adjudication of the Petition on Its Merits Based Upon the Current Record Would Best Serve the Ends of Justice.

The new petition does not present new issues or supplemental bases for review under RAP 13.4.

Petitioner seeks review on four purported bases:

- Under 13.4(b)(1), he argues that the COA opinion conflicts with Supreme Court precedent of *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2015);
- Under 13.4(b)(2), he argues that the COA opinion conflicts with *Coggle v. Snow*, 56 Wn. App. 499, 784, P.2d 554 (1990);

- Under 13.4(b)(3), he argues that his appeal presents important Constitutional issues of right to jury trial and due process; and
- Presumably under either 13.4(b)(2) or 13.4(b)(4), he argues that this Court must resolve a conflict between RCW 50.36.030 and RCW 4.25.510.

All of these bases were set forth in Petitioner's nineteen-page "preliminary petition," and answered by the respondents. Thus, the Court has already been comprehensively briefed on the Petitioner's claimed issues with the prior proceedings. Consequently, the Court would not be meaningfully serving the ends of justice in granting the requested relief just to add Petitioner's amended brief to the record.

The purpose of RAP 18.8, in combination with RAP 1.2, is to "promote justice and facilitate the decision of cases on the merits." Though the rules should be used to avoid harsh results and determination of cases based upon noncompliance, the rules do not endorse granting parties endless liberty to abuse procedures until they are personally satisfied with their own briefing.[5] And the salient issue here is less Petitioner's

[5] RAP 1.2(a) ("Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances…"); *State v. Graham*, 194 Wn.2d 965, 969, 454 P.3d 114 (2019) ("The Rules of Appellate Procedure were designed to allow flexibility so as to avoid harsh results."); *In re Carlstad*, 150 Wn.2d 583,

noncompliance, and more that his noncompliant submission adds nothing new for the Court to consider. Thus, considering the amended petition would only serve to waste time and money for the respondents and their counsel, and impose an unnecessary burden upon the Court.

In accord with the purposes set forth in RAPs 1.2 and 18.8, this Court can most aptly, most efficiently, and least burdensomely "promote justice" and reach the substance of this case by using its RAP 18.8 authority to forgive the formative deficiencies of Petitioner's "preliminary petition," and decide the petition on the merits based upon the present record.

RESPECTFULLY SUBMITTED this 24th day of April, 2020.

DAVIS ROTHWELL
EARLE & XÓCHIHUA, PC

/s/ Keith Liguori
Keith M. Liguori, WSBA No. 51501
Counsel for Laurence Respondents

593 80 P.3d 587 (2003) (Sanders, J. dissenting) ("Together RAP 1.2(a), RAP 1.2(c), and RAP 18.8(a) make clear that an appellate court should liberally interpret the Rules of Appellate procedure when necessary to promote justice and to consider cases and issues on their merits."); *Weeks v. Chief of Washington State Patrol*, 96 Wn.2d 893, 896, 639 P.2d 732 (1982) ("It has been apparent that the trend of the law in this state is to interpret rules and statutes to reach the substance of matters so that it prevails over form.") (internal quotations omitted).

DAVIS ROTHWELL

April 24, 2020 - 11:36 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97882-4
Appellate Court Case Title:	Richard Ferguson v. Baker Law Firm, P.S., et al.
Superior Court Case Number:	17-2-07335-9

The following documents have been uploaded:

- 978824_Answer_Reply_20200424113031SC258537_7771.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2020.04.24 Ans to Mot for Leave.pdf

A copy of the uploaded files will be sent to:

- ferg099@comcast.net
- garybaker@grovestreetlaw.com
- kmathews@fogartylawgroup.com
- mark@mixsanders.com
- pfogarty@fogartylawgroup.com
- prothwell@davisrothwell.com
- sgriffin@davisrothwell.com

Comments:

Sender Name: Tami Whitney - Email: twhitney@davisrothwell.com
Filing on Behalf of: Keith M Liguori - Email: kliguori@davisrothwell.com (Alternate Email: tpowells@davisrothwell.com)

Address:
520 Pike Street
Suite 2500
Seattle, WA, 98101
Phone: (206) 622-2295

Note: The Filing Id is 20200424113031SC258537