

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case No. 316190

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III**

In re the Marriage of

Catherine Allen, et al

Respondent

v.

Jeffery Allen,

Appellant.

BRIEF OF APPELLANT

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I. STATUTES & COURT RULES

RCW 2.28.030 (4)

RCW 26.09.175 (2)(A)

RCW 3.34.110

CODE OF JUDICIAL CONDUCT CANNON 2

RULE 2.6

RULE 2.11(A), 6(A)

CR RULE 60 (B)(1)

RCW 26.09.140

II. INTRODUCTION

This case deals and starts with matters involving ethics violations that occurred by Judge Pro Tem Harry Ries, in the Superior Court of Grant County. These actions created a domino affect thereafter resulting in a conflict of interest and multiple court rule violations in an effort to first seek a Change of Venue, as the parties directly involved, no longer reside in Grant County but have lived for more than 3 years in Snohomish and Pierce Counties.

The original motion for Change of Venue was claimed improper but still the court still proceeded to make a decision on the matter (Note a professional legal service provider attempt several times to serve Ms. Allen and his notes are of record of her avoiding). The decision didn't come for several weeks and caused additional administrative applications towards Mr. Allen's support obligations. The longer the case drew out, the more support was owed for back support if the findings were positive for the State prosecutor sand Ms. Allen. Whereas Mr. Allen is current on his support but the longer the case drew out meant he would be in rears in support with the newly implemented amount.

Secondly, as the case for Modification of Child Support moved forward, additional administrative errors in connection with a Commissioner Chlarson and clerks in Grant County Superior Court caused additional undue hardship and rights violations in defense on Modification of Child Support. Mr. Allen maintains that a conflict arose during a scheduling conflict in which Commissioner Chlarson was involved. Her actions resulted in Mr. Allen having to cancel his Order for Review of Change of Venue hearing schedule in order to not conflict with his parent-time order (Grant County file # 083004724, 2009). It also created a hardship in traveling back to back hearings in a County 200 miles away.

Mr. Allen brought up the issue during the Modification hearing and asked Commissioner Chlarson to step down due to the conflict she created in the scheduling and he also mentioned the conflict of interest in a the Change of Venue hearing. Commissioner Melissa Chlarson stated she had nothing to do with scheduling issue though she was the one who took both Ms. Allen and

Mr. Allen aside to indicate we were in the wrong venue and she would have it rescheduled for proper venue. Ultimately, Commissioner Chlarson gag ordered Mr. Allen with threat of Jail. Mr. Allen, acting as Pro Se, was prevented from further communicating towards his defense, to cross examine, ask questions and was unable to provide any additional facts in the hearing as the case moved forward. This barred Mr. Allen from his constitutional rights for a fair hearing, access to counsel and undue hardship and ultimately judgment against Mr. Allen.

Mr. Allen, also contends that the State DSHS Prosecuting Attorney, Jerry Hamley and Ms. Allen, did not provide the proper documentation for discovery for argument for Change of Venue in the first hearing. Mr. Allen also contends he also did not receive first notice for hearing on the Modification of Child Support, stemming it was mailed but was never received and only finding out of the other hearing upon his own filing for Change of Venue.

This is not about fighting child support modification, but the opportunity for both parties to equally review support matters in a local venue, so as to have witnesses available, access to a local attorney and not have to travel long distance which puts undue hardship financially, emotionally and physically which in itself led to decisions that effected the outcome against Mr. Allen.

Mr. Allen feels that the state prosecutor entered his personal views and was not based on any factual evidence to support his statement to influence Pro Tem Judge Harry Ries to prevent this case from moving outside of Grant County. This case was between Ms. Allen and Mr. Allen who both have agreed to a venue change previously with Ms. Allen agreeing if the change was done in a swift manner. Mr. Allen stated as well that he would quickly move this matter having already received certified documents to start the process. Ms. Allen's previous declarations also indicated both parties willingness to change venues. The state prosecution disregarded the motion and disagreed showing that there would be a long-term delay. The state prosecutor failed to substantiate fact or show cause that there actually would be a long delay or hardship to either party and cause any harm towards support for the children.

Note: Mr. Allen is an active father who exercises every parent- time and additional time as it comes available. He also has the children 50% of the time of the Summer schedule, volunteers at

their school, and has taken the kids to a nearby park for ice cream while they are in the care of daycare after school. This is not a situation in the children are not deprived as they also has Native American heritage in which they receive additional benefits. Mr. Allen also pays for all clothing for both households because Ms. Allen would not provide clothing upon Mr. Allen's parent-time visitations and currently pays 62% of the daycare.

Mr. Allen argues that the State of Washington DCS, in terms of child support enforcement and adjustment, is not limited to county boundaries or processes on which to prosecute or enforce support changes. DCS is state-wide agency and assigning new counsel and new venue shouldn't have be an issue but the state failed to provide that in the hearing and provisions thereafter to the presiding Judge in order to make their argument to prevent venue change.

III. ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The trial court erred in assigning Judge Pro Tem Harry Ries to the motion for Modification of Support and Motion for Change of Venue. Mr. Ries was Mr. Allen's former lawyer to his defense in a previous suit against his ex-wife while going through his divorce.

Issues Pertaining to Assignment of Error No. 1

Upon receiving notice to appear in Grant County Superior Court, a last minute change to substitute the presiding judge for Judge Pro Tem Harry Ries due to another Judge was ill. The Judge Pro Tem was not familiar with the case as stated on record and required time to review. When the hearing concluded and subsequent paperwork filed it was then that Mr. Allen noticed the conflict of interest and informed the court that an ethics violation had occurred. Mr. Hamley was also notified but failed to respond or, as a court officer take measures to clear up the matter. Additional efforts were made to notify the Superior Court Clerk and were summarily dismissed because they stated there is no procedure to follow through.

Assignment of Error No. 2

A review was ordered by Judge Pro Tem Harry Ries towards Change of Venue, which was denied based on a single letter response by a third party, (DSHS) Prosecuting Attorney, Jerry

Hamley. No statute or declaration was ever provided by either Jerry Hamley or Ms. Allen while it was in review. Previous court declaration, noted by the judge, indicated Ms. Allen wanted a change of venue in prior filings and was open to a new venue as long as it was not delayed for a long period.

Issues Pertaining to Assignment of Error No. 2

Because the review was still ongoing for several weeks with Judge Pro tem Harry Ries, and subsequently ordered that the change of venue would be denied, Mr. Allen again asked the court for a new hearing for Motion and Review based on the conflict of interests. The request for Change of Venue was then rescheduled through Superior Court Commissioner, Melissa Chlarson (outside of court venue). No review or communication was scheduled in open court to resolve the matter and a date was set without prior approval of litigants, which then set in motion additional conflicts towards a hearing date for Change of Venue. It was ordered through the commissioner's office and relayed through a clerk that the Motion for Change of Venue was to be rescheduled a day prior for Modification of Support hearing in Grant County Superior Court. This created a conflict with Mr. Allen's scheduled court ordered time to pick up his children, whom reside in Snohomish County (200 miles away), thus creating undue hardship and travel costs. Mr. Allen had no other choice and was forced to cancel the motion and date of the hearing for Change of Venue so as to not conflict with standing court order for scheduled pick of his children and or be found in contempt of court. Motion for Modification went forward the next day.

Assignment of Error No. 3

In Mr. Allen's motion for Change of Venue a declaration and motion was provided prior to the hearing noting that Ms. Allen and DSHS Prosecuting Attorney, Jerry Hamley, did not provide the appropriate response in accordance to rules and regulations on submittal of paperwork. They failed to provide Mr. Allen with a proper summons for review of Ms. Allen's income, assets, and other information showing her additional income from other sources such as church, investments and other accounts. Ms. Allen is a licensed financial specialist with government training in bookkeeping and accounts and also who ran her own business for over 10 years doing investments and retirement, yet she did not provide statements for review as it is requested that

all income resources should be provided. In open court Mr. Allen requested for proof of service as the prosecutor informed the court that it was only mailed to him with no certified mailing. Soon after this statement Mr. Allen was ordered to refrain from responding or defending in oral argument.

Issues Pertaining to Assignment of Error No. 3

Upon attending the hearing for Modification of Support, Mr. Allen immediately asked the commissioner to remove herself from the case due to ongoing conflicts of interests and her handling of the scheduling of the Motion for Change of Venue and Motion for Review that was initially implemented from within her office. Immediately upon that statement and further argument Mr. Allen was then gag ordered and threatened with jail and was not able to defend/refute statements in his defense for the rest of the hearing. This prevented Mr. Allen any rights to make claim, cross examine, question state findings or argue statements made in court. Essentially allowing the state prosecutor and Ms. Allen to say anything they want without consequences or refute.

Assignment of Error No. 4

In request for Motion for Change of Venue, respondent's declaration indicated that the case would cause undue hardship, expense and conflict with witnesses traveling. In addition, Mr. Allen was not able to secure a legal representative from a great distance to be able to meet and review his case, again causing additional hardship for expenses and travel to and from the attorney's office.

Note: (To get an idea of travel involved, Mr. Allen resides in Tacoma, WA and the court is located in Ephrata, WA, a 3 hour drive one way over the pass with winter conditions.)

Issues Pertaining to Assignment of Error No. 4

Respondent was ultimately put into undue hardship and stress because of long distance travel, expenses, and related pass conditions. Respondent was unable to receive legal advice and secure an attorney from long distance and would have equated more undue costs and travel to meet and review his case if one was to be found. Witnesses could not make the long distance travel and/or were restricted due to health concerns. The distance also made it difficult to send and receive

court documents in a timely manner and placed additional hardship due to court restrictions in procedures in filing and receipt of motions, discoveries and declarations.

IV. STATEMENT OF THE CASE

This case arises out of a dispute between appellant, Mr. Allen and respondent, Ms. Allen and Grant County Superior Court and Prosecutor, Jerry Hamley. Mr. Allen contends that the motions and proceedings in Grant County Superior Court included ethics violations by a Superior court Judge Pro Tem Harry Ries, improper procedures involving providing documentation and paperwork for Modification of Child Support to respondent, enduring undue hardship on travel costs, restrictions in receiving proper legal representation from long distance or being able to provide witnesses to a venue that would have incurred additional stress, costs and restrictions.

In addition, Mr. Allen was forced to present himself as a pro se and subsequently gag ordered at the beginning of the hearing and was prevented from making any cross examinations, review of documents, questioning of state comments, claims, and questioning of Ms. Allen's assets during the Motion for Modification of Child Support. Mr. Allen indicated improper procedures and conflict of ethic violations involving the previous matter of Change of Venue and asked the court commissioner to step down due to that conflict in which she mishandled the previous scheduling and handling of the conflict of interest issue. Commissioner Melissa Chlarson was angered at the request and verbally in anger issued a gag order and threat of Jail.

From the very beginning Mr. Allen filed for Motion for Change of Venue, which was ultimately added to the same hearing date for the Motion for Modification of Child Support. The Motion for Change of Venue was first argued in which Mr. Allen provided the necessary discovery, declaration, and RCW codes and judicial rules in support for the change of venue. Mr. Allen contends that the Petitioner, Ms. Allen and their shared custody of their children reside in Everett, WA in Snohomish County for nearly two years. Mr. Allen requested that the hearing for the Modification be heard in Snohomish County where the children and petitioner reside and to allow Mr. Allen the ability to seek legal aid closer to where all parties involved are located. Arguing and defending a case on the other side of Washington Sate incurred undue hardship and

stress, financial hardship, difficulty in getting legal representation and travel of witnesses. Ms. Allen was represented by DSHS Prosecuting Attorney, Jerry Hamley and thus had no undue hardship to contend with.

Upon the judge's findings, the Motion for Change of Venue was set for review and the modification for child support was placed on hold until a decision was made. This delay also added additional time when modification of support was finalized thus through administrative means Mr. Allen would now be behind in support when in fact he was current on his child support upon the date of hearing.

In the review, Judge Pro Tem Harry Ries, already in ethics violations had subsequently asked Prosecuting Attorney, Jerry Hamley on his opinion for a Change of Venue. Ms. Allen had already indicated for a change of venue in previous declaration noted by the Judge. At no time did Ms. Allen go against the motion for change of venue other than it be swiftly done in order for the Change of Support to take action. The only response the court received was from the prosecuting attorney, Jerry Hamley, on his opinion for no change in venue. State prosecutor provided no legal declaration in defense of his decision or provide any reference to fact, RCW codes or legal evaluation in defense of the State's decision. Mr. Hamley simply wrote a letter to the Judge Pro Tem on his opinion against it and provided no evidence to support fact on procedure delays. Mr. Allen contends that because DCS covers the entire State of Washington, moving casework to the county where both the CP and children reside would not prevent or cause undue hardship or delays in receiving support.

In response to the verdict, Mr. Allen asked for a new Motion for Change of Venue and notified the court again of the ethics violation that occurred and reiterated in the declaration that continued efforts for the Motion for Modification would have serious conflicts and undue hardship. In an effort to alleviate, the commissioner stated to both Ms. Allen and Mr. Allen that the current motion was in the wrong venue for review and returned to her office to set a new date and time for a new hearing. A court clerk came out in the hallway, outside of courtroom, and set a new date for the Motion for Change of Venue without consulting or going through any legal procedure towards an agreement to set a date. It was simply set with no regard to the parties scheduling and further complicated by assigning new date a day before the Modification of

Support and on the day I was schedule to pick up my children 200 miles away in Western WA.

Mr. Allen and Ms. Allen have shared custody of two young boys and a parenting plan was entered in Grant County Superior Court in Nov. 2009. Because the order is set with dates and times for parenting time, the schedule the clerk came out with conflicted with Mr. Allen's date and time to pick up his children located in Snohomish County. The new date set would not have allowed for Mr. Allen to exercise and abide by the court order for parent-time and pick up of his children and still be present at the hearing for Change of Venue. This created a conflict and undue hardship and stress where it meant either be sentenced for contempt of court or attend the hearing. Subsequently Mr. Allen had to withdraw the hearing date in order to not be in contempt but it opened another conflict in which the hearing for modification for child support was still moving forward the very next day. Mr. Allen was still without legal counsel, under extreme duress and financial burden, and unable to provide for witnesses as declared in previously.

The court's actions led to changes in modification of support, placed Mr. Allen in rears of support with the new amount quadrupling his original support and additional restrictions and calculations without having to be able to defend due to restrictions noted above. Mr. Allen is asking for a reversal of the courts decision and requests a new hearing in Snohomish County to review financial records to create an adjustment to support to match income based on current amounts, including hidden financial records.

V. ARGUMENT

A. This appeal presents a series of questions of law regarding requirements and procedures under RCW 3. 34.110 and references to RCW 2.28.030 (4) in which a judicial officer did not remove himself from a case involving interested parties in which he was an officer of the court for the defense of Mr. Allen. It is the responsibility of the court official to alert himself/herself of possible conflicts of interests and should liberally disclose on the record to litigants appearing before them of any extrajudicial role even if there is no apparent reason to withdraw as stated in the CJC application.

1. Findings of fact based on RCW 4.12.030 also clears way for grounds authorizing that

the Change of Venue was appropriate as the State (DSHS) failed to provide any discovery or legal requirements to base its decision before the court.

2. Court was notified of the conflict and chose to not respond or take action, which further presented an impartial venue. The Superior Court Commissioner, Melissa Chlarson was aware based on declarations and statements in the hearing and instead chose to gag order Mr. Allen preventing him from questioning, cross examine, review and counter statements.
3. Upon discovery and notification to the clerks office regarding the problem. Mr. Allen was told there is no provision to handle the situation and the Superior Court Office Clerk chose to ignore and provided no further resolution. Rules 2.6, Rule 2.11(a), 6(a) and CR Rule 60 B(1) are also pertinent in finding of fact.

B. A request for Change of Venue was first submitted and heard prior to the Modification of Support Hearing and subsequently denied without proper procedure providing any basis of fact or evidence to uphold the decision. If the court had held an adversarial hearing and made specific findings of fact based on admissible evidence, the court would review those findings under the substantial evidence test. However, no admissible evidence was introduced in a hearing by the state, and no proper findings were made. Therefore, this review of the errors in the trial court is *de novo*.

1. RCW 26.09.280 was provided in declaration response with no equal valid response from the Prosecutor or Ms. Allen Allen.
2. It should be noted that Ms. Allen provided the court with a request for Change of Venue, noted in Allen vs. Allen 08-3-00472-4 and reference again in open court under Judge Pro Tem Harry Ries.

VI. CONCLUSION

- (1) Error: Conflicts of interests with Judge Pro Tem in this case and no supporting position by the state prosecutor Jerry Hamley and Ms. Allen, who failed to cite any case law or statute in support of their position. Prosecution failed to provide fact or findings that would cause delays in Change of Venue. Providing an opinion through an affidavit without providing supported documents or case law and simply offered an opinion that the hearing is appropriate in Grant County does not serve as evidence or fact. Mr. Allen provided statutes in favor for transfer and indicate hardship, undue financial costs, unavailability to access to attorneys without incorporating large costs associated to meet with an attorney from a long distance and additional hardship for witnesses to travel to the hearing.
- (2) Error: Commissioner Chlarson gag order prevented Mr. Allen's due right for a fair hearing without undue hardship and the availability to cross examine, question, review documents and provide answers to his defense. Mr. Allen was acting as a Pro Se and was prevented to communicate on other provisions and statements from opposing party on the modification of support.
- (3) Error: State DSHS Prosecution and Ms. Allen in not providing proper summons and court motions, including paperwork and calculations without having proof such as certificate of mailing or personal service was completed. Having an office specialist sign a declaration does not prove receipt of documents it only indicates mailing of documents. Mr. Allen declares no such paperwork was received prior to filing for Change of Venue.

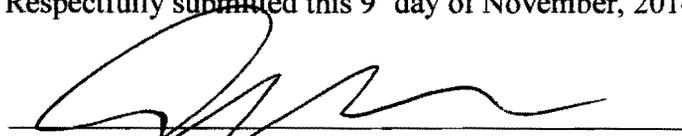
The USPS does not maintain a copy of the Certificate of Mailing, or the manifest for that Certificate of Mailing. The USPS does not track these letters through the mail stream. The USPS does not verify that the addresses on those letters are complete or accurate, nor does it keep a record of whether any of those letters were returned to sender.

A Certificate of Mailing is NOT proof that a letter was received by the addressee. Since the only record of the mailing is in the possession of a party of interest (the sender), the addressee, who is also a party of interest, cannot rely upon the

business records of a disinterested third party (USPS) in contesting the receipt of such a letter.

- (4) Error: Consistent non-communication and judicial mismanagement helped protect one of their own highly respected legal representatives in this small legal community. Grant County Superior Court knew there was a conflict of interest with Judge Pro Tem Harry Ries and erred in judicial procedure allowing additional errors to continue without resolution. This also included the officer of the court Prosecutor Jerry Hamley, when presented with fact failed to disclose thus allowing the case to move forward for Modification of Support to occur in Grant County.

Respectfully submitted this 9^h day of November, 2014

A handwritten signature in black ink, appearing to read 'Jeffery Allen', is written over a solid horizontal line.

Jeffery Allen, Pro Se Appellant

Case # 31690

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Jeffery Allen vs. Catherine Allen

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November 2014, I placed in U.S Mail for delivery true and correct copies of the foregoing Brief of Appellant on the court.

Clerk of the Court
Court of Appeals, Division III
500 N Cedar St, Spokane, WA 99201

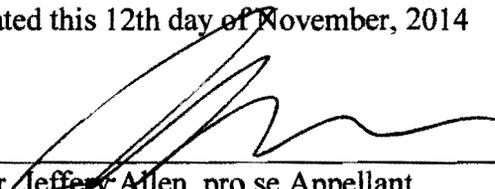
Copies of Appellant's Brief was placed in U.S Mail for delivery to Ms. Allen and Kacie L. Maggard, WSBA #40133 below on November 12th, 2014:

Ms. Catherine Allen
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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 12th day of November, 2014


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