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CIVIL SERVICE COMMISSION

BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE

IN RE THE APPEAL OF:)
)
MAMIE HILL,)
Appellant,)
)
vs.)
)
CITY OF SEATTLE PUBLIC)
SAFETY CIVIL SERVICE)
COMMISSION,)
Respondent)

No. 00-07-026

ORDER ON MOTION TO DISQUALIFY
RHEA RHOLFE (sic), MIRIAM MOSES,
AND MARY EFFERTZ

THIS MATTER comes on upon the filing of a "Motion to Disqualify Rhea Rholfe (sic), Miriam Moses, and Mary Effertz" by C. Christine Maloney, Assistant City Attorney. This motion is supported by declarations allegedly demonstrating bias on the part of the Hearing Examiner, Rhea Rolfe, the Executive Director, Miriam Israel Moses, and Administrative Staff Assistant Mary Effertz. Some of the declarations, including that of counsel, who reinforces the declarants' statements, contain hearsay and speculation, and some allegations not within the declarants' personal knowledge.

I previously recused myself from hearing this appeal, *not*, as stated in one declaration, because I was "too close" to the issues", but rather, since the Public Safety Civil Service

1 Commission and the Civil Service Commission *share office space*, and since I have some
2 computer space in the CSC's office, there could be an appearance of conflict.

3 I do not socialize off the job with anyone in the PSCSC, and I have not really socialized
4 with anyone from that Commission *on the job*, other than exchanging pleasantries, birthday and
5 going away parties, and so on. None of the declarations, other than counsel's raise any issue of
6 bias regarding the Hearing Examiner.

7 My questions to counsel about her involvement in this case were based upon the recusal
8 of counsel's superior, Marilyn Sherron, from involvement in this matter. The Rules of
9 Professional Conduct state, *inter alia*:

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11 Except as provided in section (b), while lawyers are
12 associated in a firm, none of them shall knowingly
13 represent a client when any one of them practicing alone
would be prohibited from doing so by rules 1.7, 1.8(c), 1.9,
or 2.2. R.P.C. 1.10(a)

14 It is my understanding that the Commission, while engaged in a prehearing conference,
15 entertained an oral motion by the City to dismiss appellant's case. Appellant Hill had asked that
16 one of the Commissioners recuse herself, since she went to the same church as the
17 Commissioner. Said Commissioner declined. Further, over appellant's objection, the
18 Commission was being advised by an Assistant City Attorney, Margaret Klockars, who had
19 worked in the City Hearing Examiner's Office where appellant had been employed at the same
20 time, and which office fired and was sued by appellant. Ms. Klockars did not recuse herself. The
21 PSCSC was represented by Deputy City Attorney Jack Johnson, who was Klockars' superior. In
22 the course of the proceedings, recused attorney Sherron arrived for the PSCSC because,
23 according to her, the assigned attorney had not shown up. Following a phone call from Klockars
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1 to her superior, Jack Johnson arrived to represent the PSCSC. Appellant, who was unrepresented,
2 objected. All of this entanglement causes a great deal of concern in this case.

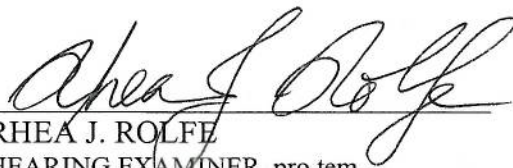
3 In spite of whatever Mr. Sepolen thinks he heard, his statement (which is hearsay) is in
4 error. The hearing examiner has never represented the Executive Director in any capacity, and
5 did not know the Executive Director on a personal basis prior to the latter's employment with the
6 Commission.

7 It cannot be overemphasized that the City Attorney's Office's recent concerted efforts to
8 disqualify the Commission office staff from any involvement in cases are, at the very least,
9 misguided and inappropriate. There is no such thing as an "ex parte communication" with the
10 Executive Director. There is no basis for a challenge to the Executive Director *or* the
11 Administrative Staff Assistant, any more than there could be a basis for challenging a court clerk
12 or bailiff. Nor is there any rule relating to a challenge to staff, nor should there be. The staff
13 make procedural and administrative decisions, and help shepherd the parties through the process.
14 This is particularly true for unrepresented parties, whether they are appellants or department
15 staff. The Commission has traditionally maintained the posture of being accessible to
16 unrepresented individuals.
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18 While I do not see an actual conflict of interest for the Hearing Examiner in this case, the
19 physical proximity of the two Commission offices is enough to raise an *appearance* of conflict.
20 Consequently, my original decision to recuse myself stands. The Commission should appoint a
21 different Hearing Examiner. The motion to challenge the staff should be stricken as frivolous
22 and immaterial.
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1 The motion to disqualify the Hearing Examiner is granted, although it was not necessary,
2 since the Hearing Examiner had already recused herself. The motion is stricken as it pertains to
3 the Executive Director and the Administrative Staff Assistant.
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5 11 December 2001
6 DATE

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8 RHEA J. ROLFE
9 HEARING EXAMINER, pro tem
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