

FILED
SUPREME COURT
STATE OF WASHINGTON
5/21/2020 1:55 PM
BY SUSAN L. CARLSON
CLERK

No. 98319-4

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

DAVID LADENBURG, Petitioner,

v.

DREW HENKE, Respondent.

ANSWER TO PETITION AGAINST A STATE OFFICER

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INTRODUCTION

The Petitioner, a Judge in the Tacoma Municipal Court (TMC) seeks to compel the Respondent, the Tacoma Municipal Court Presiding Judge, to withdraw her order granting the public defender's motion, pursuant to GR 29 and RCW 3.66.090, to consolidate multiple cases involving the same defendant into one municipal department. The issue now before this Court is whether the Petitioner's request for a writ of prohibition or mandamus should be dismissed; retained by this Court for subsequent briefing, argument, and determination on the merits; or transferred to a superior court for determination on the merits. RAP 16.2(d).

This Court's original jurisdiction pursuant Cost. Art. IV Sec. 4 to accept a petition is authorized only when the complained of action involves a state officer. A municipal court judge is not a state officer under a plain reading of Cost. Art. IV Sec. 4. In addition, individual judges are not parties to, and nor have any rights associated with, the cases that are assigned to them. Therefore, even if this Court desired to extend its jurisdiction, a writ is not appropriate because the Petitioner has no fundamental right or interest in the defendant's cases that needs to be protected. Furthermore, Presiding Judge Henke's actions were well within

her authority under GR 29 to assign work to the judicial officers of the municipal court. The petition for writ should be dismissed.

STATEMENT OF THE CASE

The Tacoma Municipal Court has three elected judges; (1) presiding Judge Drew Henke (Respondent), (2) Judge David Ladenburg (Petitioner), and (3) Judge Dwayne Christopher, who is not a party to this matter.

The City of Tacoma contracts with Pierce County for public defender services. For the past four years, the defenders have filed affidavits of prejudice in nearly all cases assigned to Judge Ladenburg. These cases have had to be reassigned to the other two municipal court judges, Presiding Judge Henke and Judge Christopher. As a result, the transfer of this volume of workload to the other two judges has required the municipal court to focus on judicial efficiency and economy.

The municipal court case at issue (*City of Tacoma v. Nester* Cause No. D49091, hereinafter “Case #1) in this matter was filed in 2017, and assigned to Judge Ladenburg. The defendant was represented by private counsel. The defendant and the City stipulated to an agreed order to continue the matter and waive speedy trial (referred to as a Stipulated Order of Continuance or SOC). If the defendant fulfilled certain conditions, the case would be dismissed. Judge Ladenburg approved the

order. The defendant would subsequently become indigent and the public defender was assigned to represent the defendant in Case #1.

In 2018, the City filed two additional cases against the same defendant (Nos. D49608 and D49845, hereinafter Case #2 and Case #3). The public defender was appointed to represent the defendant and subsequently filed affidavits of prejudice against Judge Ladenburg in both cases, requiring these cases to be reassigned to the other judges.

In June 2018, based on the filings in Case #2 and Case #3, Judge Ladenburg *sua sponte* revoked the SOC in Case #1, found the defendant guilty and entered judgment and sentence. The public defender filed a RALJ appeal, and on November 9, 2018, Pierce County Superior Court upheld the appeal, ruling that “[t]he trial court did not have authority to revoke the SOC without a motion from the prosecutor,” and reversing the revocation and finding of guilt. The SOC was reinstated by Judge Ladenburg.

A year later in June 2019, the City filed a fourth case against the defendant (No. D50796, hereinafter Case #4). Again the public defender was appointed and filed an affidavit of prejudice against Judge Ladenburg. In January 2020, Case #4 was tried to a jury in front of Judge Christopher *and the defendant was acquitted.*

Following the not guilty verdict, Judge Ladenburg scheduled a hearing to revoke the SOC in Case #1, based on the filing of Case #4 (*the case in which Mr. Nester was acquitted of the criminal charges*). Judge Ladenburg desired and conducted an extensive fact-finding hearing involving the same subject matter tried in Case #4 (a case Judge Ladenburg could not be involved with because of the affidavit of prejudice filed against him by the public defender). His intent was to review and reevaluate the evidence offered at trial, the same evidence that resulted in an acquittal.

Presiding Judge Henke contacted Judge Ladenburg and told him only to proceed with the hearing if the all of the parties agreed. The public defender objected to the hearing and on four separate occasions requested a continuance. The public defender had ordered a transcript from the trial in Case #4 that occurred the prior week and needed additional time to prepare and arrange for all of the witnesses to be present. The public defender's motions were denied and Judge Ladenburg conducted the hearing despite the public defender's objection.

The public defender's office moved to consolidate the cases involving Mr. Nester (Cases #1, #2 and #3) to one judge in January and February 2020. The logical choice would have been to assign all of the cases to Judge Ladenburg, since he was assigned the first case, but the

affidavits of prejudice filed in Cases #2 and #3 made that impossible. Because Judge Christopher had just presided over the jury trial in Case #4, Presiding Judge Henke appropriately granted the defendant's motion to consolidate the cases in Judge Christopher's courtroom. This is the decision about which Judge Ladenburg complains and for which he seeks a writ in the instant case.

ISSUES PRESENTED FOR REVIEW

- 1) Can the Supreme Court exercise original jurisdiction over a municipal court judge under State Const. Art. IV Sec 4 as a petition against a state officer?
- 2) Can a municipal court judge challenge the Presiding Judge's order issued upon motion of the public defender under GR 29 and RCW 3.66.090 to consolidate multiple court cases involving the same defendant?

ARGUMENT

- A. Because a municipal court judge is not a state officer under Const. Art. IV Sec. 4, this Court cannot exercise original jurisdiction.**

Art. 4, Sec. 4, of the Washington Constitution provides that the Supreme Court shall have original jurisdiction in habeas corpus, quo warranto and mandamus as to all state officers. In this area, the Supreme Court does not have exclusive jurisdiction; its jurisdiction is concurrent

with that of the superior courts. *State ex rel. Malmo v. Case*, 25 Wn. 2d 118, 169 P.2d 623, 165 A.L.R. 1426 (1946); *State v. Clausen*, 124 Wn. 389, 214 P. 635 (1923); *Jones v. Reed*, 3 Wn. 57, 27 P. 1067 (1891).

The Supreme Court may take or reject jurisdiction on an application for mandamus directed to a state official. *State ex rel. O'Connell v. Meyers*, 51 Wn.2d 454, 319 P.2d 828 (1957). RAP 16.2 sets forth the method available in an original proceeding in the Supreme Court against a state officer. Determining whether a respondent is a state officer is a threshold question.

The Tacoma Municipal Court was established¹ pursuant to Chapter 299, Laws of 1961, commonly known as the Justice Court Reorganization Act (Act) as a municipal department of the Pierce County Justice Court pursuant to the provisions of the Act. The relevant portions of Chapter 299, Laws of 1961, were codified as Chapter 3.46 RCW. In 2008, the state legislature enacted Chapter 227, Laws of 2008², related to trial court operations, and repealed Chapter 3.46 RCW but provided that a City operating a municipal department under Chapter 3.46 prior to July 1, 2008, “may continue to operate as if this act was not adopted, and will remain subject to the provisions of Chapter 3.46 as written prior to the

¹ Tacoma City Council Resolution No. 16858 passed December 19, 1961

² Chapter 227, Laws of 2008 was subsequently codified as Chapter 3.50 RCW.

adoption Chapter 227, Laws 2008.” See RCW 3.46.015. Contrary to the Petition, the requirements of Chapter 3.50 RCW, entitled “Municipal courts – alternative provision,” are not applicable to Tacoma Municipal Court.

The Respondent is a municipal court judge for the City of Tacoma, as is the Petitioner. Tacoma’s municipal court is governed by Chapter 3.46 RCW, not Chapter 3.50 RCW. Nothing in Chapter 3.46 RCW contains language anointing its municipal court judges as state officers; to the contrary, the judges and the personnel are local government employees and their salaries are paid for by the City. See Chap 3.46 RCW

The Petitioner claims that because he is governed by this Court’s rules of ethics and is eligible to participate in the state retirement system, these facts convert all municipal judges into state officers. Petition at pg. 12. This cannot be the case, because if that were true, then city attorneys, limited practice officers, and guardian ad litem employed by local governments would also be considered state officers, and there is no authority to support such a contention.

The Petitioner argues that even if his municipal judge position is not a state officer, this Court can still exercise original jurisdiction when an application involves an interest of the state at large, or of the public, or when it is necessary in order to afford an adequate remedy. *O’Conner v.*

Matzdorff, 76 Wn.2d 589, 458 P.2d 154 (1969). However, Petitioner cites no authority where this Court has accepted original jurisdiction involving one municipal judge suing another municipal judge. The only authority cited by the Petitioner either involves *the fundamental rights of the parties* to the underlying case, or expressly involves a state officer.³

In the first case cited by the Petitioner, *City of Seattle v. Rohrer*, 69 Wn.2d 852, 420 P.2d 687 (1966), this Court agreed to accept the petition of a defendant who claimed his right to a jury trial was denied by the municipal court. This Court accepted original jurisdiction under its powers related to “appellate and revisory jurisdiction.” Const. Art. IV Sec. 4. This Court did not, however, hold that a municipal court judge was a state officer.

Similarly, *O’Conner v. Matzdorff*, *id.* involved a petition by the party in the underlying lawsuit who was denied by the justice of the peace of the right to file a civil suit without payment of the filing fee even though she was

³ All of the other cases cited in the Petition involving state officers. *State ex rel. Garber v. Savidge*, *State Com’r Public Lands*, 132 Wn. 631, 233 P. 946 (1925) (State Public Lands Commissioner); *Franklin Counties v. Killian*, __ Wn.2d __, __ P.3 __, 2020 WL __ (2020) (superior court judge); *State ex rel. Campbell v. Superior Court of King County*, 34 Wn.2d 771, 210 P.2d 123 (1949) (superior court judges); *O’Connell v. Yelle*, 51 Wn.2d 620, 320 P.2d 1086 (1958) (state auditor); *Seattle Times co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010) (superior court judge); *Freeman v. Gregoire*, 171 Wn.2d 316, 256 P.3d 264 (2011) (governor); *State Labor Council v. Reed*, 149 Wn.2d 48, 65 P.3d 1203 (2003) (secretary of state); *State ex rel. Taylor v Lawler*, 2 Wn.2d 488, 98 P.2d 658 (1940) (superior court judges)

indigent. This Court accepted original jurisdiction to review the potential harm *to the party* in the underlying litigation.

Unlike the two cases cited by the Petitioner, no party to the underlying case is claiming harm or asking this Court for relief. Instead, when this Court should be concerned about how the judiciary is going to manage its ever increasing postponed workload, the Petitioner has choose this time to file suit over a single reassigned case.

B. Because a municipal court judge has no rights, interest, or stake in the cases that are assigned to him/her for adjudication, this Court cannot accept original jurisdiction.

As a judge, the Petitioner has no rights, interest or stake in the cases coming before him. Even though Petitioner freely admits he has no standing in the underlying case, he claims he has been deprived of his responsibilities. Petitioner claims he has “case responsibility” that is mandatory and is intrinsic to his function as a judge. Petition at pg. 9. Although Petitioner may claim some level of responsibility while the case is assigned to him, once that assignment changes, so goes any responsibility. The Petitioner has not pointed to any court rule or statute that mandates or even authorizes the first judge assigned to hear a case unbridled authority over the final adjudication of the matter. There is no such authority; however, that is what the Petition is requesting.

Every multi-judge trial court in the State of Washington assigns, reassigns, and transfers cases among the judges until the matters are disposed. This process works because the judicial officers are neutral adjudicators that do not have vested interests in the cases to which they are assigned. It is worth noting that beyond the Petitioner and Respondent, three other judicial officers have also presided over the underlying case (Case #1) and issued orders; however, none of them are claiming exclusive ownership of the case.⁴

The Petitioner claims that he has some sort of ethical obligation to be involved in the final decisions related to the underlying case; however that assertion is contrary to the Code of Judicial Code (CJC) Rule 2.7.

CJC Rule 2.7 reads:

Responsibility to Decide. A judge shall hear and decide matters assigned to the judge, except when disqualification or recusal is required by Rule 2.11 or other law.

The public defenders have filed affidavits of prejudice against the Petitioner in nearly every case assigned to him for the past four years. The

⁴ Arraignment heard by Commissioner Dennis Ball on 5/30/2017
Motion Hearing heard by Commissioner Ball on 6/1/2017
Order to Show Cause issued by Commissioner Ball on 2/1/18
Violation hearing heard by Pro Tem Judge Thomas Cena on 3/27/18
Order to appear signed by Pro Tem Judge Cena on 7/17/19
Motion to vacate revocation heard by Judge Dwayne Christopher on 2/2/20.

Petitioner is precluded from being involved in all of the defendant's current cases with the exception of Case #1. Further, the only reason the Petitioner does not have an affidavit of prejudice filed against him in Case #1 is because the defendant was originally represented by private counsel for a brief period of time. The public defender now represents the defendant in Case #1. The Petitioner, over the objection of both the public defender and the prosecution, *on his own motion*, terminated the defendant's SOC, convicted and sentenced the defendant in Case #1. The public defender, on RALJ appeal, was able to have the conviction in Case #1 overturned. Under CJC 2.11, a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned...." The extent of the Petitioner's actions in trying to keep Case #1 and in using the facts and circumstances from Case #4 (a case he is precluded from hearing, and *in which the defendant was acquitted*) to convict the defendant gives the appearance that the Petitioner has a personal investment in the outcome of Case #1. This is wholly contrary to his obligation to remain impartial. Petitioner should have recused himself from further involvement in Case #1. The Petitioner has no mandated responsibility related to Case #1, especially now that it has been consolidated with other cases involving the defendant.

C. Because this Court cannot exercise original jurisdiction to issue a statutory writ, this Court cannot accept original jurisdiction.

The Petitioner asks this Court to exercise original jurisdiction under the authority of Const. Art. IV Sec 4 and Chapter 7.16 RCW and issue a writ for mandamus or prohibition. Petition at page 9. This Court has recently held it does not have authority to exercise original jurisdiction and issue a writ according to the statutory scheme created by the Legislature. *Riddle v. Elofson*, 193 Wn.2d 423, 430, 439 P.3d 647 (2019). This Court reasoned that if it were to exercise original jurisdiction under the statutory authority to issue writs, it would amount to an expansion of its authority to exercise original jurisdiction over certain matters. Because the State Legislature cannot expand this Court’s jurisdiction through legislation, the Petitioner cannot rely on the authority found in Chap. 7.16 RCW, and any cause of action based on a statutory writ for mandamus or prohibition must be rejected as matter of law. *Riddle v. Elofson*, id. The Petitioner is left with common-law authority to issue to issue a writ that was in effect at the time the State Constitution was passed.

D. Because the Petition cannot meet either prong necessary for this Court to issue a common law writ, this Court cannot accept original jurisdiction.

Assuming for the sake of argument this Court finds that a municipal court judge is a state officer, then this Court can only issue a common law writ of prohibition (or mandamus) “when two conditions are met: “(1) [a]bsence or excess of jurisdiction, and (2) absence of a plain, speedy, and

adequate remedy in the course of legal procedure.” *Skagit County Pub.*

Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1, 177 Wn.2d

718, 722-23, 305 P.3d 1079 (2013). As outlined herein, Petitioner cannot

satisfy either prong and therefore, a writ of prohibition cannot be issued.

First, the Respondent has express authority and jurisdiction to grant an order of consolidation pursuant to General Rule (GR) 29 and RCW

3.66.090. GR 29 was adopted in 2002 by this Court. The Rule grants to the presiding judge three powers germane to this petition.

(f) Duties and Authority... [T]he Presiding Judge shall:

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;

(2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges;

...

(h) Oversight of judicial officers. It shall be the duty of the Presiding Judge to supervise judicial officers to the extent necessary to ensure the timely and efficient processing of cases. The Presiding Judge shall have the authority to address a judicial officer’s failure to perform judicial duties and to propose remedial action. If remedial action is not successful, the Presiding Judge shall notify the Commission on Judicial Conduct of a judge’s substantial failure to perform judicial duties, which includes habitual neglect of duty or persistent refusal to carry out assignments or directives made by the Presiding Judge, as authorized by this rule.

The official comment of this Court regarding GR 29 states: “The language in subsection (d), (e), (f) and (g) was intended to be *broad* in

order that the presiding judge may carry out his/her responsibilities.”(emphasis added).

As presiding judge, the Respondent is required and vested with authority to supervise the judicial officers “as to ensure the expeditious and efficient processing of all cases.” Specifically, under GR 29(f) (2), the presiding judge shall assign judicial officers to hear cases. The presiding judge is also mandated under GR 29(h) to supervise the judicial officers to ensure the timely and efficient processing of cases. Nothing in GR 29 or in statute limits the presiding judge’s authority when assigning cases among the judicial officers within the Court. The presiding judge has **broad** authority when assigning cases to meet this Court’s mandate that all cases be processed expeditiously and efficiently. This authority includes consolidating multiple cases involving a single defendant into a single courtroom.

To be clear, this case does not involve the Respondent reconsidering a ruling of the Petitioner. It is understood that the parties are responsible to seek reconsideration of a substantive ruling by way of appeal, and that substantive rulings are not for a fellow judge to reconsider. *Whitehead v. Satran* 37 Wn.2d 724, 225 P.2d 888 (1950) (Where one judge of superior court entered judgment against garnishee defendant and a second judge of the court denied a motion to set it aside, and no appeal was taken from

judgment or order denying motion to set it aside, a third judge of the court, in ruling on motion for charging order in aid of judgment, could not reconsider the matter of liability of the garnishee defendant as determined by judgment.) What this case does involve, however, is the defendant's motion to consolidate the three remaining cases into one courtroom.

RCW 3.66.090 provides:

A change of venue may be allowed upon motion:

(1) Where there is reason to believe that an impartial trial cannot be had in the district or municipal court in which the action was commenced; or

(2) Where the convenience of witnesses or the ends of justice would be forwarded by the change.

When such change is ordered, it shall be to the district court of another district in the same county, if any, otherwise to the district court of an adjacent district in another county: PROVIDED, That where an affidavit of prejudice is filed against a judge of a municipal court the cause shall be transferred to another department of the municipal court, if one exists, otherwise to a judge pro tempore appointed in the manner prescribed by law. The court to which a case is removed on change of venue under this section shall have the same jurisdiction, either civil or criminal to hear and determine the case as the court from which the case was removed.

The Respondent, in her role as Presiding Judge, granted the defendant's motion to consolidate the defendant's cases into a single municipal courtroom (Judge Christopher's courtroom).⁵ The Respondent

⁵ As previously noted above the Tacoma Municipal Court is organized under former Chap. 3.46 RCW, not the alternative municipal court provision under Chap. 3.50 RCW; Consequently, RCW 3.50.125 is not applicable to this discussion.

based this ruling on the fact the defendant had previously filed affidavits of prejudice against the Petitioner in all of the other defendant's current cases. While the consolidation order allows the municipal court to operate more expeditiously and efficiently, no rulings by Petitioner were reconsidered or overturned.

As previously mentioned, the City's public defenders have filed affidavits of prejudice against the Respondent in all most all of the cases assigned to him for the past four years. The Petitioner's assigned workload is now a fraction of the other two judges, which necessitates the Presiding Judge to take action for the betterment of the entire Municipal Court. The Respondent was well within her authority when she granted the consolidation order; consequently, the Petitioner has not met the first prong of the test to issue a writ.

Likewise, the Petitioner has failed to meet the second prong needed to obtain a writ of prohibition—that no plain, speedy, and adequate remedy exists. *Kriedler v. Eikenberry*, 111 Wn.2d 828, 766 P.2d 438 (1989); RCW 7.16.300.

“The question as to what constitutes a plain, speedy, and adequate remedy is not dependent upon any general rule, but upon the facts of each particular case, and its determination therefore rests in the sound discretion of the court in which the proceeding is instituted.” *State ex rel. O'Brien v. Police*

Court, 14 Wn.2d 340, 348, 128 P.2d 332 (1942). “A remedy is not inadequate merely because it is attended with delay, expense, annoyance, or even some hardship.” *Id.* at 347. “Something in the nature of the action must make it apparent that the rights of the litigants will not be protected or full redress will not be afforded without the writ.” *Riddle v. Elofson*, 193 Wn.2d at 434.

The Supreme Court and the superior court have concurrent original jurisdiction of a petition against a state officer in the nature of quo warranto, prohibition, or mandamus. RAP 16.2. The Plaintiff could have brought his petition to the Pierce County Superior Court and sought relief through a preliminary injunction and declaratory judgment. *See* CR 65 (governing preliminary injunctions); CR 57; RCW 7.24.010-.190 (Uniform Declaratory Judgments Act). These mechanisms could have satisfied the relief the Petitioner seeks via a writ of prohibition: to enjoin enforcement of the order and determine whether GR 29 and RCW 3.66.090 authorized issuance of the order. The Petitioner can obtain the full relief he is seeking from the Superior Court and just because the Petitioner may experience some delay, expense, or annoyance does not mean the remedy is inadequate. The Petition does not meet the second prong necessary to obtain the extraordinary relief of ordering a writ.

CONCLUSION

This petition does not involve any great legal question regarding judicial independence or depth of the Presiding Judge's authority. Instead, the Petitioner filed the request with this Court in an attempt to maintain control over one of the few cases where he has not had an affidavit of prejudice filed against him, while at the same time attempting to avoid going before the Pierce County Superior Court, which previously overturned his finding of guilt and sentencing of the defendant in the underlying case at issue. This Court should dismiss the Petition, or in the alternative transfer, the matter to the Pierce County Superior Court for processing in the normal course.

Respectfully submitted this 21st day of May, 2020.

WILLIAM C. FOSBRE, City Attorney

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CERTIFICATE OF SERVICE

I certify that on the date stated below, I electronically filed the foregoing **Answer to Petition Against a State Officer** with the Clerk of the Court, which will send notification of such filing to the following:

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Original E-filed with:
Supreme Court
Clerk's Office

EXECUTED this 21st day of May, 2020, at Edgewood, WA.

/s/Britt K Pittman
Britt K. Pittman, Paralegal

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DAVID LADENBURG, Petitioner,

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DREW HENKE, Respondent.

**DECLARATION OF JEAN HAYES IN SUPPORT OF
ANSWER TO PETITION AGAINST A STATE OFFICER**

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Attorneys for Respondent

I, Jean Hayes, declare as follows:

1. I make this declaration based on personal knowledge.
2. I am employed by the City of Tacoma in the City Attorney's Office, Prosecution Division, as a Deputy City Attorney. I have been employed as the supervisor for the Prosecution Division since October 2003.
3. The Tacoma Municipal Court has three elected judges; (1) presiding Judge Drew Henke (Respondent), (2) Judge David Ladenburg (Petitioner), and (3) Judge Dwayne Christopher, who is not a party to this matter.
4. The City of Tacoma contracts with Pierce County for public defender services. For the past four years, the defenders have filed affidavits of prejudice in nearly all cases assigned to Judge Ladenburg. These cases have had to be reassigned to the other two municipal court judges, Presiding Judge Henke and Judge Christopher. As a result, the transfer of this volume of workload to the other two judges has required the municipal court to focus on judicial efficiency and economy.
5. The municipal court case at issue (*City of Tacoma v. Nester* Cause No. D49091, hereinafter "Case #1) in this matter was filed in 2017, and assigned to Judge Ladenburg. The defendant was represented by

private counsel. The defendant and the City stipulated to an agreed order to continue the matter and waive speedy trial (referred to as a Stipulated Order of Continuance or SOC). If the defendant fulfilled certain conditions, the case would be dismissed. Judge Ladenburg approved the order. The defendant would subsequently become indigent and the public defender was assigned to represent the defendant in D49091.

6. In 2018, the City filed two additional cases against the same defendant (Nos. D49608 and D49845, hereinafter Case #2 and Case #3). The public defender was appointed to represent the defendant and subsequently filed affidavits of prejudice against Judge Ladenburg in both cases, requiring these cases to be reassigned to the other judges.
7. In June 2018, based on the filings in Case #2 and Case #3, Judge Ladenburg *sua sponte* revoked the SOC in D49091 found the defendant guilty and entered judgment and sentence. The public defender filed a RALJ appeal, and on November 9, 2018, Pierce County Superior Court upheld the appeal, ruling that “[t]he trial court did not have authority to revoke the SOC without a motion from the prosecutor,” and reversing the revocation and finding of guilt. The SOC was reinstated by Judge Ladenburg.

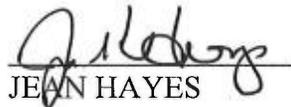
8. A year later in June 2019, the City filed a fourth case against the defendant (No. D50796, hereinafter Case #4). Again the public defender was appointed and filed an affidavit of prejudice against Judge Ladenburg. In January 2020, Case #4 was tried to a jury in front of Judge Christopher *and the defendant was acquitted.*
9. Following the not guilty verdict, Judge Ladenburg scheduled a hearing to revoke the SOC in Case #1, based on the filing of Case #4 (*the case in which Mr. Nester was acquitted of the criminal charges*). Judge Ladenburg desired and conducted an extensive fact-finding hearing involving the same subject matter tried in Case #4 (a case Judge Ladenburg could not be involved with because of the affidavit of prejudice filed against him by the public defender). His intent was to review and reevaluate the evidence offered at trial, the same evidence that resulted in an acquittal.
10. Presiding Judge Henke contacted Judge Ladenburg and told him only to proceed with the hearing if all of the parties agreed. The public defender objected to the hearing and on four separate occasions requested a continuance. The public defender had ordered a transcript from the trial in Case #4 that occurred the prior week and needed additional time to prepare and arrange for all of the relevant witnesses to be present. The public defender's motions were denied and Judge

Ladenburg conducted the hearing despite the public defender's objections

11. The public defender's office moved to consolidate the cases involving Mr. Nester (Cases #1, #2 and #3) to one judge in January and February 2020. The logical choice would have been to assign all of the cases to Judge Ladenburg, since he was assigned the first case, but the affidavits of prejudice filed in Cases #2 and #3 made that impossible. Because Judge Christopher had just presided over the jury trial in Case #4, Presiding Judge Henke appropriately granted the defendants motion to consolidate the cases in Judge Christopher's courtroom. This is the decision about which Judge Ladenburg complains and for which he seeks a writ in the instant case.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THE FOREGOING IS TRUE AND CORRECT.

DATED this th20 day of May, 2020, at Tacoma, Washington.


JEAN HAYES

CERTIFICATE OF SERVICE

I certify that on the date stated below, I electronically filed the foregoing DECLARATION OF JEAN HAYES IN SUPPORT OF ANSWER TO PETITION AGAINST A STATE OFFICER with the Clerk of the Court, which will send notification of such filing to the following:

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Original E-filed with:
Supreme Court
Clerk's Office

EXECUTED this 21st day of May, 2020, at Edgewood, WA.

/s/Britt K. Pittman
Britt K. Pittman, Paralegal

TACOMA CITY ATTORNEYS OFFICE

May 21, 2020 - 1:55 PM

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Filed with Court: Supreme Court
Appellate Court Case Number: 98319-4
Appellate Court Case Title: David Ladenburg v. Drew Henke

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