

NO. 48662-4-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

PAUL TRUMMEL

Appellant,

v.

STEPHEN MITCHELL and COUNCIL
HOUSE, INC.

Respondents.

MOTION TO STRIKE
SEATTLE WEEKLY'S
STATEMENT OF
ADDITIONAL
AUTHORITIES

1. IDENTITY OF MOVING PARTY

The moving parties are the Respondents Stephen Mitchell and Council House, Inc.

2. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 17.1(a) and RAP 10.8, Respondents respectfully request that the Court strike the statement of additional authorities submitted by amicus curiae Seattle Weekly.

3. FACTS RELEVANT TO MOTION

On November 14, 2003, this Court heard oral argument in this

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matter. Prior to the hearing, the Court was provided with 218 pages of briefing from the parties in addition to three separate amicus briefs submitted in general support of the Appellant's position.

Despite the fact that the Court authorized the filing of separate 50-page briefs on the civil and contempt issues in this case, the "length of briefs" has been a hotly contested issue. In March 2003, Appellant filed a brief on the civil issues in excess of sixty pages. However, upon the objection of Respondents, the Appellant's request for overlenght brief was denied. The Appellant's revised 50-page brief was filed on April 15, 2003, seven months before the hearing.

When Respondents filed their initial 50-page brief on the civil issues, Appellant submitted an objection, alleging that the brief was not properly double spaced. Respondents denied that the spacing was improper but did revise the brief upon the Clerk's direction. The Respondents revised 50-page opening brief on the civil issues was filed on August 15, 2003, three full months before the hearing.

Thirty days prior to the hearing, Seattle Weekly moved the Court for permission to file an amicus brief and did file a brief with extensive argument and legal analysis in support of Appellant's position. The Court heard oral argument from the parties and from Seattle Weekly on November 14, 2003.

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On December 1, 2003, Seattle Weekly filed a statement of additional authorities pursuant to RAP 10.8 containing fifteen additional citations in support of Appellant's argument. Respondents request that the statement of additional authorities be struck.

4. GROUND FOR RELIEF AND ARGUMENT

Respondents acknowledge that RAP 10.8 allows for the filing of "additional authorities" prior to a final ruling by the Court. However, the purpose of RAP 10.8 is to allow parties and amicus curiae to submit additional new authorities that are decided or published *subsequent to* the briefing of the parties and prior oral argument. The rule is not meant to allow parties (who have had more than adequate time to fully research issues and argue them in their briefs) to supplement their briefs with additional authorities that were available when the briefs were originally filed.

Permitting the filing of additional authorities that are available to the parties at the time of briefing essentially allows parties to submit briefs beyond the page limits specified in RAP 10.4(b). That, of course, is not what RAP 10.8 is for. It is for the situation that occurs when a relevant precedent is decided after the parties have already submitted their briefing. For example, the relevant case of *Hough v. Stockbridge*, was decided by the Washington Supreme Court on September 11, 2003, almost one month

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after Respondents completed their briefing. RAP 10.8 properly allowed Respondents to notify the Court that they were relying upon that precedent.

Seattle Weekly has a wholly different purpose. It is simply adding legal research that it should have done before it filed its amicus brief. Seattle Weekly had sufficient time to prepare its brief. The Respondents' briefs were filed three months before the hearing, providing Seattle Weekly with sixty days to conduct its legal research. To the extent that the additional authorities are even relevant, the Court should not consider authority that Seattle Weekly could have found prior to the filing of its brief and which Respondents now have no ability to respond to.

This is especially true considering the attention that the parties have paid to the "length of brief" issue in this case. Surely, Appellant would have objected if Respondents had submitted their fifty page brief along with a long list of "additional authorities." This would be an obvious attempt to extend the page limits of the brief. Similarly, Appellant should not be given the benefit of fifteen new cases that it would not have had room to fit within the page limits of its briefing on the civil issues.

Respondents respectfully request that the Court strike Seattle Weekly's inappropriate and untimely statement of additional authorities.

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Respondents further request that the Court award Respondents their costs and other fees they incurred in bringing this motion.

RESPECTFULLY SUBMITTED this 5 day of December, 2003.

SHORT CRESSMAN & BURGESS PLLC

By 

Richard A. Du Bey, WSBA No. 8109

Thane D. Somerville, WSBA No. 31468

Attorneys for Respondents

CERTIFICATE OF SERVICE


The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

The Undersigned certifies that on the date written below, a true and correct copy of the this document was served on each of the parties below as follows:

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DATED December 5, at Seattle, Washington.


Elaine M. Schnee

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