SUPREME COURT
OF THE STATE OF WASHINGTON

C.C., an individual,

Respondent,

and

A.B., an individual; D.E.F., an individual; M.R., an individual; J.L., an individual; B.F., as guardian for K.F., an individual; C.B., an individual; A.M., an individual,

Plaintiffs,

v.

KIWANIS INTERNATIONAL, a non-profit entity; KIWANIS PACIFIC NORTHWEST DISTRICT, a non-profit entity; KIWANIS OF TUMWATER, a non-profit corporation; KIWANIS OF CENTRALIA-CHEHALIS, a non-profit entity; KIWANIS OF UNIVERSITY PLACE, a non-profit entity; KIWANIS VOCATIONAL HOME, a nonprofit entity; LEWIS COUNTY YOUTH ENTERPRISES, INC. d/b/a

No. 103894-1

REPLY ON MOTION TO MODIFY CLERK'S RULING RE: ANSWER TO PETITION FOR REVIEW



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Kiwanis Vocational Homes for Youth, a non-profit corporation,

Petitioners,

and

CHARLES McCARTHY, an individual; EDWARD J. HOPKINS, an individual; UNITED WAY OF PIERCE COUNTY, d/b/a CHILDREN'S INDUSTRIAL HOME and/or COFFEE CREEK CENTER; COFFEE CREEK CENTER, a non-profit entity; CHILDREN'S INDUSTRIAL HOME d/b/a COFFEE CREEK CENTER, a non-profit entity; MENTOR HOUSE, d/b/a CHILDREN'S INDUSTRIAL HOME and/or COFFEE CREEK CENTER, a nonprofit entity; STATE OF WASHINGTON; STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, DEPARTMENT OF CHILDREN, YOUTH AND FAMILY SERVICES, CHILD PROTECTIVE SERVICES, governmental entities,

Defendants.



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## A. INTRODUCTION

C.C.'s answer to the Kiwanis petitioners' motion to modify the Clerk's ruling at issue here[1] fails to address the points made in the Kiwanis petitioners' opening motion. Rather, C.C. argues for an interpretation of RAP 13.4(d) that renders the rule superfluous and opens the door to a multiplicity of pleadings RAP 13.4 never contemplated. This Court should reject C.C.'s interpretation of RAP 13.4.

## B. FACTS RELEVANT TO MOTION

C.C. at various times tries to argue that the Kiwanis entities are advocating a "race to the courthouse." Answer at 3 n.2, 10. That is simply untrue. The Kiwanis petitioners filed their February 25 petition for review two weeks after Division II decided on February 11 to finally publish its opinion. Either party

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[1] At various places, C.C. refers to the Clerk's ruling as the March 14, 2025 "Ruling of the Washington Supreme Court." That is inaccurate. The ruling at issue is *the Clerk's* ruling, until this Court weighs in on the Kiwanis petitioners' motion to modify. *See* RAP 17.7.



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could have filed a petition for review under RAP 13.4(a) and the other could have answered in due course. RAP 13.4(d).

The Kiwanis petitioners merely note that C.C. had *ample* time to decide on his course of action. C.C. filed a motion to publish Division II's unpublished opinion on September 19, 2024. Division II took considerable time to decide on publication, nearly five months (September 19, 2024 – February 11, 2025), affording C.C.'s counsel *months* of time to decide on seeking review by this Court, and preparing a petition for review if they wanted to do so.

At that, the Kiwanis petitioners initially filed their petition for review on February 25, 2025. Again, C.C. had *ample* time to act on an answer to that petition. Instead, he *waited* to file his petition for review until March 13, 2025, rather than filing an answer to the Kiwanis petition with its own "cross-review" issues, as RAP 13.4(d) contemplates.

C. ARGUMENT

In his answer, C.C. nowhere denies that this Court



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interprets court rules like it interprets statutes, motion at 4-5, or that in interpreting a court rule, like a statute, the Court implements the Court's intent, interpreting the rule *as a whole*, effectuating all of its provisions. *State ex. rel. Schillberg v. Everett Dist. Justice Court, Snohomish County*, 90 Wn.2d 794, 797 585 P.2d 1177 (1978).

Not to be ignored, RAP 13.4 is designed to *limit* the number of pleadings parties submit to this Court on review. RAP 13.4(d) *limits* replies, for example. The issue for this Court is whether it wants to open the door to a whole new group of added pleadings on review.

The Clerk's interpretation of RAP 13.4(d) makes the process of answering a petition for review, and raising new issues, entirely superfluous. C.C. did not answer the obvious question posed in the Kiwanis petitioners' motion at 6: Why would any respondent raising new issues to this Court not file *both* an answer to the initial petition, *and* a separate petition for review, giving themselves extra pages in *three* pleadings –



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answer/PFR/possible reply. Nor does C.C. have an answer to the fact that the process envisioned by the Clerk creates an avenue, not contemplated by RAP 13.4(d) to inundate the Court and its Commissioner with unnecessary added briefing on review.

C.C.'s answer does not address the intent of the 1994 amendments to RAP 13.4(d) that were designed to permit parties answering a petition for review to raise new issues in such an answer, rather than filing a separate petition. Elizabeth A. Turner. 3 *Wash. Practice Rules Practice* (9th ed.) at 227-29. Motion at 6.

Under RAP 13.4(d), once the Kiwanis petitioners filed their February 25, 2025 petition for review, C.C. had 30 days to file an answer. If C.C. wanted to raise new issues, and he did, RAP 13.4(d) required him to "raise those new issues in an answer."[2] He could not file a separate petition for review, hoping

[2] C.C. acknowledges that the answer raising new issues is a "cross-petition" for review. Answer at 7-8. However, the cases he cites address a distinct issue from the procedures contemplated by RAP 13.4(a) and RAP 13.4(d). Rather, those



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to give himself multiple bites at the apple and more pages beyond those allotted to him by RAP 13.4(f)/RAP 18.17, or an additional pleading – a possible reply on his March 13 petition – not permitted by RAP 13.4(a), (d).

C.C. complains that the present process is "unfair" in that he does not get to answer the Kiwanis petitioners' petition for review as to RCW 23B.14.340. Answer at 9-10. That "unfairness" is of *his own making*. He could have answered the Kiwanis entities' petition and raised his new issues in a single pleading. That he *chose* not to address the issues raised in the Kiwanis petitioners' February 25 petition was *his choice*. But he is not entitled to file a pleading not contemplated by RAP 13.4(a), (d).

Finally, C.C. argues that RAP 1.2(a) requires a liberal construction of RAP 13.4 and that he is entitled to a waiver of the requirements of RAP 13.4(d), citing RAP 1.2(c). But C.C.

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cases address whether an issue has actually been presented to this Court.



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fails to reference RAP 18.8(b) that strongly supports the "desirability of finality" by denying extensions of time as to petitions for review. That policy should be no less stringent for raising "new issues" in a RAP 13.4(d) answer, a pleading that is, under the rule, a cross-petition for review.

## D. CONCLUSION

This Court should modify the Clerk's March 27 ruling and bar C.C. from filing an "answer" to the Kiwanis entities' petition for review. His "petition for review" is that answer. RAP 13.4(d).

This document contains 946 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of April, 2025.

Respectfully submitted,

/s/ Philip A. Talmadge

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DECLARATION OF SERVICE

On said day below I electronically served via the appellate portal a true and accurate copy of the ***Reply on Motion to Modify Clerk Ruling*** in Supreme Court Cause No. 103894-1 to the following parties:

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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: April 8, 2025 at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
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**TALMADGE/FITZPATRICK**

**April 08, 2025 - 3:27 PM**

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**Comments:**

Reply on Motion to Modify Clerk's Ruling Re: Answer to Petition for Review

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