

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

ROBERT W. COONEY,

Respondent,

and

HILLARY A. BROOKS,

Appellant.

No. 104365-1

PETITIONER'S
RESPONSE TO MOTION
TO STRIKE

Cooney's unsupported and reflexive Motion to Strike Petitioner's Statement of Additional Authorities ("Statement") should be denied. RAP 17.3(a)(3)-(4) provides that motions must include both reference to the record relevant to the motion and supporting argument. Cooney's Motion includes neither. Brooks' Statement complies with RAP 10.8 and, because Cooney raised new issues for review in his Answer, Brooks is entitled to respond to those issues. RAP 13.4(d).

The purpose of additional statements is to bring relevant authorities to a court's attention. A court's sound consideration

of any legal issue depends on the court apprising itself of all relevant authorities. Were it otherwise, a court could inadvertently fail to appreciate an issue's gravity—or could decide the issue inconsistently with other principles of law. Indeed, to avoid this possibility, this Court has long recognized that courts may consider an authority even if the parties do not brief it. *See, e.g., Ellis v. City of Seattle*, 142 Wn.2d 450, 460 n.3, 13 P.3d 1065 (2000) (“[A]ny court is entitled to consult the law in its review of an issue, whether or not a party has cited that law.”). The appellate courts have a duty to correctly ascertain the law. *See, e.g., State v. Quismundo*, 164 Wn.2d 499, 505-06, 192 P.3d 342 (2008) (noting the “court’s obligation to follow the law remains the same regardless of the arguments raised by the parties before it”). RAP 10.8 should be a device that assists, not hinders, the Court in fulfilling that responsibility.

The text of RAP 10.8 demonstrates the propriety of the Statement. The rule requires that the “additional authorities must relate to a point made in the briefing or at oral argument.” RAP

10.8(a). The rule does not recite, as Cooney reads it, that a party can only respond to issues raised in her own briefing. Nor does the rule state or imply that additional authorities cannot relate a point raised by the other party in briefing, or address a new issue raised by the other party. And rather than prohibiting argument, the rule requires argument explaining the reasons for the additional authorities. RAP 10.8(b).

Brooks' Statement abided by the rule's text. Brooks' Statement provided pinpoint citations of the "point[s]" in the briefing that the additional authorities related to, as RAP 10.8(b) requires. Statement 1-2. Cooney's newly raised straw man issue that there is no constitutional right to appeal to avoid responding to the actual issue Brooks raised—that where the state provides an "appeal of right", that appeal must be conducted in accord with due process—is misleading, suggesting that Brooks was not entitled to an "appeal of right" and that as a result appellate courts are not subject to constitutional due process when ruling. Answer 10-16; PFR 7-19. Citation of *Evitts v. Lucey*, 105 S.Ct. 830, 83

L.Ed.2d 821 (1985) is necessary for the Court's proper consideration of the Petition's first issue, given Cooney's insertion of a misleading new issue.

Additionally, citation of RAP 2.5(a)(2) and *Roberson v. Perez*, 156 Wn.2d 33, 123 P.3d 844 (2005), will assist the Court in considering Cooney's new issue that Brooks did not raise the contract's non-waiver provision below in violation of RAP 2.5(a), justifying the appellate court's action in ignoring the issue. Answer 15. While raising that new issue, Cooney neglected to inform the Court that his raising of the purported RAP 2.5(a) violation was itself a RAP 2.5(a) violation. Answer 15 (including no citation to the record where he previously raised the issue). Nor did Cooney explain that RAP 2.5(a)(2) excepts failure to state a claim from the rule's application. *Compare* Answer 15; PFR 13-14; Statement 2. Meaning that Brooks could have raised the issue for the first time on appeal and would not have violated RAP 2.5(a) had she done so.

Cooney asks the Court to condone his raising of new issues that he asserts are dispositive of issues before the Court, while simultaneously seeking to prevent Brooks from responding to those new issues, either through a RAP 10.8 or RAP 13.4(d) response. Motion, at 1-2. And he does so based only on his unsupported representation that he “did not ask this Court to review issues not raised in the petition in his answer”. Motion to Strike 2. A proper response, had the issues not been new, would be to show where they were previously made of record. Cooney’s inability to cite authority or record citations as required by RAP 17.3(a)(3) is telling. Motion, at 2.

Cooney also argues that Brooks is attempting to “circumvent RAP 13.4(d)” when the rule specifically provides that a party can reply to issues not raised in the petition for review. Motion to Strike 1. Brooks’ Statement identified the new issues as such. Statement 1 (“a position Brooks did not advance”), 2 (“neither Cooney nor the appellate court raised as an issue that she did not”). Both issues were made in support of

Cooney's argument that "[r]eview of Division One's unpublished opinion is not warranted under RAP 13.4(b)(3)".

Answer 10. If Cooney were not asking the Court to review his newly raised issues, he would not have advanced them in his Answer as supporting denial of review.

And, in any event, Brooks complied with RAP 13.4(d). The Statement is limited to the new issues raised in the Answer, was served on all other parties, was filed within 15 days of the Answer, and was filed in the Supreme Court. RAP 13.4(d) does not recite that a response to the raising of new issues cannot be through RAP 10.8. Nor does the text of RAP 10.8 prohibit its use to cite authorities relevant to new issues. Had Brooks cited RAP 13.4(d) instead, this Motion is proof positive that Cooney would have found fault with that approach, too.

Because Brooks cited authorities necessary for a proper evaluation of the actual issues before the Court and complied with both rules, this Court should deny Cooney's unsupported Motion that fails to comply with RAP 17.3(a)(3)-(4).

This document contains 992 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 21st day of August 2025.

Respectfully submitted,

/s/ Hillary A. Brooks

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DECLARATION OF SERVICE

I electronically served a true and accurate copy of the *Petitioner's Response to Motion to Strike* in Supreme Court Cause No. 104365-1 to the following:

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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: August 21, 2025 at Bend, Oregon.

/s/ Hillary Brooks
Hillary Brooks

HILLARY ANNE BROOKS

August 21, 2025 - 10:45 AM

Transmittal Information

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