

Summary of SC90222, *State ex rel. Skylar M. Manion v. The Honorable R. Brent Elliott*
Proceeding originating in the Daviess County circuit court, Judge R. Brent Elliott
Argued and submitted Dec. 15, 2009; opinion issued Feb. 23, 2010

Attorneys: Manion was represented by Robert E. Sundell of Anderson & Sundell PC in Maryville, (660) 582-6633; and the state was represented by Jayne T. Woods of the attorney general's office in Jefferson City, (573) 751-3321, and Daviess County Prosecutor Andrea Gibson in Gallatin, (660) 663-4129.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man facing revocation of his probation challenges the denial of his application for change of judge. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri makes permanent its writ prohibiting the circuit court from proceeding other than to grant the change of judge. Probation revocation is a civil proceeding, and because the man's application was timely under the applicable rule, he is entitled to a change of judge.

Facts: In April 2006, Skylar Manion pleaded guilty to three counts of second-degree arson and one count of attempted second-degree arson. The court suspended imposition of his sentence and placed him on probation for five years. Over the next two years, Manion had three probation-revocation hearings over which a second judge presided. In each of these, the judge determined that Manion had violated the terms of his probation but continued him on probation, first with "shock probation," then with another five-year probationary term and finally with the additional condition that Manion complete a recovery program. A third judge was assigned to Manion's most recent probation-revocation hearing. Manion filed an application for change of judge 22 days after the revocation application was filed and 28 days after a warrant was issued for his arrest. He previously never had requested a change of judge. The circuit court overruled his motion. Manion now seeks this Court's writ prohibiting the circuit court from taking any action in the probation case until it grants the change of judge.

WRIT MADE PERMANENT.

Court en banc holds: Manion is entitled to a change of judge. A probation-revocation hearing is a civil action and not a mere continuation of the earlier criminal proceeding. Accordingly, Rule 51.05 governs Manion's application for change of judge. This rule grants a party the absolute right to disqualify a judge once without cause or any showing of prejudice if the application is filed timely and if the party previously has not obtained a change of judge under Rule 51.05. Manion previously had not requested a change of judge. To be timely, Rule 51.05(b) specifies that an application must be filed at the longer period of either 60 days from the service of process or 30 days from the designation of the trial judge. Here, Manion filed his application for a change of judge just 22 days after the state filed its motion to revoke his probation – well within the 60-day period. As such, his application was filed timely.