
Susan Chen et al

Petitioner

vs.

Kate Halamay *et al*

Respondents

Supreme Court No. 983682

Motion for Permission for licensed
lawyer, Mr. James Daugherty to
file briefs on behalf of minor, J.L.

Pursuant to Commissioner Michael E. Johnson's Oral Directive on October 1, 2020, Petitioners submit this Motion requesting this Court to permit licensed lawyer, Mr. James Daugherty to submit briefings for the Petition for Review on behalf of the disabled minor, J.L.

As a competent and qualified Washington licensed lawyer, Mr. Daugherty (who was privately-retained by J.L.'s parents) intends to submit supplemental briefing on behalf of J.L. for the pending Petition for Review. *See, Ex. A. Daugherty Decl.* However, Mr. Daugherty's appearance was denied by the Court of Appeals and he is now seeking this Court's review on that denial (#98503-1).

A. Through a series of *en banc* decisions, this Court held non-attorney could not act on others' behalf.

Following Division One's order denying Mr. Daugherty's appearance, J.L. was left with only one option, being represented by his pro se parents, which was inadequate and illegal. RCW 2.48.180 (3). Granting a *pro se* litigator the right and duty to act on others' behalf violates established law, in particular, this Court's very recent holding in *State v. Yishmael*, 195 Wn.2d 155, 456 P.3d 1172 (2020) (non-attorney's practice of law is a strict liability offense). *See also, Hagan*

& Van Kamp, P.S. v. Kassler Escrow, Inc., 96 Wn.2d 443, 635 P.2d 730 (1981) (striking down RCW 19.62 that authorized nonlawyers to practice of law); *Washington State Bar Association v. Washington Association of Realtors*, 41 Wn. 2d 697, 251 P.2d 619 (1952) (court's concerns on legal work by "unskilled or unqualified" lay persons); *Wash. State Bar Assn. v. Great W. Union Fed. Sav. & Loan Assn* ("The 'pro se' are quite limited and apply only if the layperson is acting solely on *his own behalf*") (emphasis in original). If Division One's decision stands, Washington non-attorney parents will be motivated to represent their minor children without hiring an attorney.

B. J.L. should be afforded an opportunity to access the Courts.

A person's right to access justice is not only substantial, it is fundamental. *Tennessee v. Lane*, 541 U.S. 509, 124 S. Ct. 1978, 158 L.Ed 2d 820 (2004). This right is materially affected when a person's disability prevents him from having equal and meaningful access. Each court in Washington must protect persons with disabilities from discrimination in judicial proceedings. See, 42 U.S.C. § 12131-12134 (Title II of the ADA); RCW 49.60 (Washington Law Against Discrimination). To accomplish this objective, and thereby preserve the integrity of the judicial system, the Washington Supreme Court promulgated GR 33 to fulfill this mandate:

Access to justice for all persons is a fundamental right. It is the policy of the courts of [Washington] state to assure that persons with disabilities have equal and meaningful access to the judicial system.

In the 2015 Washington State Civil Legal Needs Study Update, Justice Charles Wiggins stated,

Ultimately, it challenges us to work all the harder to secure the investments needed to deliver on the promise embedded in our constitutional history and our nation's creed – that liberty and justice be made available "to all".

In *State v. Santos*, 104 Wn.2d 142, 146, 702 P.2d 1179 (1985), this Court held that “constitutional considerations require that children be parties to actions”. The *Santos* Court announces:

A child must not be a party in name only. It is fundamental that parties whose interests are at stake must have an opportunity to be heard “at a meaningful time and in a meaningful manner.” *Olympic Forest Prods., Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422, 511 P.2d 1002 (1973), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

Santos, 104 Wn.2d at 147.

Minor J.L. cannot appear *pro se*, nor could he appear through his *pro se* parents. In recognizing his constitutional rights to legal representation, state trial court appointed counsel for J.L. on a limited representation in the Motion to Vacate pursuant to GR 33. J.L. was also appointed pro bono counsel by the federal district court and the 9th Circuit. When issue of pro se parents cannot represent minors was brought to its attention, the 9th Circuit also appointed pro boon counsel to directly represent J.L.’s brother.

CONCLUSION

In light of the foregoing, Petitioners respectfully request this Court permit Mr. James Daugherty file supplemental briefs on behalf of disabled minor, J.L. in support of Petition for Review.

DATED this 2nd day of October, 2020.

Respectfully submitted,

/s/ Susan Chen

Susan Chen, Petitioner

PO BOX 134, Redmond, WA 98073

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd of October, 2020, I caused to be served via the following means, a true and accurate copy of the foregoing upon the following person(s):

Jeremiah Newhall 701 Fifth Avenue, Suite 4750 Seattle, Washington 98104 Tel: (206) 749-0094 <u>jeremiah@favros.com</u>	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Email
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Dated this 2nd day of October, 2020

/s/ Susan Chen
Susan Chen, *Pro se* Petitioner
PO BOX 134, Redmond, WA 98073

EXHIBIT A

SUPREME COURT OF THE STATE OF WASHINGTON

Susan Chen, et al)	Supreme Court No. 983682
)	
Petitioners)	
)	Certificate of Attorney
)	in Support of Motion
)	for James Daugherty to file
Kate Halamay and Allegro)	a Responsive Brief on
Pedriatics)	behalf of the minor child
)	J.L.
)	
Respondents)	
)	

James Daugherty, attorney, hereby makes the following Certificate of Attorney in support of the Motion of Petitioner Susan Chen for James Daugherty to file a responsive brief on behalf of the minor child J.L. to the Petition for Discretionary Review.

1. James Daugherty is an Attorney in the State of Washington, WSBA #33332.
2. I am requesting approval from the Court to file a Responsive brief on behalf of the child J.L. to the Petition for Discretionary Relief.
3. This Certificate is filed in support of the Motion of the Petitioner Susan Chen for permission for James Daugherty to file a responsive brief to the Petition for Discretionary Relief.
4. In addition, James Daugherty, Susan Chen and Nash Lian have filed a separate Petition for Discretionary Relief to review the Order of the Court of Appeals Division One denying James Daugherty Motion to Appear on behalf of J.L. The Washington Supreme Court case number for that Petition is 98503-1.

5. Oral argument for that Petition (98503-1). was held on October 1, 2020 before Commissioner Michael Johnston.
6. Commissioner Johnston stated he was considering transferring consideration of that Petition for Discretionary Review (98503-1) to the Division of the Washington Supreme Court considering the parent's Petition for Discretionary Review.
7. James Daugherty would need additional time in order to prepare a Responsive Brief on behalf of J.L. James Daugherty is requesting 4 weeks from the time that James Daugherty is authorized to file a responsive brief on behalf of J.L.

Dated this 2rd day of October, 2020.

Respectfully Submitted
Jame Daugherty (WSBA 33332)

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the Washington Supreme Court under Case No. 98503-1, and a true copy will be with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence or e-mail (when agreed upon by the parties) address as listed on ACORDS/WSBA website directory:

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DATED this 2nd day of October, 2020.

s/ James Daugherty
Respectfully submitted,
James Daugherty

SUSAN CHEN - FILING PRO SE

October 02, 2020 - 4:47 PM

Transmittal Information

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Motion 1 - Supplemental Brief
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- carrie@favros.com
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