No. 1042329

SUPREME COURT

OF THE STATE OF WASHINGTON

SARA HUTCHINSON,

Petitioner,

v.

ED PUTKA,

Respondent.

–

MOTION

PETITIONER'S OPPOSITION TO CLERK'S MOTION TO STRIKE REPLY TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW

SARA HUTCHINSON

PRO SE

Sara Hutchinson
PO BOX 773
KALAMA WA 98625
Phone: 360-749-7249
Email: kiebler022@gmail.com

I. INTRODUCTION

Petitioner Sara Hutchinson "Hutchinson", pro se, respectfully opposes the Clerk's motion to strike her "Reply to Respondent's Answer to Petition for Review." Hutchinson's Reply was expressly authorized under RAP 13.4(d) because Respondent's (Putka) Answer injected new factual allegations and legal issues that were not raised in the original Petition for Review. These included new allegations of fraud, new theories of discovery blame, procedural rule non-compliance, and arguments under RCW 49.60.2235 asserting and expanding on that no novel legal issue exists—none of which were raised or addressed in the Petition or the appellate decision. RAP 13.4(d) allows a reply when the answering party "seeks review of issues not raised in the petition for review," and requires that a reply "be limited to addressing only the new issues raised in the answer." Even though Putka's answer doesn't explicitly ask for additional review; In Putka's urging the Court to deny review, his answer went beyond the scope of the Petition for Review

and he injected new factual assertions and legal arguments that were not raised in the Petition for Review. Hutchinson's Reply complies fully with both conditions. Hutchinson asks this court to allow the Reply to remain on the record and to consider it in full. She would note to apply RAP 1.2(a) and 1.2(c):

> 1.2(a) These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).
>
> 1.2(c) The appellate court may waive or alter provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

II. FACTUAL AND PROCEDURAL BACKGROUND

On 28 May 2025, Hutchinson filed a Petition for Review in this Court, seeking discretionary review of the Court of Appeals' decision in *Hutchinson v. Putka* (Div. II, No. 58847-7-II). The Petition for Review raised, among other things, the novel issue of the proper interpretation of RCW 49.60.2235 (a provision of the Washington Law Against Discrimination concerning coercion and intimidation in real estate transactions)

which has not been addressed in any published appellate decision, and she argued that the Court of Appeals had improperly narrowed her discrimination claim and overlooked key evidence. Putka filed an Answer to the Petition for Review on or about 23 June 2025, opposing review. Putka's Answer did not expressly "seek review" of any additional issues as contemplated by RAP 13.4(d). Instead, Putka urged the Court to deny review. However, in doing so, the Answer went beyond the scope of the Petition and injected new factual assertions and legal arguments that had not been raised in the Petition for Review or resolved by the lower courts. For example, Putka's Answer:

1. Accused Hutchinson of fraud and lying: The Answer states that "in truth, [Petitioner's] own lying and fraud, not discrimination, was the basis for Putka's behavior" – a serious and inflammatory allegation never raised in Hutchinson's Petition for Review or in the Court of Appeals' analysis. This effectively introduces a new

issue attacking Hutchinson's integrity to justify the outcome below. Not allowing Hutchinson to Reply to this horrible accusation would be extremely unfair.

2. Blamed Hutchinson for discovery gaps: The Answer claims that Hutchinson herself was at fault for any gaps in the evidence. It specifically argues that Hutchinson's "failure to obtain all documents related to the back-up offer" – referring to a missing page of a key document – "is not proof of Respondent's deviousness, but of Hutchinson's bungling". This is a new factual argument (imputing the absence of evidence to Hutchinson's own failings) not previously addressed in the Petition.
3. Argued that the Court of Appeals' scope of review is not subject to review: The Answer suggests that even if the Court of Appeals limited the scope of Hutchinson's claims or evidence, "scope of review, of itself, is not grounds for appeal to this Court" under RAP 13.4(b)(1). In other words, Putka contends that the Supreme Court

cannot or should not review the appellate court's decision to exclude or ignore certain issues/evidence. This is a new legal position not raised by Hutchinson, effectively foreclosing an entire basis for Supreme Court review that Hutchinson sought (i.e. that the lower court improperly narrowed her case).

4. Claimed no novel issue under RCW 49.60.2235 exists:

   The Petition had argued that RCW 49.60.2235 presents an unexamined question of law (a matter of first impression) warranting review. Putka's Answer introduced a new counterargument: it asserted that this case does not present any issue of first impression because Washington's general anti-discrimination framework (the *McDonnell Douglas* burden-shifting test) is well-settled and "the legal formula that should apply to such claims is well established," even if no prior case involves the exact same facts. Putka concluded that "this Court need not grant review on this basis". This is a new

legal argument directly aimed at negating Hutchinson's contention that RCW 49.60.2235 raises a novel issue for the Court's consideration.

Hutchinson had no prior opportunity to rebut these new allegations and arguments because they were not part of the original Petition or the questions presented for review.

On 06 July 2025, Hutchinson submitted a Reply to Putka's Answer, specifically limited to addressing the new matter injected by Putka. Each section of the Reply corresponded to one of the above-described new arguments (fraud allegations, discovery issues, misapplication of RAP 2.5/9.12, mischaracterization of the novelty of RCW 49.60.2235, etc.), and the Reply explicitly noted that those points were "new arguments" raised for the first time in the Answer. Hutchinson did not use the Reply to simply reargue issues from the original Petition; rather, the Reply served to prevent Putka's new accusations and contentions from remaining unrebutted.

On July 7, 2025, the Supreme Court Clerk issued a letter advising that under RAP 13.4(d) a reply to an answer may be filed "only if the answering party seeks review of issues not raised in the petition for review," and that here "it does not appear that the answer[] … sought review of any issues," such that Petitioner's Reply "does not appear to be permitted". The Clerk indicated a motion to strike the Reply would be considered, and invited Petitioner to respond by July 21, 2025.

Hutchinson now submits this opposition, demonstrating that the Reply was proper under RAP 13.4(d) because Putka's Answer effectively raised new issues beyond those in the Petition, entitling Hutchinson to file a narrowly tailored reply.

II. ARGUMENT

A. Respondent's Answer Introduced New Issues Requiring Rebuttal

Putka's Answer presented several new factual and legal theories that were not raised in the Petition for Review. These include: (1) the introduction of a fraud accusation; (2) a new

theory assigning blame to Petitioner for discovery gaps; (3) a legal argument that the case presents no novel issue under RCW 49.60.2235 because it is governed by established federal discrimination law; and (4) arguing a procedural rule violation in RAP 13.4(b)(1). Each of these assertions introduces a new ground for opposing review, entitling Hutchinson to reply under RAP 13.4(d).

RAP 13.4(d) does allow a reply when the respondent's answer truly brings in a new issue beyond the scope of the petition. The core principle is that each party should have one opportunity to address each issue (Appendix A, *Bar Bulletin-Seeking Supreme Court Review-Who gets the Last Word*). If the answering party injects a new issue for review, the petitioner is permitted a reply because otherwise the petitioner would have no opportunity at all to respond to that issue before the Court decides whether to grant review. As one commentator observes, RAP 13.4(d) "allows each party to address an issue once" – thus a reply is proper when it "will be the only opportunity for

the petitioner to address" an issue newly raised by the respondent. (Appendix A) This ensures fundamental fairness in the petition process: the respondent cannot broaden the case or raise new matters and at the same time deprive the petitioner of any chance to answer them.

B. Petitioner's Reply Properly Addressed Only the New Issues Introduced

Hutchinson's Reply does not reargue issues raised in the Petition, nor does it introduce new issues of its own. It is strictly limited to rebutting Respondent's new allegations and theories. This is precisely the function RAP 13.4(d) contemplates—to allow the Petitioner one opportunity to respond to new matters inserted into the record by the Respondent's Answer. In this case, Putka's Answer, while nominally opposing review, opened the door to new issues and arguments not previously before the Court. These were not mere elaborations on points in the Petition; they were entirely new lines of attack and legal theories, as detailed in the

Background section above. Putka accused Hutchinson of fraudulent conduct for the first time on review, blamed Hutchinson for a missing discovery document that had formed part of Hutchinson's argument about pretext, asserted a categorical bar to this Court's review based on the scope of the Court of Appeals' consideration, and claimed that no "first impression" issue exists under a statute that no appellate court has ever construed. None of these specific allegations or arguments was presented in the Petition for Review. By introducing new factual assertions about Hutchinson's honesty and litigation conduct, and new legal contentions about the unreview ability or purported non-novelty of certain issues, Putka in effect expanded the scope of the issues beyond those framed by the Petition. In terms of RAP 13.4(d), the Answer sought to litigate matters "not raised in the petition for review." Hutchinson's decision to file a Reply was squarely in line with RAP 13.4(d)'s allowance for replies in such circumstances. The Reply does not reargue the original grounds for review; rather,

it directly addresses the new material injected by Putka – which is precisely the scenario in which the rule permits a reply. Hutchinson was confronted with new accusations of misconduct and new legal theories against review that she had no chance to rebut in her Petition. Without a reply, those contentions – for example, that Hutchinson "bungled" discovery or engaged in "lying and fraud" – would stand unrebutted before the Court. It would be fundamentally unfair and contrary to the adversarial process to allow Putka to raise such new issues and then prevent Hutchinson from answering them. RAP 13.4(d) exists to prevent that unfairness, by authorizing a reply when (and only when) the Answer introduces new issues outside the petition's scope. Importantly, Hutchinson's Reply was carefully limited to the subjects that Putka raised anew. Hutchinson did not use the Reply to repeat arguments about why the Court of Appeals erred or to bolster her original petition on points Putka had merely refuted. Instead, each section of the Reply corresponded

to a distinct new issue from the Answer, such as the fraud allegations or the RAP 2.5/9.12 issue, and provided a focused rebuttal to that point. This approach is consistent with RAP 13.4(d)'s requirement that "a reply to an answer should be limited to…only the new issues raised in the answer". Thus, Hutchinson adhered to the letter and spirit of the rule in filing a constrained reply purely to address Putka's extra-petitional issues.

C. Washington Case Law and Authorities Support Allowing the Reply in This Instance.

Washington courts recognized the distinction between an answer that merely elaborates on existing issues (which does *not* permit a reply) and an answer that effectively raises additional issues (which does allow a reply). While published case law on RAP 13.4(d) is rare, the Supreme Court's recent practice and orders shed light on the rule's application.

For example, in *Bayley Construction v. Dep't of Labor & Industries*, the respondent's answer introduced a new

argumentative twist (relying on certain dictionary definitions) in responding to the petition, and the petitioner filed a reply claiming this was a "new issue." The Supreme Court disagreed and struck the reply, finding that the respondent had not truly raised a new issue for review but merely offered a different argument on the same issue; in other words, "argument…is not synonymous with 'issue'" under RAP 13.4(d) (Appendix A). *Bayley* illustrates that if the Answer only provides new reasoning or authorities on points already in the petition, a reply will not be allowed.

By contrast, in *Coogan v. Genuine Parts Co.*, the respondent's answer went beyond opposing the petition and conditionally urged review of additional issues (contingent on the Court granting the petition). The respondent later moved to strike the petitioner's reply, arguing that it did not "seek review" of new issues because it only raised them conditionally (i.e., the respondent claimed it truly wanted no review at all). The Washington Supreme Court denied the motion to strike and

allowed the reply, implicitly recognizing that the answer had indeed triggered the petitioner's right to respond on those additional issues (Appendix A). In fact, the Court not only permitted the reply but ultimately *granted review* on both the petitioner's and respondent's issues in *Coogan (*Appendix A*)*. Although the Court's order in *Coogan* contained no detailed reasoning, its actions signal that when an Answer effectively adds new issues into the mix, a reply is proper and will not be struck. The Court evidently "believed the petitioner had done nothing wrong in filing a reply," given that the reply was the petitioner's only opportunity to address the issues raised by the respondent (Appendix A). This outcome aligns perfectly with the principle that each party gets to address each issue once – the respondent raised new points, so the petitioner was allowed one chance to counter them (Appendix A).

The situation in Hutchinson's case is comparable. Like the respondent in *Coogan*, Putka's Answer introduced matters beyond the confines of Hutchinson's original issues for review.

Here Putka's new accusations of fraud, procedural default, and lack of any novel legal question are separate issues that alter the landscape of the case. Hutchinson is not attempting a "creative interpretation" of what constitutes an issue (Appendix A); rather, Putka's own Answer explicitly raised these points as reasons to deny review, making them part of the case that Hutchinson must address. To strike Hutchinson's Reply in this context would be to endorse a scenario where one party (Respondent) can lob new charges and legal theories at the petition stage and the other party (Petitioner) is silenced from responding. The rule's allowance for replies in the presence of new issues was designed to prevent exactly this kind of one-sided argument.

Finally, it bears noting that disallowing the Reply could prejudice the Court's decision-making on whether to grant review. The petition for review process is focused on whether certain criteria (e.g. conflict, public interest, legal novelty) are met (RAP 13.4(b)), not an adjudication on the merits. Putka's

injection of inflammatory factual claims (accusations of lying and fraud) and assertions of procedural bars could mislead the Court regarding the case's posture or importance if left unrebutted. Petitioner's Reply helps ensure the Court has a balanced and accurate understanding of those points when evaluating the petition. Moreover, if the Court were to grant review, no prejudice comes from the Reply – the parties will have full briefing on the merits, and Putka's concerns can be addressed in that context. If the Court were to deny review, it should do so based on a fair presentation of the issues, not because Petitioner was procedurally foreclosed from answering new arguments that cast her case in a false light. In short, allowing the Reply here furthers the interests of justice and does no harm to the integrity of the review process.

For all of the above reasons, Petitioner's Reply is authorized under RAP 13.4(d) and is appropriately before the Court. The Clerk's motion to strike the Reply should therefore be denied.

D. Respondent's Argument Concerning RAP 13.4(b)(1) Introduced a New Procedural Issue

Putka's Answer also raised a new procedural issue by asserting that Hutchinson failed to cite RAP 13.4(b)(1) and therefore review should be denied. This argument was not addressed in the Petition and, if credited, could independently preclude review. Hutchinson had no prior opportunity to address this procedural claim, which attempts to create a procedural bar not previously litigated. Hutchinson's Reply appropriately explains that even if RAP 13.4(b)(1) was not cited by number, the Petition clearly and substantively raised conflicts with controlling decisions such as Scrivener and Mikkelsen—satisfying RAP 13.4(b)(1) in substance. Because this is a new procedural challenge introduced by Putka, a reply was appropriate and necessary.

E. Respondent's "No Novel Issue" Argument Introduced New Legal Grounds

Putka further argued that Petitioner's case does not present a novel issue because it is governed by established case law—specifically invoking the federal McDonnell Douglas framework. This was not a simple rebuttal of Hutchinson's claim that RCW 49.60.2235 presents a novel issue; it introduced a new legal theory not raised in the Petition. Hutchinson had no opportunity to address this framing until Respondent's Answer reframed the legal context. Thus, the argument functions as a new legal ground for denying review, making Petitioner's reply proper under RAP 13.4(d).

III. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Clerk's motion to strike the Reply to Respondents answer to the Petition for Review, be DENIED. The Reply was properly filed under RAP 13.4(d), is limited to new issues raised in the Respondent's Answer, and ensures a balanced presentation of the issues. Petitioner also requests that

the Reply be considered in full in the Court's deliberation on the Petition for Review.

DATED this 21st day of July, 2025.

Respectfully submitted,

Sara Hutchinson

APPENDIX

BAR BULLETIN

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Seeking Supreme Court Review – Who Gets the Last Word?

September 1, 2020 | in General

SEPTEMBER 2020 BAR BULLETIN

By Ian Cairns

Always Appealing" is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, PS, a Seattle law firm in Seattle that limits its practice to civil appeals and related trial court motions practice.

Unlike the cadence of a merits appeal — opening brief, response brief, reply brief — a party that files a petition for review with the Washington Supreme Court is not permitted to file a reply unless "the answering party seeks review of issues not raised in the petition for review." RAP 13.4(d). Although this language appears straightforward, whether a respondent's answer has triggered the petitioner's right to file a reply by "seeking review" of an issue has generated a surfeit of motions practice, with motions to strike a reply to a (real or imagined) "new" issue generating a whole other round of pleadings. In almost every monthly Departmental calendar, there is usually at least one case in which the Department also rules on a motion to strike a claimed unauthorized reply.

This surely was not what was intended when RAP 13.4(d) was promulgated prohibiting most replies in support of a petition for review. But because petitions for review are resolved through summary orders with no explanation, little case law exists on what it means to "seek review" of an

issue under RAP 13.4(d). However, the Supreme Court's disposition of recent motions to strike replies provides some hints to the proper interpretation of RAP 13.4(d).

As an initial matter, it is perhaps easiest to explain when a reply is not authorized. A reply is not authorized simply because the respondent has discussed arguments or authorities not addressed in the petition. In other words, "argument" is not synonymous with "issue." Because of repeated confusion on this point, the Supreme Court amended RAP 13.4(d) in 2006, which previously authorized a reply if "the answer raise[d] a new issue." The current "seeks review" formulation was used in the hopes of preventing "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." See Tegland, 3 Wash. Prac., Rules Practice RAP 13.4 (8th ed.) (quoting Drafter's Comment, 2006 Amendment to RAP 13.4).

Despite this amendment, petitioners continue to justify filing replies by conflating "argument" with "issue." For example, in Bayley Constr. v. Dep't of Labor & Indus, 195 Wn.2d 1004, 458 P.3d 788 (2020), the Supreme Court denied review and struck a reply, rejecting the petitioner's assertion that the respondent's argument relying on dictionary definitions was a new issue because the petition had not addressed those definitions.1

Another problem of interpretation arises when a respondent "conditionally" raises an issue in its answer, i.e., asks that the Court only review the issue if it first accepts review of an issue raised by the petitioner, while resisting review altogether as the preferred result. The Supreme Court recently addressed this issue in Coogan, et al. v. Genuine Parts Co., et al., __ Wn.2d __, 466 P.3d 776 (2020), where the petitioner filed a reply addressing several issues the respondent conditionally raised. The respondent asked the Supreme Court to strike the reply, arguing that it did not "seek review" of any issues, because "it did not want [the] Court to grant review," and had "merely ask[ed] the Court to take up additional issues if it grants review as requested by the petitioner." The Supreme Court denied the motion to strike — and, perhaps not coincidentally, accepted review of the issues raised by both petitioner and respondent.

Although the Supreme Court's order in Coogan contains no reasoning, it is clear from the Court's denial of the motion to strike that it believed the petitioner had done nothing wrong in filing a reply. This makes sense because RAP 13.4(d) allows each party to address an issue once and, unlike a reply rearguing issues raised in the petition, a reply addressing conditional issues raised by the respondent will be the only opportunity for the petitioner to address those issues.

So, what lessons can be learned from Bayley and Coogan? First, counsel should not file replies based on a creative interpretation of what constitutes an "issue." In the July and August 2020 terms the Supreme Court struck a total of six replies — five at the Clerk's request and another

based on a motion from the respondent. More to the point, the Court did not grant review in any of the cases in which it struck an unauthorized reply. Although it is always tempting to get in the last word, filing an unauthorized reply the Court is unlikely to consider — and may strike on its own motion — does nothing to help a client and risks distracting from potentially meritorious issues raised in the petition. Moreover, if the Court does grant review, a petitioner can always respond to new arguments in its supplemental brief.

Second, respondents should consider carefully whether to raise new issues in the answer, either conditionally or unconditionally, because doing so will permit the petitioner to file a reply. Raising new issues, even conditionally, also increases the likelihood the Supreme Court will grant review by providing additional grounds for review. If a respondent is content with the result in the Court of Appeals, it may be better to focus on why the petition fails to meet the criteria of RAP 13.4(b), rather than raising additional issues that might pique the Court's interest.

Ian Cairns is an honors graduate of the University of Washington School of Law and became a principal of Smith Goodfriend in 2018. Ian focuses on civil appellate practice in state and federal courts and has experience in a wide variety of subject areas. Ian is also a co-author of the Appellate Practice chapter of the King County Bar Association Young Lawyer Division's Washington Lawyers Practice Manual and former Chair of the King County Bar Association's Appellate Section.

1 The motions to strike and related pleadings cited in this article are posted on the Supreme Court's website, https://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.petitions.

CERTIFICAT OF COMPLIANCE

Undersigned hereby certifies, pursuant to RAP 10.4, this MOTION OPPOSING MOTION TO STRIKE PETTITIONERS REPLY TO RESPONDANTS ANSWER TO THE PETITIION FOR REVIEW pursuant to RAP 18.7(c)(17) has a word count of approximately 2916.

JULY 21, 2025

Respectfully submitted

Sara Hutchinson PRO SE

CERTIFICATE OF SERVICE

I Declare under penalty of perjury, according to the laws of Washington state, that on the date written, I emailed a true and correct copy of this Citation and Declaration of delivery to the following person at the following email address.

Meredith A Long

meredith@longview-law.com

Dated this 21ST Day of JULY 2025

Sara Hutchinson – PRO SE

SARA HUTCHINSON - FILING PRO SE

July 21, 2025 - 1:48 AM

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