

ORIGINAL

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02/08/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0641

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 21-0641

ROBERT L. ALLUM
Appellant/Plaintiff,

v.

STATE OF MONTANA
Appellee/Defendant.

APPEAL FROM: The District Court of the Eighteenth Judicial District, Case No.
DV-16-2021-0000162-DK, Judge Peter B. Ohman, Presiding

**MOTION TO RECUSE JUSTICES LAURIE MCKINNON, JAMES A.
RICE, BETH BAKER, JIM SHEA, DICK SANDEFUR, AND INGRID
GUSTAFSON, FOR CAUSE.**

COUNSEL OF RECORD:

For Appellant:

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

For Appellee:

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INTRODUCTION

Appellant, Robert L. Allum (Allum) was before the Montana Supreme Court, in 2020, on appeal, from the Workers' Compensation Court (WCC), in Case No. DA 20-0113 (Allum I). Allum I raised only two issues, (1) Whether WCC was a constitutional entity; and (2) did the Montana Supreme Court have subject-matter jurisdiction? The merits of the case were not reached, but, instead, the case was dismissed, pursuant to Section I, paragraph 3(c)(i), of the Montana Supreme Court's Internal Operating Rules.

Allum is before the Court, in this appeal, based upon Judge Ohman's granting the motion for summary judgment, of Appellee, State of Montana (State), based upon two arguments: (1) exclusivity of WCC of subject matter; and (2) *res judicata* of Allum I. Both of the current arguments, require the Court, to revisit their decision, in Allum I.

BASIS OF RECUSAL

The Named Justices have a history of denying Allum's constitutional rights to due process, and exceed their constitutional authority, on multiple occasions; therefore, Allum will not, and cannot, receive a fair and impartial hearing, before these Justices. Examples justifying recusal:

Order on Petition for Supervisory Control,
filed October 22, 2019, Case No. OP 19-0597

1. Justices exceeded their authority, in violation of Article III, § 1, of the

1972 Montana Constitution (Mont. Const. Art.) ("separation of powers clause). WCC is an unconstitutional entity, the legislatively created, "office of workers' compensation judge," is part of the Mont. Const. Art. VI, Executive Branch. The Supreme Court Justices, only, have supervisory control, of the Mont. Const. Art. VII, inferior courts of the Judicial Branch.

2. Justices denied Allum's right to a trial by jury (Mont. Const. Art II, § 26), by attempting to invoke the logic and *stare decisis* of *Shea v. North-Butte Mining Co.* 55 Mont. 522; 179 P. 499; 1919 Mont. LEXIS112 (1919). The right to a trial by jury, and other procedural safeguards, did not apply, in 1919, since the Act was voluntary. The Justices refuse to acknowledge and accept that *Shea* and its progeny, are no longer applicable, after 1973. The Legislature made participation, in the workers' compensation program, mandatory, by the employers and employees (en. 92-202.1 by Sec. 1, Ch. 492, L. 1973, currently § 39-71-401(1) MCA). The Justices appear to confuse a constitutional challenge to the unconstitutional act(s) of judicial officials, with a constitutional challenge of an unconstitutional statute; therefore, feigning confusion of Allum's legal theory of *res ipsa loquitur*. Justices provided no legal theory, or case law, to support their decision; instead choosing to deny Allum his right to a trial, by imposing procedural requirements, not found in constitutional law, state statutes, or American jurisprudence, namely, (1) Allum had to notify the Attorney General,

even though not applicable to challenges to unconstitutional act(s) of judicial officials; and (2) "file a brief with the law for his claims to a right of jury trial," contrary to U.S. Const. Amendment VII, and Mont. Const. Art. II, § 26. Thus, demonstrating the Justices' abuse of their office, and power, to deny Allum's constitutional rights, instead of preserving said rights.

Order on Petition for Supervisory Control,
filed December 10, 2019, Case No. OP 19-0695

1. Justices exceeded their authority (*see* 1, above)
2. Justices denied Allum's right to cross examination and practiced "economic warfare," against Allum, by failing to follow the provisions of the Montana Administrative Procedures Act (MAPA), and the *stare decisis* of *Hert v. J.J. Newberry Company*, 587 P.2d 11, 12 (1978) Order on Petition on Rehearing; and *Goldberg v. Kelly* (1970), 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287. Justices failed to instruct Judge Sandler, the only "workers' compensation judge," for the State of Montana, to adhere to MAPA and the *stare decisis*.

3. The Justices' propensity to deprive Allum of a fair and impartial hearing of Allum II, is demonstrated by (1) the Justices willingness to classifying the violation of Allum 's due process rights, as a "non-emergency;" (2) that denying Allum the right of cross examination, is not "the court [] proceeding under a mistake of law;" and (3) "Allum retains the remedy of a timely appeal," to cover-up the foregoing constitutional violations, which violates the adage, "justice

delayed is justice denied".

Order on Appeal, decided June 16, 2020, Case No. DA 20-0113 (Allum I)

Justices knowingly violated the hornbook principles of (1) a judge is a person and a court is a physical place (*Todd v. United States* 158 U.S. 278 (1895), quoting Mr. Justice Story, in *United States v. Clark*, 1 Gallison 497); and (2) subject matter jurisdiction is required of every court, before rendering a decision (*Ruhrgas AG v. Marathon Oil Co.*, 526 U. S. 574, 583 (1999); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 1244 (2006); *Pinnow v. Montana State Fund*, 2007 MT 332, ¶16). Justices, by knowingly, violating these principles, demonstrated said Justices' intent, to violate Allum's due process rights in Allum I.

Allum II requires these same Justices, to address, the same subject matter jurisdiction (Judge Ohman's Order, based upon *res judicata* (*Thornton v. Alpine Home Ctr.*, 2001 MT 310, ¶ 14, 307 Mont. 529, 38 P.3d 855; and *Montana et al. v. United States*, 440 U.S. 147, footnote 11 (1979))); and constitutionality of WCC (Judge Ohman's Order based on exclusive jurisdiction of WCC). These Justices, in light of their actions in Allum I, now have a vested interest in denying Allum a fair and impartial hearing, on the merits, in Allum II.


Predecessors of these Justices, in *Kelleher Law Office v. State Comp. Ins. Fund*, 213 Mont. 412, 691 P.2d 823 (1984), "'by judicial fiat' extend[ed] lien protection to attorneys who have filed their retainer agreements with the Division

of Workers Compensation," in direct violation of § 37-61-420 MCA, until amended, effective October, 2021. Thus, it is a germane question, to ask these Justices, and any potential future judicial officer, presiding in Allum II, to state under oath, if said judicial officer, has received monies from injured worker's settlements, until October, 2021, without filing a complaint, or answer; and if in the affirmative, the amount, to establish the degree, of the financial interest, of any such judicial officer, in potentially denying Allum, his due process rights, to protect this violation of Montana law, for the benefit, of the judicial officer's licensed attorney friends.

Counsel for Appellee has been contacted, and message left.

Allum, based upon the foregoing, respectfully requests the named Justices recuse themselves, from the action, herein.

Respectfully submitted this 8th day of February, 2022.



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CERTIFICATE OF SERVICE

I, the undersigned hereby certify that a true and correct copy of **MOTION TO RECUSE JUSTICES LAURIE MCKINNON, JAMES A. RICE, BETH BAKER, JIM SHEA, DICK SANDEFUR, AND INGRID GUSTAFSON, FOR CAUSE**, was hand delivered to the following:

Ben Williams
Special Assistant Attorney General
Montana Department of Labor and Industry
P.O. Box 1728
Helena, MT 59624-1728

DATED this ⁸9th day of February, 2021.



ROBERT L. ALLUM