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**SUPREME COURT OF THE STATE OF WASHINGTON**

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YEVGENY SEMENENKO and NATALYA SEMENENKO,

Petitioners,

v.

STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

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**DSHS ANSWER TO PETITIONERS' MOTION TO REJECT  
ANSWER TO PETITION FOR DISCRETIONARY REVIEW**

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**ORIGINAL**

**TABLE OF CONTENTS**

I. IDENTITY OF RESPONDENT .....1

II. RELIEF REQUESTED .....1

III. PROCEDURAL FACTS RELEVANT TO ANSWER.....1

IV. ARGUMENT .....2

    A. There Is No Rational or Compelling Basis for Rejecting  
        the Answer to the Petition for Review.....2

    B. Rejection of the Department’s Answer Does Not Make  
        Sense When Other Briefs May Be Filed Until December  
        3, 2014.....3

    C. Rearguing a Disagreement About Underlying Law Does  
        Not Support Rejection of the DSHS Answer.....3

V. CONCLUSION .....4

**TABLE OF AUTHORITIES**

**Rules**

RAP 1.2(a) ..... 2

RAP 13.4(d) ..... 2

## **I. IDENTITY OF RESPONDENT**

The State of Washington, Department of Social and Health Services, Respondent, answers the Petitioners' Motion to Reject Answer.

## **II. RELIEF REQUESTED**

The Court should deny the Petitioners' Motion to Reject the Answer for filing. Petitioners quibble with the arguments made by the Answer, but their rejecting theory is rooted solely in the timing of the Answer. Petitioners show no prejudice from the timing of the Answer. The Court, however, would be prejudiced if forced to make a decision on whether to grant discretionary review without hearing from the Respondent.

## **III. PROCEDURAL FACTS RELEVANT TO ANSWER**

Division I of the Washington State Court of Appeals issued a decision terminating review of the Semenkos' claims by unpublished decision on August 11, 2014. See Appendix to PFR at 1-14. The Semenkos timely petitioned for discretionary review in this Court with briefing filed and served on October 3, 2014. The Department's Answer to Petition for Discretionary Review was filed on November 4, 2014, one day later than RAP 13.4(d) requests. The timing resulted from the Department's counsel misreading the calendar with regard to the 30<sup>th</sup> day during October, which has 31 days. On November 5, 2014, Petitioners

filed their Motion to Reject Answer citing the late filing and a disagreement with the Department's arguments.

#### IV. ARGUMENT

##### A. **There Is No Rational or Compelling Basis for Rejecting the Answer to the Petition for Review**

Petitioners concede in their motion that rejection of the Department's brief is discretionary. That is because the rule clearly states that a response to a PFR "should be filed within 30 days after the service on the party of the petition. RAP 13.4(d) (Emphasis added). Obviously, the Department's filing should have occurred on the 30<sup>th</sup> day, not the 31<sup>st</sup> day. But rejection of the answer is grossly inappropriate and would serve only to harm the interests of the Court in becoming fairly informed regarding whether the pending petition for discretionary review presents issues that warrant this Court's review.

The Court undoubtedly has broad authority with regard to items filed in a case, but the Semenkos offer no authority or precedent that supports rejecting the Answer. Nor do the civil or appellate rules counsel for such a result. Under RAP 1.2(a), the rules of appellate procedure

*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 . . . .*

(Emphasis added.) The Department's Answer is necessary to justice. It ensures that the Court will not mistakenly accept review of issues based on the one-sided explanations provided by a Petition, without rebuttal.

Nor is there merit to the Semenikos' rhetoric comparing the one day late Answer in an ongoing proceeding to the underlying case, where they ignored an administrative remedy for more than ten months past the stated deadline. The Motion to Reject the Answer is no place to smuggle in additional arguments on underlying claims.

**B. Rejection of the Department's Answer Does Not Make Sense When Other Briefs May Be Filed Until December 3, 2014**

The Court rules allow amicus briefing to be filed within 60 days of the PFR, meaning that briefing may not be completed until December 3, 2014. Again, there is no reason to reject the Department's briefing when other briefing may still be filed in the case.

**C. Rearguing a Disagreement About Underlying Law Does Not Support Rejection of the DSHS Answer**

The Semenikos suggest the Department's Answer misstates their legal position. Motion to Reject Answer at 3-4. The Semenikos misread the Department's answer. It is obvious from the Department's Answer (and from the Petition) that the Semenikos contend that the 90 day time period in statute limits DSHS authority. The Answer merely points out that there is statutory authority to issue findings on reports of

abuse. That point does not obscure the existence of the Semenkos' argument to the contrary. Petitioners remain free to argue their legal theories and have done so, and their desire to reply to the Answer is no basis for rejection of the Answer.

#### V. CONCLUSION

The Respondent respectfully requests that the Court deny the Semenkos' Motion to Reject Answer.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of November, 2014.

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