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NO. 66140-0-I

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**COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON**

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SCOTT E. STAFNE,

Appellant,

v.

SEATTLE SCHOOL DISTRICT NO. 1, et al.,

Defendants/Respondents.

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**ANSWERING BRIEF OF RESPONDENTS**

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GREGORY JACKSON, WSBA #17541  
Freimund Jackson Tardif & Benedict Garratt, PLLC  
711 Capitol Way South, Suite 602  
Olympia, WA 98501  
(360) 534-9960  
Attorneys for Respondents

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COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON

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## **I. INTRODUCTION**

Scott E. Stafne, as “Advocate” and “Officer of the Court”, brings this appeal of the September 28, 2010 decision by the Superior Court dismissing the administrative appeal of Petitioners Anderson, Essad, Guzsek, and Malone. Scott E. Stafne, however, is not an “aggrieved party” under RAP 3.1 with standing to challenge the decisions of the Superior Court because Scott E. Stafne is not a party to the Superior Court action, his personal rights and pecuniary interests are unaffected by the Superior Court decision, and the decisions of the Superior Court are not challenged by Petitioners Anderson, Essad, Guzsek, and Malone. Consequently, the Court should dismiss this appeal.

Alternatively, Scott E. Stafne has not properly assigned error to the Superior Court decision that Petitioners Anderson, Essad, Guzsek, and Malone were not “aggrieved persons” under RCW 28A.645.020, nor has he properly assigned error to the Superior Court decision that Petitioners’ appeal was moot because the NTN contract was executed prior to their appeal. The failure of Scott E. Stafne to assign error to these discussions renders this appeal moot.

## **II. STATEMENT OF ISSUES ON APPEAL**

1. Does Scott E. Stafne, as attorney for Petitioners Anderson, Essad, Guzsek, and Malone in the Superior Court, have standing under

RAP 3.1 to seek review of the decisions of the Superior Court when Scott E. Stafne is not a party to the Superior Court action, his individual, personal and pecuniary interests are unaffected by the decisions of the Superior Court, and the legal rights challenged belong to Petitioners individually and not to attorney Scott E. Stafne?

2. Does the failure of Scott E. Stafne to properly assign error to the decision of the Superior Court that Petitioners Anderson, Essad, Guzsek, and Malone lacked standing under RCW 28A.645.020 to prosecute their administrative appeals in Superior Court preclude review and render this appeal moot?
3. Does the failure of Scott E. Stafne to properly assign error to the decision of the Superior Court that Petitioners Anderson, Essad, Guzsek, and Malone's appeal in the Superior Court was moot precludes appellate review?

### **III. STATEMENT OF THE CASE**

#### **A. The Decision And Contract With NTN**

After months of planning, public hearings, and deliberations, Respondent Board awarded a contract to New Technology Network (NTN) to implement a Science, Technology, Engineering, and Mathematics (STEM) program at Cleveland High School on February 3,

2010. CP 342-345. Respondent Superintendent Dr. Maria Goodloe-Johnson executed the NTN contract on May 20, 2010. CP 676.

Petitioners Anderson, Essad, Guzsek, and Malone filed a notice of appeal in King County Superior Court on March 5, 2010 challenging Respondent District's award of the NTN contract to implement the STEM program at Cleveland High School pursuant to RCW 28A.645.010. CP 587-626. Petitioners Anderson, Essad, Guzsek, and Malone did not ask the Attorney General to investigate the awarding of the NTN contract nor did they seek a preliminary injunction to enjoin Respondent District from executing the NTN contract. CP 654.

RCW 28A.645.020 provides in pertinent part that the administrative record must be filed within twenty days after an appeal is filed. The Order Setting Case Schedule (Administrative Appeal) issued by the King County Superior Court set the deadline for filing the administrative record as sixty days after the notice of appeal. CP 623. The Case Scheduling Order also required Petitioners to file their opening brief no later than August 16, 2010. *Id.*

On March 15, 2010, Respondent District filed a motion to extend the time for it to file the administrative record from the twenty days provided by RCW 28A.645.020 to conform to the sixty days provided by the Case Scheduling Order issued by the Court. CP 1-5; 6-11. The

Superior Court granted Respondent District's motion on March 29, 2010 over Petitioners' objection. CP 627.

Petitioners appealed the Superior Court order that extended the deadline to file the administrative record via a motion for direct review by the Supreme Court of Washington. CP 165-169. The Supreme Court denied review on June 7, 2010. *Id.*

Respondent District filed the administrative record on April 22, 2010. CP 342-345. The notice summarized the contents of the 16,584 pages of the administrative record and contains a certification from Susan Enfield that the 16,584 pages "constitute the 'transcript of the evidence and the papers and exhibits relating to the decision[s]' the Seattle School Board made for the NTN contract and Cleveland STEM." *Id.* (quoting from RCW 28A.645.020).

**B. Motion To Dismiss And Hearing**

On September 10, 2010, Respondent District filed a motion to dismiss Petitioners Anderson, Essad, Guzsek, and Malone's claims based upon 1) the absence of standing to prosecute the appeal; 2) the failure to request that the Washington Attorney General file a taxpayer suit as a condition precedent; 3) that the appeal was moot because Petitioners failed to enjoin the signing of the NTN contract; and 4) Petitioners abandoned their appeal by failing to file a timely responsive. CP 642-652; 686-692.

The Superior Court granted Respondent District's motion on three of these four grounds.

17           So I am finding, number one, on the  
18 abandonment; and, number two, I don't believe they have  
19 standing, but I actually think that issue was moot in  
20 light of my finding that you've abandoned your claims.

21           And I also think that they -- that they would  
22 have had to or sought to enjoin the contract. I don't  
23 know what would have happened if they'd sought to  
24 enjoin and couldn't. I'm not making a finding of that,  
25 because they didn't take that step.

RP 15.

The following exchange occurred between the Superior Court and Petitioners' attorney Scott E. Stafne regarding the court's finding that Petitioners abandoned their claims:

6 And also the other issue that was not even  
7 addressed in your brief at all was your failure to file  
8 a brief, an appellate brief, and this case is scheduled  
9 to go to trial on October 4th, I believe. And you did  
10 not follow the case schedule. There's no appellate  
11 brief. I don't know how you were anticipating that you  
12 were going to present your case.

13           MR. STAFNE: Your Honor, I -- I do not  
14 intend to present evidence in this case for the reasons  
15 that we've discussed before and that I know you  
16 disagree with, but --

17           THE COURT: Well, then I would consider  
18 you have abandoned your claim. If you have chosen --  
19 because you disagree with the decision of this court  
20 and the appellate court, if you have chosen to not  
21 proceed with your lawsuit because of that, then I say  
22 that you have abandoned your case.

RP 6.

The final order entered by the court dismissing Petitioners Anderson, Essad, Guzsek, and Malone's claims states in pertinent part:

The first reason that this motion is granted is because the Appellants attorney stated on the record at the hearing that he did not file his brief because he did not intend to pursue his claim because he felt he was precluded from doing so by prior court order of this and the appellate court. This court considers the appellants to have thus abandoned claims.

CP 582. The Superior Court did not sanction attorney Scott E. Stafne nor make a finding that his conduct in failing to file an appellate brief was unethical. CP 582; RP 2-18.

**C. Appeal To Court Of Appeals**

On October 10, 2010, attorney Scott E. Stafne filed a Notice of Appeal of the Superior Court's dismissal on his own behalf as "Attorney/Office [sic] of the Court." CP 583-584.

**IV. ARGUMENT**

**A. Scott E. Stafne Is Not An Aggrieved Person Under RAP 3.1 And He Does Not Have Standing To Pursue This Appeal**

RAP 3.1 provides that "Only an aggrieved party may seek review by the appellate court." One without a legal interest in the subject matter and who is not injuriously affected by a judgment, order, or decree, is not entitled to present an appeal. *In re Gallinger's Estate*, 31 Wn.2d 823, 826, 199 P.2d 575 (1948). The general rule in Washington is that no one can

appeal from a judgment, order, or decree or seek review in a higher court unless they were parties to the proceedings below. *Sheets v. Benevolent & Protective Orders of Keglers*, 34 Wn.2d 851, 856, 210 P.2d 690 (1949). A party is only an aggrieved person when they have been named as a party to the action below, actively participated in the action below, and their property or pecuniary interest is adversely affected by the lower court judgment. *Temple v. Feeney*, 7 Wn. App. 345, 499 P.2d 1272 (1972).

Here, there is no dispute that Scott E. Stafne was not a “party” to the Superior Court administrative appeal below nor personally or legally aggrieved by the September 28, 2010 Order of dismissal. The named parties in the Superior Court are Petitioners Anderson, Essad, Guzsek, and Malone. CP 587. Scott E. Stafne did not have any personal or pecuniary interest in the action nor were any of his individual rights affected by the September 28, 2010 Order of dismissal. The following cases are illustrative.

An administrator of an estate who lacked a personal interest in a probate action other than as administrator lacked standing to appeal. *In re Estate of Wood*, 88 Wn. App. 973, 976, 947 P.2d 782 (1997). Plaintiffs were not “aggrieved” persons who could appeal sanctions imposed upon their attorney for his conduct in their personal injury action. *Breda v. B.P.O. Elks Lake City*, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004).

Likewise, an attorney is not an “aggrieved person” who can appeal a sanction that is imposed only on his or her client.

A lawyer who is sanctioned by a court becomes a party to an action and thus may appeal as an aggrieved party. However, although an attorney may appeal sanctions in his own behalf, he may not appeal decisions that solely affect his clients because his rights are not affected by the rulings and he is not an aggrieved party under RAP 3.1.

*Breda v. B.P.O. Elks Lake City*, 120 Wn. App. at 353, citing *Johnson v. Jones*, 91 Wn. App. 127, 955 P.2d 826 (1998).

In *Johnson v. Jones*, 91 Wn. App. 127, the trial court sanctioned defendant’s attorney, Jones, for CR 11 and CR 37 violations. Jones appealed the sanctions against him and also appealed substantive rulings made by the trial court against his client. *Johnson v. Jones*, 91 Wn. App. at 132. Jones did not have standing under RAP 3.1 to appeal the decisions of the trial court that affected only his client.

Finally, we need not consider Jones's other assigned errors: (1) the court's denial of Mermis's motion to strike the trial date, (2) its dismissal of Mermis's third party claims, and (3) its exclusion of one of Mermis's witness's testimony as a discovery sanction. “Only an aggrieved party may seek review by the appellate court.” An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected. Because Jones was not a party in the action below and his rights were not affected by these rulings, he cannot seek review of these assigned errors.

*Johnson v. Jones*, 91 Wn. App. at 132.

Here, Scott E. Stafne was not a party to the administrative appeal of Petitioners Anderson, Essad, Guzsek, and Malone in the Superior Court; his rights are not affected by the September 28, 2010 Order dismissing that action; and he cannot seek review of the dismissal pursuant to RAP 3.1 because he is not an aggrieved person under the rule. Scott E. Stafne's four assignments of error and ten issues pertaining to the assignments of error implicate rulings by the Superior Court that affected the substantive rights of Petitioners Anderson, Essad, Guzsek, and Malone as parties, and not Scott E. Stafne as attorney. As a result, Scott E. Stafne's appeal as "Attorney" and "Officer of the Court" should be dismissed.

**B. Scott E. Stafne's Failure To Properly Assign Error To The Decision Of The Superior Court That Petitioners Did Not Have Standing And That Their Appeal Below Is Moot Precludes Review In The Court Of Appeals**

Scott E. Stafne did not assign error to or challenge the Superior Court's ruling that Petitioners Anderson, Essad, Guzsek, and Malone did not have standing to appeal pursuant to RCW 28A.645.020. RP 4. Scott E. Stafne also failed to assign error or challenge the ruling of the Superior Court that Petitioners' administrative appeal was moot because of their failure to enjoin Respondent District from signing the NTN contract. RP 5.

A party waives assignments of error that are not properly raised in its briefing on appeal. *Milligan v. Thompson*, 110 Wn. App. 628, 42 P.3d 418 (2002). Appellate courts may properly refuse to consider arguments in the absence of a proper assignment of error. *Saviano v. Westport Amusements, Inc.* 144 Wn. App. 72, 180 P.3d 874 (2008). The failure to assign error properly under RAP 10.3 precludes appellate review. *Emmerson v. Weilep*, 126 Wn. App. 930, 110 P.3d 214 (2005). Here, the failure of Scott E. Stafne to assign error to the Superior Court's determination that Petitioners Anderson, Essad, Guzsek, and Malone were not aggrieved persons under RCW 28A.645.020 renders his appeal moot.

Where, as here, an appellant fails to assign error to the trial court's findings of fact, those findings become verities that may not be challenged on appeal. *Sackett v. Santilli*, 146 Wn.2d. 498, 47 P.3d. 948 (2002); *In re Estate of Palmer*, 145 Wn. App. 249, 187 P.3d 758 (2008); *Boyd v. Kulczyk*, 115 Wn. App. 411, 63 P.3d 156 (2003). The decision by the Superior Court that Petitioners Anderson, Essad, Guzsek, and Malone do not have standing under RCW 28A.645.020 cannot be attacked now, and if Petitioners do not have standing to bring the underlying appeal, all of the issues raised by Scott E. Stafne in this appeal are moot.

“A case is moot if a court can no longer provide effective relief.” *Harbor Lands LP v. City of Blaine*, 146 Wn. App. 589, 592, 191 P.3d

1282 (2008), citing *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). Because the issue of standing in the Superior Court completely disposes of the underlying Petitioners' claims, it also disposes of their appeal here. Thus, even if this Court considered Scott E. Stafne's assignments of error, that would not change the Superior Court's determination that Petitioners do not have standing. The absence of standing below is a complete bar to Petitioners' claims in the Superior Court and here.

Similarly, Scott E. Stafne's failure to challenge the Superior Court's determination that Petitioners Anderson, Essad, Guzsek, and Malone's underlying appeal is moot also precludes review here. The Superior Court determined that Petitioners' failure to obtain a preliminary injunction prohibiting Respondent District from entering into the NTN contract before the contract was signed removed the jurisdiction of the Superior Court to hear their appeal based upon the holding in *BBG Group, LLC v. City of Monroe*, 96 Wn. App. 517, 519-20, 982 P.2d 1176 (1999). CP 649-650. The Superior Court determined that once the NTN contract was signed, the case became moot and there no standing to bring a subsequent action based upon the public policy that the Superior Court would not invalidate a public contract and essentially force the public to pay damages twice. *BBG Group, LLC v. City of Monroe*, 96 Wn. App.

517. *See also Peerless Food Products, Inc. v. State*, 119 Wn.2d 584, 596, 835 P.2d 1012 (1992) (holding disappointed bidders have no cause of action for damages; the only judicial remedy is declaratory or injunctive relief.).

Scott E. Stafne's failure to assign error to this decision precludes him from challenging the Superior Court decision now. Scott E. Stafne has not challenged the lower court's determination that Petitioners' appeal is moot and mootness is a complete bar to his subsequent appeal.

## V. CONCLUSION

Scott E. Stafne has no right to appeal a decision of the Superior Court based upon an alleged injury to the rights of his clients because he has no personal or pecuniary interest affected by the Order of dismissal entered by the Superior Court. Scott E. Stafne was not sanctioned by the Superior Court, he was not a party to the action by the Superior Court, and he has not standing to appeal the decision by the Superior court under RAP 3.1.

Moreover, the determination by the Superior Court that the underlying Petitioners do not have standing and that their underlying appeal is moot is unchallenged by Scott E. Stafne's appeal and may not be challenged now. There can be no claimed procedural or substantive error by the Superior Court when the Petitioners did not have standing to appeal

in the first place and the Superior Court did not have any authority to grant relief because their underlying appeal was moot as a matter of law.

For these and all the above reasons, Respondent District request that the Court of Appeals dismiss this Appeal and affirm the decision of the Superior Court to dismiss Petitioners' administrative appeal.

RESPECTUFLY SUBMITTED this 3 day of March, 2011.

FREIMUND JACKSON TARDIF  
& BENEDICT GARRATT, PLLC



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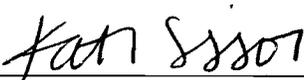
GREGORY JACKSON, WSBA #17541  
711 Capitol Way South, Suite 602  
Olympia, WA 98501  
(360) 534-9960  
Attorneys for Respondents

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the state of Washington, that the following is true and correct:

That on March 3, 2011, I arranged for the service of the foregoing Answering Brief of Respondents to the Court and to the parties to this action as follows:

Office of the Clerk Court of Appeals, Division I One Union Square 600 University Street Seattle, WA 98101-4170	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Rebecca Thorley Lindsay Noel Attorneys for Appellant Stafne Law Firm 239 N. Olympic Avenue Arlington, WA 98223	<input type="checkbox"/> Email <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

  
\_\_\_\_\_  
KATHRINE SISSON

# APPENDICES

RCW 28A.645.010  
Appeals — Notice of — Scope — Time limitation.

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

Appeals by teachers, principals, supervisors, superintendents, or other certificated employees from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provisions of chapters 28A.400 and 28A.405 RCW therefor and in all other cases shall be governed by chapter 28A.645 RCW.

[1990 c 33 § 544; 1971 ex.s. c 282 § 40; 1969 ex.s. c 34 § 17; 1969 ex.s. c 223 § 28A.88.010. Prior: 1961 c 241 § 9; 1909 c 97 p 362 § 1; RRS § 5064. Formerly RCW 28A.88.010, 28.88.010.] [SLC-RO-1.]

Notes:

**Severability -- 1971 ex.s. c 282:** See note following RCW 28A.310.010.

RCW 28A.645.010 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

RCW 28A.645.020  
Transcript filed, certified.

Within twenty days of service of the notice of appeal, the school board, at its expense, or the school official, at such official's expense, shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed. Such filings shall be certified to be correct.

[1971 ex.s. c 282 § 41. Formerly RCW 28A.88.013.]

Notes:

**Severability -- 1971 ex.s. c 282:** See note following RCW 28A.310.010.