

SUPREME COURT
OF THE STATE OF WASHINGTON

SHEILA LAROSE,

Petitioner,

v.

KING COUNTY,
WASHINGTON,

Respondent,

and

PUBLIC DEFENDER
ASSOCIATION D/B/A THE
DEFENDER ASSOCIATION
(TDA),

Defendant.

No. 103248-0

ANSWER TO
COURT'S MOTION
TO STRIKE
LAROSE'S REPLY

A. INTRODUCTION

Sheila LaRose filed a reply to King County's ("County") opposition to her petition for review to this Court in which it raised cross-petition issues, albeit contingently. Under RAP 13.4(d), LaRose is entitled to reply to those issues.

B. ARGUMENT

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King County raised and discussed *multiple* cross-petition issues in its answer to LaRose's petition for review. Answer at 26-31.

The practice of a respondent to a petition for review raising issues conditionally is commonly understood; it is addressed in the WSBA's treatise, *Appellate Practice Deskbook* (2d ed.), at 18-9. This Court has recognized on *numerous* occasions that conditional issues may be presented by respondents and considered by this Court on review. *See, e.g., Lewis River Golf, Inc. v. O.M. Scott & Sons*, 120 Wn.2d 712, 725, 845 P.2d 987 (1993); *State v. Grott*, 195 Wn.2d 256, 265, 458 P.3d 750 (2020) (recognizing that issues may be raised conditionally); *Gerlach v. Cove Apts., LLC*, 196 Wn.2d 111, 119 n.4, 471 P.3d 181 (2020) (same). The recognition of the practice, and the County's employment of that practice in this case, however, implicates RAP 13.4(d).

RAP 13.4(d) generally limits replies on petitions for

review:¹

(d) Answer and Reply. A party may file an answer to a petition for review. A party filing an answer to a petition for review must serve the answer on all other parties. *If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer.* Any answer should be filed within 30 days after the service on the party of the petition. *A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review.* A

¹ The purpose of this rule was articulated in the drafters' comments to 2006 amendments to RAP 13.4(d):

... the amendment limits the scope of a reply to an answer to petition for review. Under the current rule, a party may not file a reply to an answer to a petition for review unless "the answer raises a new issue." This provision has been subject to abuse by petitioning parties who attempt to cast an answering party's arguments in response to a petition for review as "new issues" in order to reargue issues raised in the petition. The proposed amendment is intended to clarify the rule's purpose by more clearly prohibiting a reply to an answer that is not strictly limited to responding to an answering party's request that the Court review an issue that was not raised in the initial petition for review.

Elizabeth A. Turner, 3 *Wash. Prac. Rules Practice* (9th ed.) at 231.

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reply to an answer should be limited to addressing only the new issues raised in the answer. A party filing any reply to an answer must serve the reply to the answer on all other parties. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

(emphasis added). There is no question that the County is asking this Court to affirmatively grant review on the issues it has raised contingently.

Historically, this Court has allowed petitioners a reply to contingent cross-petition issues raised by an answering party. For example, in *Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC* (Cause No. 100168-1), the insurer moved to strike the petitioners' joint reply that addressed issues the insurer raised contingently in its answer. The Court denied the motion to strike. *See* Appendix.

As authorized by RAP 13.4(d), where a party raises *new issues* in its answer, albeit contingently, as here, the petitioner has a right to reply. This is also a matter of fairness. The

respondent on review should not be able to advance issues for possible review by this Court without permitting the petitioner to respond to those contingent issues. A reply enables the Court to be fully informed in its overall review decision.

C. CONCLUSION

The Court should hear from LaRose on new issues raised contingently in the County's answer to her petition for review. It would be unfair to deprive the Court of the full discussion on such issues. This Court should not strike LaRose's reply.

This document contains 748 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 19th day of September, 2024.

Respectfully submitted,

/s/ Philip A. Talmadge

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APPENDIX

THE SUPREME COURT OF WASHINGTON

SEATTLE TUNNEL PARTNERS, et ano.,)	No. 100168-1
)	
Petitioners,)	ORDER
)	
v.)	Court of Appeals
)	No. 78691-1-I
GREAT LAKES REINSURANCE (UK) PLC,)	(consolidated with Nos. 79060-9-I
et al.,)	and 80260-7-I)
)	
Respondents.)	
)	
)	

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu, and Whitener, considered at its January 4, 2022, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petitions for review filed by Seattle Tunnel Partners, the Washington State Department of Transportation, and Hitachi Zosen U.S.A. Ltd. are granted. Any party may serve and file a supplemental brief within 30 days of the date of this order, see RAP 13.7(d). The Respondents' motion to strike the reply is denied. Review of any issues contingently raised by Great Lakes Reinsurance is denied.

DATED at Olympia, Washington, this 5th day of January, 2022.

For the Court


CHIEF JUSTICE

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Answer to Court's Motion to Strike LaRose's Reply* in Supreme Court Cause No. 103248-0 to the following parties:

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Original electronically filed by appellate portal to:
Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: September 19, 2024 at Seattle, Washington.

/s/ Brad Roberts
Brad Roberts. Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

September 19, 2024 - 2:26 PM

Transmittal Information

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Answer to Court's Motion

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