In the Court of Appeals of the State of Alaska

Loren Larson Jr., Appellant, v. **Superior Court, Fourth Judicial District,** Appellee.	Court of Appeals No. **A-13449** **Order** Date of Order: **September 16, 2019**

Trial Court Case No. **4FA-18-02677CI**

Loren J. Larson Jr. appeals the dismissal of his complaint against the superior court. In this complaint, Larson claimed that, in 2010, a superior court clerk improperly and without notice converted his Civil Rule 60(b) motion for relief from judgment in his post-conviction relief case (4FA-01-00511 CI) to a motion in his underlying criminal case (4FA-96-03495 CR). Larson contended that, as a result of this conversion, he was entitled to have the superior court vacate and reopen the final order on that motion.

Judge Wollenberg has recused herself from consideration of Larson's appeal. Following notice of Judge Wollenberg's recusal, Larson filed a motion to re-instate Judge Wollenberg as a panel member in this appeal. Larson contends that this appeal from his civil action raises only a single procedural issue.

But the relief Larson ultimately appears to be seeking in this case is to re-open his Civil Rule 60(b) challenge to the superior court's judgment in his 2001 post-conviction relief case. *See, e.g.*, Supreme Court File No. S-17416 (Order dated June 13, 2019) (transferring jurisdiction of this appeal to this Court because the matter arises from Larson's post-conviction relief case, 4FA-01-00511 CI). When Judge Wollenberg represented Larson in her former capacity as an assistant public defender, Larson was

seeking to re-open the same post-conviction relief action. For the reasons discussed in the attached order in Court of Appeals File No. A-12945 (dated April 22, 2019), Judge Wollenberg is therefore ineligible to participate in this appeal.

Accordingly, Larson's motion to re-instate Judge Wollenberg as a panel member in this appeal is DENIED.

Entered at the direction of Judge Wollenberg.

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In the Court of Appeals of the State of Alaska

Loren J Larson JR, Appellant, v. **State of Alaska,** Appellee.	Court of Appeals No. **A-12945** **Order** Appellate Rule 204 Date of Notice: **4/22/2019**

Trial Court Case No. **4FA-01-00511CI, 4FA-96-03495CR**

Following a jury trial, Loren J. Larson Jr. was convicted of two counts of first-degree murder and one count of first-degree burglary. This Court affirmed his convictions on direct appeal. *Larson v. State*, 2000 WL 19199 (Alaska App. Jan. 12, 2000) (unpublished).

Since then, Larson has litigated several proceedings attacking both his convictions and the superior court's denial of post-conviction relief, all ultimately predicated on Larson's claims of juror misconduct at his trial. *See, e.g.*, *Larson v. State*, 79 P.3d 650 (Alaska App. 2003) (affirming the dismissal of Larson's first application for post-conviction relief); *Larson v. State*, 2013 WL 4012639 (Alaska App. June 26, 2013) (unpublished) (affirming the dismissal of Larson's motion for a new trial under Criminal Rule 33); *Larson v. State*, 2013 WL 6169314 (Alaska App. Nov. 20, 2013) (unpublished) (affirming the dismissal of Larson's motion for relief from his criminal judgment under Civil Rule 60(b)); *Larson v. Schmidt*, 2013 WL 6576742 (Alaska App. Dec. 11, 2013) (unpublished) (affirming the dismissal of Larson's petition for writ of habeas corpus, but directing the superior court to treat his petition as an application for post-conviction relief); *Larson v. State*, 2016 WL 191987 (Alaska App. Jan. 13, 2016) (unpublished) (affirming the denial of Larson's Civil Rule 60(b) motion to reopen his first application for post-conviction relief); *Larson v. Schmidt*, 2018 WL 3572449

(Alaska App. July 25, 2018) (unpublished) (affirming the dismissal of Larson's petition for writ of habeas corpus); *Larson v. State*, 2018 WL 6200315 (Alaska App. Nov. 28, 2018) (unpublished) (affirming the denial of Larson's motion to reopen litigation on his motion for a new trial).

Larson now appeals to this Court from his most recent challenge, a motion for relief from judgment under Alaska Civil Rule 60(b). In his latest Rule 60(b) motion, which was denied by the superior court, Larson sought to vacate the judgment dismissing his first post-conviction relief action. Judge Wollenberg has recused herself from consideration of Larson's appeal.

Following notice of Judge Wollenberg's recusal, Larson filed a motion to re-instate Judge Wollenberg as a panel member in this appeal. Larson acknowledges that, in her prior capacity as an assistant public defender, Judge Wollenberg represented him in 2016, in Alaska Supreme Court File No. S-16216 (a petition for hearing from this Court's decision in *Larson v. State*, 2016 WL 191987, File No. A-11835 (Alaska App. Jan. 13, 2016) (unpublished)). But Larson contends that Judge Wollenberg is not disqualified from participating in this appeal because her prior representation of him occurred more than two years ago.

(In his motion, Larson notes the two-year time limitation in subsection (a)(6) of AS 22.20.020, the judicial disqualification statute. But given Larson's argument, it appears he intends to refer to subsection (a)(5), which governs a judicial officer's authority to act in a matter in which the judicial officer previously counseled a party. In any event, the language of both provisions contains a two-year time limitation.)

Under AS 22.20.020(a)(5), a judicial officer may not act in a matter in which "a party . . . has retained or been professionally counseled by the judicial officer as its attorney within two years preceding the assignment of the judicial officer to the

matter." The plain language of this provision suggests that a judge may act in any matter — even the same matter — in which the judge previously counseled a party, so long as the prior representation occurred more than two years prior to the judge's assignment to the matter.

But notwithstanding the two-year time limitation codified in AS 22.20.020(a)(5), the Alaska Supreme Court stated in *Keel v. State* that a judge is nevertheless disqualified from a matter if the judge participated as an attorney for one of the parties in an earlier stage of the same case. *See Keel v. State*, 552 P.2d 155, 157 n.5 (Alaska 1976).

In addition, a judge's ethical duties are governed by the Alaska Code of Judicial Conduct. Under Canon 3(E)(1)(b), "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," including situations where "the judge served as a lawyer in the matter in controversy[.]"

Although this appeal involves a different appellate case number than the previous matter on which Judge Wollenberg represented Larson, both matters ultimately relate to the same "matter in controversy" — Larson's claim that juror misconduct at his trial entitles him to a new trial. Both matters also sought the same relief — to reopen Larson's first post-conviction relief action, 4FA-01-00511 CI, in which he challenged his convictions based on these claims of juror misconduct. The current matter and the matter on which Judge Wollenberg previously represented Larson are therefore the same matters for purposes of disqualification.

Accordingly, Larson's motion to re-instate Judge Wollenberg as a panel member in this appeal is DENIED.

Entered at the direction of Judge Wollenberg.

Clerk of the Appellate Courts

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