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No. 98319-4

SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID LADENBURG, in his capacity as a
Tacoma Municipal Court Judge,

Petitioner,

v.

DREW HENKE, in her capacity as the
Presiding Judge of the Tacoma Municipal Court,

Respondent.

PETITIONER'S REPLY ON RAP 16.2(b) PETITION

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A. INTRODUCTION

The answer offered by the respondent Henke to Judge David Ladenburg's RAP 16.2(b) petition invoking this Court's original jurisdiction under article IV, § 4 of the Constitution is remarkable in a number of ways as to both the law and the facts. First, the answer does not deny the recitation of facts in Judge Ladenburg's opening petition at 1-8. Glaringly, Judge Henke determined to transfer *Nester* case #1 from Judge Ladenburg to another judge of the Tacoma Municipal Department of the Pierce County District Court, without hearing from Judge Ladenburg or making the requisite findings on the record under RCW 3.66.090 for such a transfer.

Instead, Judge Henke attempts to justify such conduct by impugning Judge Ladenburg, making the unproven claim in her answer at 2 that: "For the past four years, the defenders have filed affidavits of prejudice in nearly all cases assigned to Judge Ladenburg." She repeats that contention in her petition at 16.¹ Whether that is true² is, of course, utterly *irrelevant* to Judge Henke's presiding judge authority, or Judge

¹ There, she contends that Judge Ladenburg's workload was less than that of the other two judges of the Court, and depriving him of *Nester* case #1 was "for the betterment of the entire Municipal Court." The illogic of that assertion is manifest – Judge Ladenburg has too few cases so it is "better" for the Court to take another case away from him.

² See Ladenburg Declaration. Defense counsel have filed affidavits against him because of his concerns about domestic violence enforcement.

Ladenburg's authority to hear the SOC revocation proceedings in *Nester* case #1.³

Finally, in making her legal arguments, Judge Henke claims Judge Ladenburg lacks standing to invoke this Court's original jurisdiction, and that he has no basis to seek a writ. She is wrong in both instances.

This Court should hear Judge Ladenburg's important RAP 16.2(b) petition.

B. RESPONSE TO STATEMENT OF THE CASE

As noted *supra*, Judge Henke's statement of the case does not take serious issue with the factual recitation in petitioner Ladenburg's petition. *Compare* pet. at 1-8 with answer at 2-5.

However, that factual recitation does confirm that Judge Ladenburg adjudicated case #1 involving defendant Nester to a stipulated order of continuance ("SOC") pursuant to which he was obligated to meet certain standards of behavior. Patently, he did not. The City Attorney filed multiple subsequent charges against Nester. Judge Ladenburg had the authority to consider the SOC's revocation. An affidavit of prejudice could not be filed against him in that case. *See* RCW 3.34.110(1)(b);

³ Judge Henke's demeaning Monday morning quarterback assertion in her answer at 10-11 that Judge Ladenburg should have recused himself in *Nester* case #1 is an argument she has no business making. That was an argument for defense counsel to make to a court, if Nester was aggrieved by Judge Ladenburg's revocation of his SOC in *Nester* case #1 after his multiple violations of its terms.

CrRLJ 8.9 (providing for affidavit of prejudice but only where no discretionary ruling had been made in the particular case). The effect of public defender efforts to consolidate case #1 with the later *Nester* cases where Judge Ladenburg had been affidavited was to obtain a backdoor, illegitimate affidavit of prejudice in case #1. Judge Henke acquiesced in the public defenders' gambit, granting consolidation.

It is *undisputed* that Judge Henke never heard specifically from Judge Ladenburg on the record regarding the *de facto* transfer of *Nester* case #1, nor did she make express findings justifying the transfer of case #1 under RCW 3.50.125/RCW 3.66.090(1).

C. ARGUMENT

(1) Judge Ladenburg Has Standing to Petition This Court for Direct Review under RAP 16.2(b)

Judge Henke contends in her answer at 5-11 that petitioner Ladenburg lacks standing as a Tacoma Municipal Court Judge to seek review of her illicit exercise of authority over his caseload. She asserts that Ladenburg is not a state officer and has not asserted a sufficient interest in his case load obligations as a judge to be able to complain about her actions. That is not so.

First, Henke contends Ladenburg is not a state officer under RAP 16.2(b). Attempting to circumvent this Court's contrary holding in

O'Connor v. Matzdorff, 76 Wn.2d 589, 458 P.2d 154 (1969) allowing for original jurisdiction in a case involving an action against a district court judge and the court's clerk,⁴ she contends that she is not a state officer. She *admits*, ans. at 6, however, that the court over which she presides is "a municipal department of the Pierce County Justice Court." But she quibbles that the court is not organized under RCW 3.50, claiming that only RCW 3.46 applies to the court.

Ultimately, that makes no difference. RCW 3.46.020 makes clear that judges of the municipal departments of such district courts are county officers: "Each judge of a municipal department [of the district court] shall be a judge of the district court in which the municipal department is situated." And although RCW 3.50.125 specifically addresses the transfer of a judge, it references RCW 3.66.090, a statute that applies equally to judges in courts organized under RCW 3.46; it allows transfer of judges *only* if there is reason to believe an impartial trial is not possible in the court,⁵ or the transfer is required for the convenience of witnesses.

⁴ In her petition at 8-9, Judge Henke offers a weak effort at distinguishing *O'Conner*. She fails to acknowledge that the case involved a writ directed to a district court judge, as here. She asserts that the Court exercised its original jurisdiction to review harm to a party in the underlying litigation. But original jurisdiction is appropriately exercised here for the harm to our judicial system wrought by actions like Judge Henke's. Presiding judges are not free, in the absence of misconduct by a judge, to yank cases from a colleague, disrupting the proper administration of justice.

⁵ There is no allegation that Judge Ladenburg's handling of *Nester* case #1 was anything but fair leading to the execution of the SOC. At issue before him was its

Neither is true here.

Moreover, Judge Henke cannot dispute Judge Ladenburg's assertion in his petition at 12 that the pensions of the Court's judges are provided by the State, the salaries are set under state law,⁶ the judges are subject to CJC jurisdiction, and the presiding judge rule, GR 29, was promulgated by this Court.

Even if the judges here are not state officers at all, as Judge Ladenburg noted in his petition at 12-13, this Court has exercised original jurisdiction in cases of municipal court judges where judicial system concerns are present. Judge Henke has no real answer to *City of Seattle v. Rohrer*, 69 Wn.2d 852, 420 P.2d 687 (1966) in which this Court exercised original jurisdiction as to a municipal court judge. Plainly, as respondent acknowledges, ans. at 8, this Court may exercise original jurisdiction over a municipal court judge, even where the municipal court judge was not a state officer if, as here, the case involves the Court's "appellate and revisory jurisdiction."

In sum, Judge Ladenburg's action is against a state officer or a judicial officer meriting this Court's exercise of its original jurisdiction.

(2) This Court Has Authority to Issue a Writ in This Case

revocation for Mr. Nester's continuing misconduct.

⁶ Part of the judges' salaries are paid by the State. Ladenburg decl. at 1. The amount is set by the State Salary Commission, as Judge Henke seemingly concedes.

The second basis that Judge Henke offers for this Court to decline to exercise original jurisdiction under article IV, § 4 is that the Court lacked authority to issue a writ. Ans. at 11-17. Again, Judge Henke's argument is wrong, particularly given this Court's critical role in issuing GR 29, and in its general supervisory authority with respect to the judicial branch of government.

This Court has the authority to issue a writ of prohibition if respondent Henke acted without, or in excess of, jurisdiction to do so, and no plain, speedy, and adequate remedy at law exists. *Skagit Cty. Pub. Hosp. Dist. No. 304 v. Skagit Cty. Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 722-23, 305 P.3d 1079 (2013). Similarly, the Court may issue a writ of mandamus if Judge Henke issued an erroneous order not correctable by appeal and there is no adequate remedy at law. *State v. Stevens Cty. Dist. Ct. Judge*, 194 Wn.2d 898, 453 P.3d 984 (2019) (upholding issuance of writ directing district court to permit filing of preliminary appearance orders signed by superior court judges in cases originally filed in district court).

As for this Court's authority to issue a constitutional writ of mandamus or prohibition, as Judge Ladenburg notes in his petition at 11-12, this Court has *frequently* done so in circumstances where judges have acted in a fashion that exceeds their authority. Judge Henke has no real

answer to those cases.

Judge Henke acted in excess of her authority here, justifying issuance of a writ of prohibition or mandamus. She contends that GR 29 somehow gave her administrative power to grant what amounted to an affidavit of prejudice against Judge Ladenburg in *Nester* case #1 after-the-fact in granting the motion to consolidate. This Court, standing at the apex of our state's judicial branch of government, must confirm the limited scope of functions it gave to presiding judges in promulgating GR 29. Ans. at 12-16. *Nothing* in GR 29(f) goes so far. As Judge Ladenburg noted in his petition at 9-10, as to superior court judges, *both* Judge Ladenburg and Judge Henke are elected judges in a multi-judge municipality. Their authority is *identical*. To be sure, in GR 29, this Court has invested a presiding judge with certain administrative responsibilities, but that did not give Judge Henke as presiding judge the authority to peremptorily override Judge Ladenburg's *substantive* decisional duties in a case.⁷

Judge Henke also cites *Riddle v. Elotson*, 193 Wn.2d 423, 439 P.3d

⁷ Judge Henke correctly notes in her answer at 14-15 that she lacked authority to "reconsider" rulings by Judge Ladenburg and that *Nester's* recourse in *Nester* case #1 was an appeal, but her entire conduct in addressing the motion to consolidate in the *Nester* cases belies her own understanding of her authority. Her ruling on consolidation gave *Nester* an after-the-fact affidavit of prejudice in case #1 and *wasted* all of Judge Ladenburg's efforts in conducting the SOC revocation hearing. She made a substantive decision on revocation, effectively overriding his decision as if she were an appellate court. Ladenburg decl. at 6.

647 (2019), ans. at 12, seemingly for the proposition that this Court can *never* exercise original jurisdiction to issue a writ of prohibition. In *Riddle*, a county clerk sought a writ of prohibition in a case where the judges of the Yakima County Superior Court issued an order requiring the clerk to post an additional statutory performance bond for her office or face a declaration that her office was vacant. The clerk could have obtained relief through a preliminary injunction and declaratory judgment because she clearly had a protected legal interest in continuing to serve through the end of her term. *Id.* at 436. Such a procedure was tantamount to an appeal. Similarly, in *Burrowes v. Killian*, __ Wn.2d __, 459 P.3d 1082 (2020), a declaratory judgment action afforded judges attempting to disrupt a clerk’s authority to maintain court records in an electronic format an adequate remedy at law.

Finally, as to whether Judge Ladenburg had an adequate remedy at law, ans. at 16-17, he did not, despite Judge Henke’s inconsistent positions on this point. Initially, Judge Henke asserts that Judge Ladenburg has no interest in cases assigned to him. Ans. at 9-11.⁸ But that assertion is belied by CJC Rule 2.7, that Henke cites. “A judge *shall* hear and decide

⁸ Ironically, Judge Henke’s argument here essentially *concedes* that Judge Ladenburg had no standing to participate in the *Nester* case, belying any argument she later makes in connection with the Court’s authority to grant a writ that he had an “adequate remedy” at law. If, as Judge Henke has contended, Judge Ladenburg has no interest at all in his caseload, he would lack standing to seek such relief.

matters assigned to the judge. . .” unless disqualification or recusal is required. The use of “shall” in the rule evidences its *mandatory* nature. *Erector Co., Inc. v. Dep’t of Labor & Indus.*, 121 Wn.2d 513, 578, 852 P.2d 288 (1993) (“shall” is mandatory and creates a duty). Judge Ladenburg had an interest in hearing *Nester* case #1 and consequences flowing from it like the SOC revocation as an aspect of his judicial case responsibilities.

But Judge Ladenburg lacked standing to raise his concerns in *Nester* case #1. He was not a “party” there. Nor could he seek to enjoin the consolidation order in the superior court, as respondent Henke blithely suggests. Ans. at 17. And this is not merely a matter where “some delay, expense, or annoyance” is involved. *This Court*, not the Pierce County Superior Court, promulgated GR 29. *This Court* should decide its parameters and the requisite relationship between judges and presiding judges.

A constitutional writ of mandamus or prohibition is available to petitioner Ladenburg.

D. CONCLUSION

Nothing offered in the City’s answer should deter this Court from concluding that Judge Henke lacked authority to deprive Judge Ladenburg of his case responsibility in *Nester* case #1. This Court should issue a writ

of mandamus or writ of prohibition directing Judge Henke to withdraw any order purporting to override the authority of Judge Ladenburg in that matter. Costs, including reasonable attorney fees, should be awarded to Judge Ladenburg.

DATED this 2nd day of June, 2020.

Respectfully submitted,

/s/ Philip A. Talmadge
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Attorneys for Petitioner
Judge David Ladenburg

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Petitioner's Reply on RAP 16.2(b) Petition* in Supreme Court Cause No. 98319-4 to the following:

William C. Fosbre
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Original E-filed via appellate portal with:
Supreme Court Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 2, 2020, at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

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No. 98319-4

DECLARATION OF
JUDGE DAVID
LADENBURG

I, DAVID LADENBURG, declare as follows:

1. I am over the age of 18 years, competent to testify, and familiar with the facts herein.
2. Tacoma pays a portion of my judicial salary – the state also pays a portion of my salary. The City does not determine the amount of my salary, as that salary established by the State Salary Commission.
3. For the first 13 years of my time on the bench, I handled the court’s dedicated domestic violence (“DV”) court. I only heard DV-related matters. During those years, there were less than a handful of affidavits filed against me. Most were from private counsel with whom I had cases with while in private practice or social acquaintances. During those years, I presided over more jury trials and handled a greater caseload

than the other two courts combined. Department of Assigned Counsel (“DAC”) attorneys handled the vast majority of those trials. I never received any complaints or criticisms from those attorneys concerning the fairness of any trial or sentencing. Indeed, the attorneys, most of whom are new to the law in my court, would regularly seek my input on how they handled their cases before me.

4. My predecessor Gary Sullivan (deceased) established this court, which was one of the first such dedicated courts in Washington, if not the nation. The court was modeled with input from both the city attorneys and DAC counsel. The court established a “bench monitoring” probation, as opposed to a separate probation department, to oversee and monitor conditions of probation including required evaluation, treatment and monitoring for law-abiding behavior (“LAB”). We had a staff of 5 staff monitoring cases in my court alone. This model, sometimes referred to as the “Duluth Model” adopted the current thinking that courts are much more effective when providing direct oversight of probationers. The model called for frequent reviews and quick action when probation violations occurred. When a probationer had new criminal charges or was non-compliant with treatment, the court notified the Tacoma City Attorney and defense counsel. The court would issue an order to appear for a

violation hearing. Importantly, throughout that time, the court would act on known violations of probation and never required the motion of either party to take action.

5. Approximately four years ago, DAC began filing affidavits of prejudice against me pursuant to CrRLJ 8.9. DAC apparently has a blanket policy of filing affidavits against me. That policy has nothing to do with whether there is any real concern as to a fair trial or sentencing.

6. I have had two trials come before me with DAC attorneys in the last four years. In one, the jury returned a not guilty verdict. There were no objections or complaints during the trial as to any issues of fairness. On the other matter, I granted a defense “half time” motion to dismiss.

7. DAC’s concern is my oversight of probation. I take DV issues very seriously and I hold offenders accountable within the bounds of the law. DAC does not like that.

8. Turning to the *Nester* matters, in case #1 as to my “*sua sponte*” revocation of Mr. Nester’s continuation without finding (“CWOFF”), the court was simply doing what it had always done. When the City offered, and Mr. Nester accepted, a second CWOFF, involving same parties and charges, he *stipulated to the underlying facts as given in*

the police report. Because the City had offered the second and third CWOFF, they would not ask for revocation in case #1. I do not know the reasons the City would take this approach to prosecution of DV crime.

9. Mr. Nester appealed my decision and the City agreed, choosing not to contest the appeal. Basically, they presented an agreed order to the Superior Court. I reinstated the CWOFF per the remand order and Mr. Nester still had pending a fourth assault charge for which he was ultimately acquitted at a jury trial. Every plea agreement as in case #1 requires the defendant to both maintain LAB and have no similar incidents. With regard to probation revocation, I did not need a conviction if enough evidence reasonably showed the defendant had similar DV incidents. One of the reasons the court adopted the term Continuation With Out Finding – CWOFF – was to distinguish the court’s role from the traditional format found in the SOC process argued by DAC. Prior to *Nester* we, as a court, had never needed a motion to revoke when evidence was before the court to revoke a deferral.

10. In the *Nester* RALJ appeal, DAC filed a brief in which the City joined, stating in an stipulated order of continuance (“SOC”), the court’s functions are limited to approving or disapproving the SOC and ruling on any motions to revoke. That arrangement is used in Superior

Court where the court takes no active monitoring of the conditions of the parties' agreements. Given our active oversight and monitoring, our court never adopted that procedure or understanding. Following the RALJ remand, I, acting as presiding judge and in consultation with my fellow judges, discontinued the use of CWOFS. I sent a letter to the City Attorney and DAC explaining the reasons for doing so, which my fellow judges concurred. Exhibit 1. The court indicated it would consider accepting SOC's with the proviso that the City Attorney would be responsible for monitoring the terms of any such agreement and the court would not expend resources to provide monitoring and oversight as originally contemplated when the court was created. This was an acknowledgement of the City's position in agreeing in DAC's argument in the appeal. Exhibit 2 is a 1-24-19 memo to Judge Henke and Judge Christopher discussing SOC/CWOF orders and suggestions to provide both an oversight function or one in which the City Attorney would be responsible for monitor conditions outside of court involvement. Interestingly the City was not warm to that suggestion even though they had agreed with the briefing given by DAC in the RALJ appeal.

11. In *Nester* case #1, no motion seeking consolidation was ever filed with my court. I was provided a courtesy copy of the motions

and pleadings filed in Judge Henke's court. I was not asked to recuse in that matter.

12. The City's answer here states "To be clear, this case does not involve the Respondent reconsidering a ruling of the petitioner." Ans. at 14. In fact, the motion was to vacate my revocation finding and to consolidate the cases in Judge Christopher's court. DAC's original motion to consolidate came long after Mr. Nester was given notice of the revocation hearing, which was reset up to 5 times. Ultimately, Judge Henke entertained the motion to vacate and decided she could not vacate my judgment. She, nevertheless, granted the motion to consolidate the cases. Technically, DAC's motion to strike my sentencing date as to Mr. Nester is still pending. The matter has now been indefinitely on hold given the COVID-19 pandemic. As the exchange of emails between Judge Henke and me on January 29, February 17, and February 21 in my petition demonstrate, Judge Henke made a ruling on the merits and not a procedural decision in removing *Nester* case #1 from me. She acted as an appellate court without authority to do so.

13. This is not about a case being reassigned or a disgruntled judge. This is a matter about judicial independence concerning matters assigned to a judge for final determination. This is an issue that could

have a dramatic impact on judges and courts across the State if these actions are allowed to stand.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Tacoma, Washington, this 2nd day of June, 2020.


David Ladenburg

EXHIBIT 1



City of Tacoma
Municipal Court

January 4, 2019

Ms. Jean Hayes
Assistant City Attorney
930 Tacoma Ave. So. RM 440
Tacoma, WA 98402

RE: Stipulated orders of Continuance (SOC) / Continuations without Findings (CWOFF)

Dear Ms. Hayes:

As you have previously been made aware the Tacoma Municipal Court will be discontinuing the use of orders of continuance as referenced above. The effective date will be Monday, the 7th of January, 2019.

As a result of a RALJ decision in *City of Tacoma v. Nester* #D00049091 the court will no longer accept or consider dispositions by way of an order of continuance (SOC) or continuations without finding (CWOFF). The Superior Court remand states that the court must have the agreement of both parties to revoke a continuation even when the court had knowledge of violations of the terms of the order of continuance. As you know the court has traditionally provided monitoring and oversight probation with regard to these types of dispositions. The net effect of the Nester ruling would mean the court could not enforce its own orders without the joint motion of the city and defense. This court has never accepted these types of dispositions wherein we would defer or relinquish our authority to the parties before the court.

The history of the Nester case(s) is as follows:

August 16, 2017	Judge Ladenburg grants a CWOFF on D00049091
April 12, 2018	Judge Henke grants a CWOFF on D00049608
July 27, 2018	Pro Tem Morey grants a CWOFF on D00049845
June 12, 2019	Judge Ladenburg, based on multiple new charges/dispositions revoked the CWOFF on D00049091.

Judge David B. Ladenburg
Department One

Judge Drew A. Henke
Department Two

Judge Elizabeth E. Verhey
Department Three

All these cases involve the same victim. All these cases required as conditions of probation that the defendant have law-abiding behavior (LAB) and no similar incidents (NSI).

The city may of course establish such contractual agreements with defendants but would be responsible for all monitoring of terms and conditions of any such contract. The matter would only be brought before the court on an allegation of breach of the terms of the contract.

The judges/commissioners will retain their discretion when asked to consider a deferred sentence upon a plea of guilty.

The judges will confer on any future modified forms and agree to reinstitute this type of disposition once the appropriate language is incorporated into the forms clarifying the court's authority to revoke court monitored deferral agreements sua sponte.

Sincerely yours,

David B. Ladenburg
Presiding

CC: Elizabeth Pauli, City of Tacoma Manager
Bill Fosbre, City Attorney
Michele Petrich, Court Administrator
Michael Kawamura, Dept. of Assigned Counsel

EXHIBIT 2

Ladenburg, David

From: Ladenburg, David
Sent: Thursday, January 24, 2019 2:41 PM
To: Henke, Drew; Christopher, Dwayne (DChristopher@ci.tacoma.wa.us)
Cc: Petrich, Michelle; Soderlind, Daniel; Ball, Dennis; Randy Hansen (rhansen@ci.tacoma.wa.us)
Subject: SOC/CWOF

Judge Henke, Judge Christopher,

Thank you again for our conversation regarding the above referenced issue. As I informed you yesterday I have reviewed the materials which we discussed along with GR 29 last night. To briefly recap – the court had suspended the use of CWOF (SOC) following a RALJ remand on the City of Tacoma v. Nester D#00049001. The order on remand stated the court could not revoke a CWOF without a motion by the prosecutor to do so. The ruling effectively would prevent the court from acting independently on known violations on matters for which it traditionally provided oversight. I have provided you the history of the development of our dedicated DV and Drug court programs which were established to provide such oversight.

Both of you have expressed a need to allow this tool once again and I am in agreement with doing so. The only question is what role and resources the court should provide when granting a CWOF. Incidentally, we adopted the term CWOF at the outset of our therapeutic courts to distinguish the courts role from stipulated orders of continuance (SOC) and deferred prosecution agreements (DPA). They are however basically different terms for the same legal tool. Historically, for more than twenty years the court has exercised it independent authority when overseeing court imposed conditions under a CWOF agreement. The RALJ ruling effectively ends that independent discretion.

Both of you have received and reviewed the RALJ remand which was attached to the Memorandum issued by DAC. I believe each of you have indicated you concur with the stated role of the court as: “limited to approving or disapproving a SOC and ruling on a motion to revoke the SOC” Taken literally this would mean the court would play no further role in an SOC. That means the court would not be ordering the terms and conditions of an SOC and not setting reviews for purposes of monitoring compliance with the parties contract. That responsibility would fall to the prosecutor or the prosecutor’s non court related designee. I have noted in my letter to Jean Hayes that the city can certainly establish such diversion agreement and monitor them with their own resources. Alternately, I have invited the city to propose language to modify our forms and make clear the independent authority of the court on matters where they want court oversight. Per judge Henke comments yesterday at our meeting the city does not intend to do so and has, in fact, adopted the position of the DAC memorandum. We know the city is not opposed to such language as they have offered it already on a couple cases. We discussed the possible reasons the city would like our departments to act independently and not in a uniform manner. As a court I believe we should have a uniform policy in adopting SOC’s and to what extent will be the court’s involvement. A clear policy will apply not only to the city and DAC but to private counsel and those who may be pro se.

As the current presiding judge I have responsibility for the administrative functions of the court including the allocations of our staff resources. This is a clear fiduciary duty pursuant to GR 29 which provides:

(e)

General

Responsibilities. The Presiding Judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources

in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.

(f)
Duties and Authority.

The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the 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;

(3)

Coordinate judicial officers' vacations, attendance at education programs, and similar matters;

(4)

Develop and coordinate statistical and management information;

(5)

Supervise the daily operation of the court including:

(a)

All personnel assigned to perform court functions; and

(b)

All personnel employed under the judicial branch of government, including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c)

The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

Wash. Gen. R. 29(e) - Presiding Judge in Superior Court District and Limited Jurisdiction Court District

In sum if the court is adopting an SOC that limits the courts role to approving or disapproving an SOC and entertaining any motions to revoke then there is no need for court monitoring and oversight and we will not use resources in those situations. In matters where the court is requested to monitor and use court resources in doing so then the parties must stipulate to the court's independent authority to enforce its own orders. I point out that this simply puts in place the parties agreed understanding of the law pursuant to *Marino* and *Kessler* cited in DAC'S memorandum. Additionally, this restores the legal tool of SOC's to the city's tool box in the manner they are requesting, i.e. without the court's involvement and oversight. It also preserves the court's ability to provide oversight on matters where the parties would request it.

I would like by letter to Jean Hayes, to announce our decision on this between Wednesday and Friday next week. I would request we meet again next Monday or Tuesday to discuss specific language to incorporate in our forms/orders so that we can provide clear direction to our staff.

I understand that you may have authorized CWOFF/SOC since our meeting yesterday. Obviously the court will honor those orders and the other CWOFS already in the system.

Sincerely

David L.

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the ***Declaration of Judge David Ladenburg*** in Supreme Court Cause No. 98319-4 to the following:

William C. Fosbre
Jean P. Homan
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
bill.fosbre@ci.tacoma.wa.us
jhoman@cityoftacoma.org
gcastro@ci.tacoma.wa.us

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

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 2, 2020, at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

June 02, 2020 - 1:12 PM

Transmittal Information

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

The following documents have been uploaded:

- 983194_Affidavit_Declaration_20200602131036SC296559_4730.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Declaration of Judge Ladenburg.pdf
- 983194_Answer_Reply_20200602131036SC296559_0303.pdf
This File Contains:
Answer/Reply - Reply to Answer to Motion
The Original File Name was Petitioner Reply on RAP 16.2b Petition.pdf

A copy of the uploaded files will be sent to:

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- jhoman@cityoftacoma.org
- matt@tal-fitzlaw.com
- sarah@tal-fitzlaw.com
- tom@tal-fitzlaw.com

Comments:

Petitioner's Reply on RAP 16.2(b) Petition; Declaration of Judge David Ladenburg

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