

IN THE COURT OF APPEALS OF THE STATE  
OF WASHINGTON DIVISION II

KITSAP COUNTY, a political subdivision of  
the State of Washington,

Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB, a  
not-for-profit corporation registered in the  
State of Washington, and JOHN DOES and  
JANE DOES I-XX, inclusive,

Appellant,

and

IN THE MATTER OF NUISANCE AND  
UNPERMITTED CONDITIONS LOCATED  
AT: One 72-acre parcel identified by Kitsap  
County Tax Parcel ID No. 362501-4-002-  
1006 with street address 4900 Seabeck  
Highway NW, Bremerton Washington.

Case No.: 43076-2-II

**APPELLANT'S MOTION TO  
STRIKE JUNE 9, 2014  
RESPONSE BRIEF OF AMICUS  
CURIAE CK SAFE & QUIET,  
LLC**

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## **I. IDENTITY OF MOVING PARTY**

Appellant Kitsap Rifle and Revolver Club (the “Club”).

## **II. RELIEF REQUESTED**

Pursuant to RAP 10.7, the Club requests that the Court strike the *Brief of Amicus Curiae CK Safe & Quiet in Response to Amicus Curiae Brief of Kitsap Alliance For Property Owners* (“Response”), which amicus curiae CK Safe & Quiet, LLC (“CKSQ”) filed on June 9, 2014. The Response should be stricken because it is not authorized by the Rules of Appellate Procedure or any order of this Court. With oral argument only a few days away, it would be far too late for CKSQ to seek leave to file the Response, even if leave could be given. Respondent Kitsap County (the “County”) also filed an answer to Kitsap Alliance For Property Owners’ (“KAPO”) amicus brief, and presumably intended its answer to adequately address the points raised by KAPO. There is no compelling reason to allow the Response, which should be stricken.

## **III. GROUNDS FOR RELIEF SOUGHT**

### **A. An Amicus May Not File an Answer to the Brief of Another Amicus.**

CKSQ’s Response should be stricken because the Rules of Appellate Procedure do not allow an amicus to file an answer in response to a brief filed by another amicus. RAP 10.1 identifies the briefs that may

be filed on appeal. RAP 10.1(e) provides, “If an amicus curiae brief is filed, a brief in answer to the brief of amicus curiae may be filed by a party.” RAP 10.1(e) (emphasis added). An amicus is not a “party,” and there is no rule authorizing an amicus to file an answer to the brief of another amicus.

In legal parlance, an amicus curiae is not a “party” to an appeal. *See In re Harvard Pilgrim Health Care, Inc.*, 434 Mass. 51, 57, 746 N.E.2d 513, 518 (2001) (“[the] longstanding rule is that an amicus curiae is not a party to the case”); *United States v. Gotti*, 755 F.Supp. 1157, 1158 (E.D.N.Y. 1991) (“an *amicus* is not a party to the litigation”); *United States v. State of Mich.*, 940 F.2d 143, 165 (6th Cir. 1991) (“Amicus, however, has never been recognized, elevated to, or accorded the full litigating status of a named party or a real party in interest.”). The Rules of Appellate Procedure reflect this by using the terms “party” and “amicus” distinctly. For example, RAP 10.2(h) provides, “[a]t the time a party files a brief, the party should serve one copy on every other party and on any amicus curiae.” RAP 10.2(h).

Similarly, RAP 10.1 distinguishes between an “amicus curiae brief” and a “brief in answer to the brief of amicus curiae.” RAP 10.1(e). Under RAP 10.6, “[t]he appellate court may, on motion, grant permission to file an amicus curiae brief.” RAP 10.6(a) (emphasis added). The court

may also “ask for an amicus brief.” RAP 10.6(c) (emphasis added). Counsel for the Club is unaware of any published Washington appellate court opinion interpreting these rules to allow an amicus to answer the brief of another amicus.

There is no Rule of Appellate Procedure authorizing the Response. Therefore, it should be stricken.

**B. Alternatively, the Response Should Be Stricken Because CKSQ Filed It Without Leave of the Court.**

Even if RAP 10.1 and 10.6 could somehow be interpreted to allow an amicus to file an answer to the brief of another amicus, the Response would need to be stricken because CKSQ filed it without leave of the Court.

Rule 10.6 provides rules for amicus briefs. It states:

“(a) When Allowed by Motion. The appellate court may, on motion, grant permission to file an amicus curiae brief only if all parties consent or if the filing of the brief would assist the appellate court. An amicus curiae brief may be filed only by an attorney authorized to practice law in this state, or by a member in good standing of the Bar of another state in association with an attorney authorized to practice law in this state.

“(b) Motion. A motion to file an amicus curiae brief must include a statement of (1) applicants interest and the person or group applicant represents, (2) applicants familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties, (3) specific issues to which the amicus curiae brief will be directed, and (4) applicants reason for believing that

additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion.

“(c) On Request of the Appellate Court. The appellate court may ask for an amicus brief at any stage of review, and establish appropriate timelines for the filing of the amicus brief and answer thereto.

“(d) Objection to Motion. An objection to a motion to file an amicus curiae brief must be received by the appellate court and counsel of record for the parties and the applicant not later than 5 business days after receipt of the motion.

“(e) Disposition of Motions. The Supreme Court and each division of the Court of Appeals shall establish by general order the manner of disposition of a motion to file an amicus curiae brief, including whether such disposition is reviewable or subject to reconsideration by the particular court.”

RAP 10.6 (emphasis added). Even if this rule could be interpreted to authorize an amicus to answer another amicus, it would only allow that if a court were to expressly grant leave or request such a brief. This rule “seeks to minimize the abuses sometimes associated with amicus curiae briefs.” K. Tegland, Wash. Prac., Methods of Practice § 12:53 (4th ed.).

Here, CKSQ filed the Response without filing a motion for leave and without a court order authorizing the Response. When the Court granted KAPO’s motion for leave to file its amicus brief, it issued an order stating: “Any response to this brief is due in this court no later than ten (10) days from the date of this order.” *Order Granting Motion for Leave to File Brief of Amicus Curiae* (May 29, 2014). This order does not authorize CKSQ to file an answer to KAPO’s amicus brief.

A brief filed in violation of RAP 10.6 should be stricken. *See United States v. Hoffman*, 154 Wn.2d 730, 735, 116 P.3d 999, 1001 (2005) (granting motion to strike amicus brief that failed to comply with RAP 10.3 and 10.6); *see also, White v. Conestoga Title Ins. Co.*, 982 A.2d 997, 1001 (Pa. Super. Ct. 2009) *aff'd in part, rev'd in part on other grounds*, 617 Pa. 498, 53 A.3d 720 (2012) (granting motion to strike supplemental brief filed by amicus without leave where state rules of appellate procedure did not authorize the brief).

CKSQ filed the Response without leave or request of the Court in violation of RAP 10.6. Therefore, even if RAP 10.6 could be read to authorize a brief such as the Response, it would need to be stricken.

**C. Any Request by CKSQ for Leave to File the Response Would Be Untimely.**

Even if RAP 10.6 could be read to allow CKSQ to move for leave to file the Response, it would be too late for the motion to be granted. Under RAP 10.6, an amicus must request leave “not later than 30 days before oral argument or consideration on the merits.” RAP 10.6(f). Oral argument is scheduled for June 26, 2014. This may explain why CKSQ did not file a motion with its Response. The motion would have been untimely because CKSQ filed the Response on June 9, 2014. Now, less

than ten days before oral argument, it is far too late for CKSQ to move for leave to file an answer to the amicus brief filed by KAPO.

**D. There Is No Compelling Reason to Allow CKSQ's Unauthorized Response.**

Appellate courts routinely deny leave to file an amicus brief where the parties have adequately briefed an issue.<sup>1</sup> As a party, the County was entitled to respond to KAPO's amicus brief, and did so. *See Kitsap County's Answer to Amicus Br. of Kitsap Alliance of Property Owners* (June 9, 2014). The County presumably intended its answer to adequately address KAPO's amicus brief. Therefore, there is no compelling reason why CKSQ needed to file the Response, and there is certainly no compelling reason to excuse CKSQ's violations of RAP 10.1 and 10.6.

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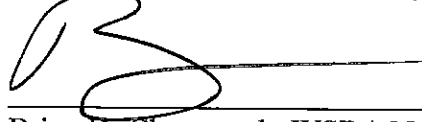
<sup>1</sup> See e.g., *Ysleta Del Sur Pueblo v. El Paso Cnty. Water Improvement Dist. No. 1*, 222 F.3d 208 (5th Cir. 2000) (denying motion to file amicus brief where issue had been "adequately briefed by [the] parties"); *United States v. Ahmed*, 788 F.Supp. 196, 204 (S.D.N.Y. 1992) *aff'd*, 980 F.2d 161 (2d Cir. 1992) (denying motion to file amicus brief where issue had been adequately briefed and would "not aid" the court's evaluation).

#### IV. CONCLUSION

For the reasons stated above, Appellant Kitsap Rifle & Revolver Club respectfully requests that the Court strike the *Brief of Amicus Curiae CK Safe & Quiet in Response to Amicus Curiae Brief of Kitsap Alliance For Property Owners*, filed by amicus curie CK Safe & Quiet, LLC on June 9, 2014.

DATED: June 18, 2014.

CHENOWETH LAW GROUP, P.C.



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**CERTIFICATE OF FILING AND SERVICE**

I, Shandra Rissmann, declare under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned have been a resident of the State of Oregon, over the age of eighteen years, not a party to or interested in this cause of action, and competent to be a witness herein.

On the date stated below, *APPELLANT'S MOTION TO STRIKE JUNE 9, 2014 RESPONSE BRIEF OF AMICUS CURIAE CK SAFE & QUIET, LLC* was electronically filed with Division II of the Washington Court of Appeals and copies served upon the following individuals by e-mail and U.S. Mail, postage prepaid, at Portland, Oregon:

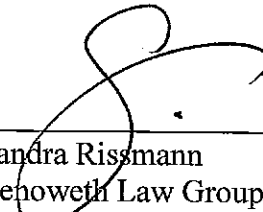
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DATED: June 18, 2014.

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