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SUPREME COURT OF THE STATE OF WASHINGTON

VIRGINIA A. BURNETT,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS,

Respondent.

**DEPARTMENT OF LABOR & INDUSTRIES
ANSWER**

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 ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTERSTATEMENT OF THE ISSUES	1
III.	STATEMENT OF THE CASE.....	2
	A. Virginia Burnett Chose Not To Pursue This Lawsuit.....	2
	B. As Assignee, L&I Decided To Dismiss the Appeal	4
	C. The Court of Appeals Granted L&I’s Motion To Dismiss Because as the Assigned Party L&I May Move To Dismiss Its Appeal	6
IV.	REASONS WHY REVIEW SHOULD BE DENIED	7
	A. No Review Is Necessary of a Decision That Recognizes the Plain Meaning of a Statute Giving Broad Discretion to L&I in an Assigned Case	8
	1. RCW 51.24.050 Gives L&I Authority To Prosecute or Compromise a Claim in Its Discretion Not Contingent on the Worker’s Wishes.....	8
	2. Interpreting RCW 51.24.050 To Allow for the Department’s Discretion in Assignment Presents No Due Process Issue	12
	B. The Decision Below Created No Due Process Issue or Error Regarding Standing	14
	1. Determining That Burnett Cannot Challenge the Decision To Dismiss the Appeal Fully Comports With Due Process	14
	2. Because the Attorney General’s Office Did Not Represent Burnett, She Lacks Standing To Claim Disqualification	17

3.	Burnett Lacked Standing To Contest Whether Costs Should Have Been Paid To Another Person.....	19
C.	No Reason Exists To Examine the Underlying Issue	19
V.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. AT&T Wireless Servs.</i> , 109 Wn. App. 80, 33 P.3d 1110 (2001).....	19
<i>Dep't of Labor & Indus. v. Wendt</i> , 47 Wn. App. 427, 735 P.2d 1334 (1987), <i>overruled on different grounds State v. WWJ Corp.</i> , 138 Wn.2d 595, 980 P.2d 1257 (1999).....	15
<i>Duskin v. Carlson</i> , 136 Wn.2d 550, 965 P.2d 611 (1998).....	14
<i>Estate of Jordan v. Hartford Accident & Indem. Co.</i> , 120 Wn.2d 490, 844 P.2d 403 (1993).....	15
<i>In re Grove</i> , 127 Wn.2d 221, 897 P.3d 1252 (1995).....	12, 13
<i>Info. Sys. Assocs., Inc. v. Phuture World, Inc.</i> , 106 So.3d 982, (Fla. Dist. Ct. App. 2013)	18
<i>Judd v. Amer. Tel. & Tel. Co.</i> , 152 Wn.2d 195, 95 P.3d 337 (2004).....	11
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).....	12, 17
<i>Puget Sound Nat'l Bank v. Dep't of Rev.</i> , 123 Wn.2d 284, 868 P.2d 127 (1994).....	15
<i>Reiter v. Wallgren</i> , 28 Wn.2d 872, 184 P.2d 571 (1947).....	18
<i>Steinmetz v. Hall-Conway-Jackson, Inc.</i> , 49 Wn. App. 223, 741 P.2d 1054 (1987).....	15, 16
<i>Wash. Med. Disciplinary Bd. v. Johnson</i> , 99 Wn.2d 466, 663 P.3d 457 (1983).....	19

Statutes

RCW 2.44.040	19
RCW 43.10.030	17
RCW 43.10.040	17
RCW 51.04.010	2, 5, 20
RCW 51.04.062	9, 10, 11
RCW 51.04.063	10
RCW 51.24	2
RCW 51.24.030	2, 5, 15, 20
RCW 51.24.040	13
RCW 51.24.050	passim
RCW 51.24.050(1).....	2, 4, 8
RCW 51.24.070	passim
RCW 51.24.070(4).....	6
Title 51	5, 15

Rules

RAP 13.4.....	1, 7
RAP 17.4(f).....	17
RAP 18.2.....	15

Other Authorities

7 Am.Jur.2d <i>Attorneys at Law</i> § 188 (2007)	18
--	----

I. INTRODUCTION

The Legislature gave the Department of Labor & Industries (L&I) broad authority to “prosecute or compromise . . . in its discretion” assigned third party cases. RCW 51.24.050. Virginia Burnett assigned her potential workplace tort action to L&I. Under the authority granted in RCW 51.24.050, L&I had the authority to decide to dismiss its appeal. Burnett does not claim that the case was not assigned to L&I, instead she believes she has authority to veto L&I’s decisions regarding the appeal. But under the plain language of RCW 51.24.050 and well-established principles regarding assignments, Burnett no longer has the power to control the litigation.

Burnett does not cite to any RAP 13.4 factor to justify review. Because she had notice that the case would be assigned to L&I and had the opportunity to be heard as to whether she agreed to the assignment, the facts of her case do not present a significant constitutional issue. In addition, application of the plain language of RCW 51.24.050 to the facts of Burnett’s case does not present an issue of substantial public interest. This Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES

Review should not be granted, but if it were the following issues would be presented:

1. RCW 51.24.050(1) provides that when an injured worker chooses not to proceed against a third party, the case is assigned to L&I, and the agency has authority to “prosecute or compromise the action in its discretion.” Since Burnett’s case was assigned to L&I, did the Court of Appeals properly dismiss the case as requested by L&I?
2. Only a party who was represented by an attorney may contest whether another party’s representation constitutes a conflict. Did Burnett lack standing to contest the Attorney General’s Office’s representation of both the Department of Corrections and L&I when the Attorney General’s Office has not represented Burnett?
3. Does the application of a statutory assignment provision comport with due process when Burnett did not object to the assignment?

III. STATEMENT OF THE CASE

A. Virginia Burnett Chose Not To Pursue This Lawsuit

Virginia Burnett worked for Walla Walla Community College, teaching inmates at the Washington State Penitentiary. CP 1. Burnett sustained an industrial injury on March 9, 2009, and received industrial insurance benefits from L&I. CP 2. When she was injured, she was “working at her job as teacher at the Washington State Penitentiary” run by the Department of Corrections. CP 2.

The industrial insurance system generally is a worker’s sole remedy for an injury. An exception is when a “third party” causes the workplace injury. RCW 51.24. A worker may bring a third party cause of action when the injury is caused by a person that does not work for the worker’s employer. RCW 51.04.010; RCW 51.24.030. When an L&I

staff person initially evaluated this case, the staff person thought that Burnett might have a third party cause of action. *See* Ex 1.¹

As required by RCW 51.24.070, L&I sent a certified letter to Burnett informing her of the potential third party claim. Consistent with that statute, the letter demanded that Burnett respond to L&I with her election within 60 days or the case would be assigned to L&I:

By this notice, demand is hereby made for you to exercise your right of election pursuant to RCW 51.24.070. Unless an election is made within 60 days from the receipt of this demand, this action will be deemed assigned to the department. The department may then prosecute or compromise the action in its discretion.

Ex 1. Burnett did not respond to the letter. Hatzialexiou Decl. at 2; Ex 2.

L&I sent a letter to Burnett that informed her that since she did not respond to the demand for election, her potential “third party action is now deemed assigned to the department to prosecute or compromise in its discretion.” Ex 2. Burnett again did not respond. Hatzialexiou Decl. at 2. L&I retained a special assistant attorney general, M. Scott Wolfram of Minnick – Hayner to represent L&I. Hatzialexiou Decl. at 2. It then substituted Tom Scribner of Minnick – Hayner as its special assistant attorney general. *Id.*

¹ All exhibits are attached to the first Debra Hatzialexiou declaration.

The retainer agreement specified that the cause of action was “assigned to L&I.” Ex 3 at 1. It also specified that “[f]or the claims/actions pursued under this agreement, L&I is the client and is afforded such rights as are attendant on an attorney – client relationship.” Ex 3 at 3.

On March 1, 2012, Wolfram filed a complaint for L&I in the name of Burnett as allowed by RCW 51.24.050. CP 1-4. The complaint specified that the action had been assigned to L&I:

Plaintiff’s cause of action arising out of said injury has been assigned to the Department of Labor & Industries, which is bringing this third party action pursuant to RCW 51.24.050(1).

CP 2. The Department of Corrections answered the complaint, asserting Industrial Insurance Act immunity as an affirmative defense. CP 8. Claiming that the exclusive remedy under the Act bars the claim, the Department of Corrections moved for summary judgment. CP 11-26. The superior court granted the motion. CP 86-87. On behalf of L&I, Scribner filed a notice of appeal. CP 88-91; Hatzialexiou Decl. at 3.

B. As Assignee, L&I Decided To Dismiss the Appeal

In December 2014, the Court of Appeals sent a letter requesting answers to five questions about the case. Upon review of the case after receiving the letter, L&I decided that the position it had taken previously was incorrect. Hatzialexiou Decl. at 3. This is because L&I concluded that

a state employee's employer is the State of Washington. Hatzialexiou Decl. at 3. Further, L&I determined that under RCW 51.24.030, a state employee from one state agency cannot sue an employee from another state agency for conduct arising out of a work place injury. Hatzialexiou Decl. at 3. The State of Washington had not waived Title 51 immunity. Hatzialexiou Decl. at 3.

On January 5, 2015, Anastasia Sandstrom, Assistant Attorney General, filed a notice of appearance on behalf of L&I. On that same day, L&I, by and through AAG Sandstrom, moved to dismiss.²

On January 8, 2015, Scribner sent an "Objection to Dismissal of Appeal." In it, Scribner argued that Burnett "should be allowed to continue with her claim for general damages and other special damages" Objection at 3. On January 26, 2015, Scribner withdrew and Janelle Carman appeared for Burnett. L&I then filed supplemental briefing. Burnett responded, with an answer and a motion to disqualify the Attorney General's Office. Burnett has not denied that the case was assigned to L&I. She also

² Although a party need not give a reason for seeking to dismiss its appeal, L&I moved to dismiss its appeal because it asserted an invalid claim. The case is premised on the notion that a state employee for Walla Walla Community College has a different employer than a state employee from the Department of Corrections, and therefore, there may be a lawsuit under RCW 51.24.030. But employees of state agencies have one employer, the State of Washington. An injured worker may only sue someone that is not a co-worker and is not an employer. RCW 51.24.030; RCW 51.04.010. The lawsuit mistakenly sought to sue the State of Washington, her employer. RCW 51.04.010 and RCW 51.24.030 prohibit this. Because of the important interests L&I has in enforcing and administering the provisions of Title 51, it cannot pursue a claim that is prohibited by the Industrial Insurance Act.

has not asked L&I to exercise its discretion and allow re-election under RCW 51.24.070(4). Hatzialexiou Decl. at 5.

C. The Court of Appeals Granted L&I's Motion To Dismiss Because as the Assigned Party L&I May Move To Dismiss Its Appeal

The Court of Appeals considered four questions. First, the Court analyzed whether the Attorney General's Office is disqualified by reason of a conflict of interest from representing L&I because the office also represents Burnett or the opposing party, Department of Corrections. Slip op. at 7. The Court of Appeals held that the Attorney General's Office has not represented Burnett, and so there is no disqualification from representing L&I. *Id.* at 7-8. Additionally, the Court of Appeals held that Burnett lacked standing to challenge the Attorney General's Office's representation of Department of Corrections and L&I. *Id.* at 10. This is because only a party who has been represented by the conflicted attorney has standing to seek disqualification of counsel. *Id.* Because the Attorney General's Office has not represented Burnett she does not have standing to move for disqualification. *Id.*

The second issue was whether L&I must demonstrate payment of Scribner's bill before it may substitute other counsel. Slip op. at 11.³ The Court of Appeals held that Burnett lacked standing to raise this argument

³ L&I has paid Scribner's costs. 2nd Hatzialexiou Decl. at 1.

because only the attorney had the right to assert payment. Because she has no rights at stake, she lacked standing. Slip op. at 12.

The third issue was whether L&I held the prerogative to seek dismissal of the appeal without approval of Burnett. Slip op. at 12. The Court of Appeals held that L&I as assignee had the right to control the litigation under the statutes and could move to dismiss without Burnett's approval. Slip op. at 16-17. Had Burnett wanted control of the litigation, she could have elected to proceed with the suit under RCW 51.24.070. Slip op. at 13.

The final issue was whether to grant the motion to dismiss. The Court granted the motion and declined to reach the merits. Slip op. at 19.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Burnett does not cite any reason under RAP 13.4 to justify review. None exists. She does not demonstrate any error on the Court of Appeals' part in applying well-established assignment law principles and the plain language of the statute. Nor does a mere claim of error with references to "public policy" satisfy the RAP 13.4 standards. She claims throughout her petition that there were due process violations, but she fails to cite to any authority that a statutory assignment provision would create a due process violation given that she had notice of the assignment and the opportunity

to contest it. She presents no significant constitutional issue meriting review.

A. No Review Is Necessary of a Decision That Recognizes the Plain Meaning of a Statute Giving Broad Discretion to L&I in an Assigned Case

1. RCW 51.24.050 Gives L&I Authority To Prosecute or Compromise a Claim in Its Discretion Not Contingent on the Worker's Wishes

Burnett does not dispute that she assigned any third party claim that she had to L&I. With this assignment, L&I gained broad discretion in deciding how to proceed with the litigation:

An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which *may prosecute or compromise the action in its discretion* in the name of the injured worker, beneficiary or legal representative.

RCW 51.24.050(1) (emphasis added). Under this statute, the Department *may* act to prosecute the claim in its discretion and then it may compromise the claim in its discretion.

Attendant to the authority to prosecute or compromise the claim in its discretion, L&I has the authority to decide when to no longer pursue the case. Burnett disputes whether L&I can decide to dismiss the appeal when the worker does not wish such an action. The relevant language delineating L&I's power is that it "may prosecute or compromise the action in its discretion" RCW 51.24.050.

Burnett appears to believe that compromise does not include the right to dismiss an appeal if the worker does not want L&I to dismiss it. *See* Pet. at 10-11. It appears to be her position that L&I cannot dismiss a lawsuit when there is “an impact upon the named, injured worker.” Pet. at 10. She argues that the Court must imply a duty of good faith. Pet. at 11. She does not cite any authority for the proposition that there is an implied duty of good faith in a statutory assignment provision, instead citing to CR 11 for the proposition that there are “well-established principles requiring good faith when representing a party’s interest.” Pet. at 12. This represents the flaw of her reasoning.

L&I did not represent Burnett. As the assigned party, L&I had discretion in how it would prosecute or compromise the claim. RCW 51.24.050. Burnett could have elected to proceed with the lawsuit on her own. But when she chose to assign the case to L&I, she forfeited the right to exercise any control over the case. The law provides that L&I may “in its discretion” prosecute or compromise the case. RCW 51.24.050. The statute does not support Burnett’s request to make L&I’s decisions contingent on her wishes.

Since RCW 51.24.050 fully supports L&I’s position, Burnett contends that the Industrial Insurance Act requires a duty of good faith under RCW 51.04.062. This statute applies in a different context:

structured settlements. A structured settlement is a method where an industrial insurance claim is resolved by a monetary payout to the worker either by L&I or a self-insured employer. RCW 51.04.063. RCW 51.04.062 provides that there should be a structured settlement process and that legislation states: “The legislature finds that Washington state’s workers’ compensation system should be designed to focus on achieving the best outcomes for injured workers.” RCW 51.04.062. It follows by saying that “To these ends,” the Legislature recognizes the need for a structured settlement process.⁴ See RCW 51.04.062. The legislative finding was done in support of structured settlement legislation, where the Legislature seeks to optimize outcomes in resolving workers’ compensation claims. RCW 51.04.062, .063. However, this is not a general statement of enforceable duties that arise under the Industrial Insurance Act, including any duties owed by the Department in prosecuting an assigned third party action.

Significantly, the policies underlying the structured settlement and third party processes are different. In structured settlement cases, the

⁴ RCW 51.04.062 provides “The legislature finds that Washington state’s workers’ compensation system should be designed to focus on achieving the best outcomes for injured workers. Further, the legislature recognizes that controlling pension costs is key to a financially sound workers’ compensation system for employers and workers. To these ends, the legislature recognizes that certain workers would benefit from an option that allows them to initiate claim resolution structured settlements in order to pursue work or retirement goals independent of the system, provided that sufficient protections for injured workers are included.”

Department is adjudicating individual workers' compensation claims for the best result. In third party actions, L&I acts to replenish the state funds. RCW 51.24.050. RCW 51.24.050 does not require L&I to look for the best outcome for the worker. Indeed, because L&I may compromise a claim in order to satisfy its statutory lien, the worker may not have as good of an outcome as the worker would have had if he or she had chosen to proceed independently.

Additionally, RCW 51.04.062 is a legislative finding that starts with the language "The legislature finds." As such it does not give rise to any enforceable right. When the Legislature employs the words "the legislature finds," "it sets forth policy statements that do not give rise to enforceable rights and duties." *Judd v. Amer. Tel. & Tel. Co.*, 152 Wn.2d 195, 203, 95 P.3d 337 (2004). The Legislature was making a general—and unenforceable—policy statement applicable to structured settlements, which has a different underlying policy than the third party statute. The general statement in RCW 51.04.062 does not override the specific direction in RCW 51.24.050 that L&I "may prosecute or compromise the action in its discretion."

2. Interpreting RCW 51.24.050 To Allow for the Department's Discretion in Assignment Presents No Due Process Issue

The Court of Appeals' decision presents no due process issue regarding its interpretation of "compromise," contrary to Burnett's claims. *See* Pet. at 11; *see also* Pet at 9. Her reasoning is that "the court's construction presumes that an injured worker has the initial ability to prosecute an action against a third-party tortfeasor, when in fact, an assignment may occur for a variety of reasons, including the inability to afford counsel—a plain access to justice issue that can result in the deprivation of important due process rights if the court's construction of the term 'compromise' is upheld." Pet. at 11. There is no constitutional right to cost-free civil litigation. *See In re Grove*, 127 Wn.2d 221, 240, 897 P.3d 1252 (1995). So, assigning a case to L&I, which necessarily means that L&I will act "in its discretion" does not require a worker to give up any due process rights.

The application of the assignment statute presents no due process violation. As Burnett acknowledges, due process includes the right to notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). As required by RCW 51.24.070, L&I sent a letter to Burnett informing her of the potential third party claim. Consistent with that statute, the letter demanded that

Burnett respond to L&I with her election within 60 days or the case would be assigned to L&I. Ex 1. Burnett did not respond to the letter. Hatzialexiou Decl. at 2; Ex 2. L&I sent another letter to Burnett that informed her that since she did not respond to the demand for election, her potential “third party action is now deemed assigned to the department to prosecute or compromise in its discretion.” Ex. 2. Burnett again did not respond. Hatzialexiou Decl. at 2.

Burnett suggests that she had no option other than to execute the assignment. Pet. at 11.⁵ But a worker does not need to assign a claim to receive workers’ compensation benefits.⁶ RCW 51.24.040. The worker may choose to proceed on his or her own. RCW 51.24.070.

Here, notice was provided to Burnett that L&I could prosecute or compromise the claim in its discretion. She had the opportunity to be heard as to whether she agreed to this and she did not contest the

⁵ She argues that there may be an inability to afford counsel that motivates a worker to assign the claim to L&I. Pet. at 11. Given that most personal injury cases are pursued on a contingency basis, this is likely to occur only in a small percentage of cases. Regardless of the assigning party’s motivation to assign the case, the Legislature has given L&I broad discretion in whether and how to pursue an assigned case. Moreover, there is no constitutional right to cost-free civil litigation. *See Grove*, 127 Wn.2d at 240.

⁶ It should be noted that the dissent incorrectly states that Burnett “had little or no choice in assigning her claim against DOC to the Department of Labor and Industries (DLI) in exchange for workers compensation benefits.” Dissent at 1. A worker is not required to assign a claim to L&I to receive workers’ compensation benefits. It is his or her choice as to whether to assign the claim under RCW 51.24.050 and .070, but in any event, the worker receives benefits regardless of what the status is of any third party claim. RCW 51.24.040 (worker “shall be entitled to the full compensation and benefits provided by this title regardless of any election or recovery made under this chapter.”).

assignment. She cannot now claim that she did not have notice and opportunity to be heard on this matter.⁷ L&I satisfied its due process responsibilities when it sent notice about the assignment to Burnett. *See Duskin v. Carlson*, 136 Wn.2d 550, 558, 965 P.2d 611 (1998) (service by certified mail of demand regarding election satisfied due process).

B. The Decision Below Created No Due Process Issue or Error Regarding Standing

1. Determining That Burnett Cannot Challenge the Decision To Dismiss the Appeal Fully Comports With Due Process

The Court of Appeals decision on standing does not implicate due process. Asserting that the Court of Appeals decided she lacked standing to challenge the motion to dismiss, Burnett argues that this deprived her of due process. Pet. at 14. But the Court of Appeals did not decide the issue of whether she could have the appeal heard on the merits on standing principles (it was only her motion to disqualify counsel that rested on this). In deciding whether she could block the motion to dismiss, the Court of Appeals relied on the discretion afforded to L&I in RCW 51.24.050 and on basic principles of assignment law. Slip op. at 12-17.

⁷ She also has never asked L&I if she could re-elect to take the case back under RCW 51.24.070. L&I indicated in its briefing below that if her request to continue the litigation was a request for reelection, L&I would have granted it, but she never actually made a request for reelection. Hatzialexiou Decl. at 5. As her relief, she appears to believe the Court could order L&I to accept a reelection, ignoring that such reelection is done in L&I's discretion. RCW 51.24.070; Pet. at 18.

The case law is well-settled that an assignment necessarily means a loss of control over the litigation. An assignee “steps into the shoes” of the assignor and has all the rights of the assignor. *Puget Sound Nat’l Bank v. Dep’t of Rev.*, 123 Wn.2d 284, 292, 868 P.2d 127 (1994); *Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 Wn.2d 490, 495, 844 P.2d 403 (1993). “[T]he assignee acquires whatever rights the assignor possessed prior to the assignment.” *Puget Sound Nat’l Bank*, 123 Wn.2d at 292-93; see *Steinmetz v. Hall-Conway-Jackson, Inc.*, 49 Wn. App. 223, 227, 741 P.2d 1054 (1987).

Here, Burnett had the right to sue under RCW 51.24.030, setting aside the question of whether Title 51 immunity applied. One of the rights in a lawsuit and in an appeal from a trial court decision is the right to decide when to no longer pursue the cause of action. Under RAP 18.2, an appellant may move to dismiss an appeal. This is a right under the appeal, which L&I acquired as the assignee. Note that L&I is the real party in interest in an assigned case, even though the case is in the name of the worker. See RCW 51.24.050, .070; *Dep’t of Labor & Indus. v. Wendt*, 47 Wn. App. 427, 431, 735 P.2d 1334 (1987) (“As assignee of the claim, the Department was the real party in interest”), *overruled on different grounds State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999).

Since the case was assigned to L&I, Burnett can no longer change the course of the case. After a case is assigned, the assignor may no longer make binding decisions in the case. *Steinmetz*, 49 Wn. App. at 227; *see also* RCW 51.24.050 (the Department may prosecute or compromise the case in its discretion). The *Steinmetz* Court held that the assignee of an insured's malpractice claim against an insurance broker was entitled to sue for negligence in spite of the fact that the assignor later entered into a covenant with the insurer not to sue the insurer. *Id.* at 228. The court emphasized that the assignee receives all of the assignor's rights as of the time of assignment—subsequent actions by the assignor do not affect those rights. *Id.* at 227-28.

Burnett's subsequent action in trying to maintain this appeal do not affect the rights given to L&I at the time of assignment, namely to make decisions in its discretion about the appeal. RCW 51.24.050. It is correct that she may not challenge dismissal because all decisions on courses of action in the case were assigned to L&I.

As noted, the Court of Appeals decision about whether she could challenge the assignment did not rest on standing. Slip op. at 12-17. But even if Burnett were correct that the Court of Appeals decided the case on standing principles, there is no due process issue. She received notice that the case would be assigned and opportunity to contest that. This is all that

due process requires. *See Mathews*, 424 U.S. at 348-49. She provides no authority for the proposition that a decision based on the premise that an assignor cannot veto litigation decisions—be it a decision on standing grounds, or not—presents a due process issue. The Court should reject her unsupported arguments.

2. Because the Attorney General’s Office Did Not Represent Burnett, She Lacks Standing To Claim Disqualification

The Court of Appeals also correctly decided that the Attorney General’s Office never represented Burnett and accordingly Burnett had no standing to claim a conflict regarding the Attorney General’s Office’s representation in this matter. Burnett claims it was a factual error to say that the Attorney General’s Office has not represented Burnett. Pet. at 14. To that extent, she believes the appellate court engaged in improper fact-finding and that she was denied due process because of the resulting ruling. Pet at 14-15. First, regarding her fact-finding argument, the Court of Appeals may determine a fact if necessary to decide a procedural motion brought before it. RAP 17.4(f). Second, the Attorney General’s Office has never represented Burnett. RCW 43.10.030 and .040 authorize the Attorney General’s Office to represent state officials and employees acting in their official capacity, not individuals regarding a private tort action.

To the extent Burnett claims that the special assistant attorneys general represented her and so therefore the Attorney General's Office represented her, the record reveals that L&I contracted with the special assistant attorneys general and L&I was the client, not Burnett. Ex 3 at 3.

The complaint states that the matter was assigned to L&I, thus showing that it was not Burnett that appeared in this matter or was represented by the special assistant attorney general. CP 2. Because she was not represented by the Attorney General's Office, the Court of Appeals correctly concluded that she did not have standing to object to the Attorney General's Office representing both Department of Corrections and L&I. Burnett does not dispute the Court of Appeals' holding that only a party who has been represented by the conflicted attorney has standing to seek disqualification. *See Info. Sys. Assocs., Inc. v. Phuture World, Inc.*, 106 So.3d 982, 984-85 (Fla. Dist. Ct. App. 2013); 7 Am.Jur.2d *Attorneys at Law* § 188 (2007); Slip op. at 10.

The Court of Appeals correctly held that it would find any conflict permissible under Washington state law. Slip op. at 10. This is because there is no conflict presented by the Attorney General's Office representing both L&I and Department of Corrections. The Attorney General's Office may represent multiple state agencies with conflicting interests. *Reiter v. Wallgren*, 28 Wn.2d 872, 879-80, 184 P.2d 571 (1947);

Wash. Med. Disciplinary Bd. v. Johnson, 99 Wn.2d 466, 480, 663 P.3d 457 (1983). The Court of Appeals did not err in rejecting Burnett's conflict argument, and no basis exists to grant review regarding it.

3. Burnett Lacked Standing To Contest Whether Costs Should Have Been Paid To Another Person

Finally, Burnett is wrong in claiming that she was denied due process because the Court of Appeals held she lacked standing to raise the costs issue in RCW 2.44.040. Pet. at 16. This concerns whether L&I had to pay Scribner potential costs before the Attorney General's Office substituted AAG Sandstrom as counsel. She does not explain why a holding that only the affected attorney may seek costs under RCW 2.44.040 as the only party with an interest in the funds violates due process. It is well-established that only a party with an interest has standing to challenge an action. *Aguirre v. AT&T Wireless Servs.*, 109 Wn. App. 80, 85, 33 P.3d 1110 (2001).

C. No Reason Exists To Examine the Underlying Issue

Burnett asks the Court to review the underlying issue as to whether one state employee from one state agency can sue another state agency. She argues that the issue is not moot because it could affect other state employees. Pet. at 17. She provides no authority for the proposition that

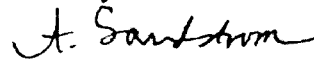
the Court should consider a matter where the appealing party has dismissed the action. The question is moot because of the dismissal.⁸

V. CONCLUSION

Burnett does not deny that the cause of action is assigned to L&I under RCW 51.24.050. Under this statute, L&I has wide discretion in how it proceeds in the case and part of that discretion is the authority to decide when to not pursue a case. Applying this statute to allow L&I to dismiss its appeal does not present an issue for review as it follows the plain language of the statute and assignment principles. No due process issue is raised when Burnett received notice about the assignment and declined to participate further. The Legislature gave wide discretion to L&I under the assignment statute and this public policy decision should not be second guessed. This Court should deny review.

RESPECTFULLY SUBMITTED the 8th day of July, 2015.

ROBERT W. FERGUSON
Attorney General



Anastasia Sandstrom
Senior Counsel
WSBA No. 24163

⁸ In any event, Burnett's claim on the merits fails. A worker may not sue his or her employer. RCW 51.24.030; RCW 51.04.010. The Department of Corrections and Walla Walla Community College are two state agencies that are subdivisions of the State of Washington. There are not two different employers, there is only one State of Washington. L&I will rely on the briefing of the Department of Corrections in this regard.

NO. 91737-0

SUPREME COURT OF THE STATE OF WASHINGTON

VIRGINIA BURNETT,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF CORRECTIONS,

Respondents.

CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the DEPARTMENT'S ANSWER and this CERTIFICATE OF SERVICE in the below described manner:

Via Email filing to:

Ronald R. Carpenter
Supreme Court Clerk
Supreme Court
Supreme@courts.wa.gov

Via First Class United States Mail, Postage Prepaid to:

Janelle Carman
John Julian
Carman Law Office, Inc.
6 East Alder St., Suite 418
Walla Walla, WA 99362-1938

//

//

Jason D. Brown
Washington State Office of the Attorney General
1116 W. Riverside Avenue
Spokane, WA 99201

RESPECTFULLY SUBMITTED this 8th day of July, 2015.

A handwritten signature in black ink, reading "Shana Pacarro-Muller". The signature is written in a cursive style with a horizontal line underneath.

SHANA PACARRO-MULLER
Legal Assistant
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7740

OFFICE RECEPTIONIST, CLERK

To: Pacarro-Muller, Shana (ATG)
Cc: Sandstrom, Anastasia (ATG)
Subject: RE: 91737-0; Virginia E. Burnett v. State of Washington, Dep't of Corrections

Rec'd 7/8/2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Pacarro-Muller, Shana (ATG) [mailto:ShanaP@ATG.WA.GOV]
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RE: Virginia E. Burnett v. State of Washington, Dep't of Corrections
Case Number: 91737-0

Dear Mr. Carpenter:

Attached for filing is the Department's Answer and Certificate of Service in the above referenced matter.

Thank you,

Shana Pacarro-Muller

Legal Assistant to
Anastasia Sandstrom, Senior Counsel
WSBA No. 24163
Office Id No. 91018
AnaS@atg.wa.gov

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