



City of Seattle

Office of Hearing Examiner

Ryan P. Vancil, Hearing Examiner

Barbara Dykes Ehrlichman, Deputy Hearing Examiner

December 11, 2019

Inge Anderson
805 SW Henderson St.
Seattle, WA 98106

David Graves
Seattle Parks and Recreation

RE: W-19-004 Appellant Comments

Dear Parties:

Appellant Inge Anderson submitted comments to the Office of Hearing Examiner ("OHE") related to W-19-004 in the context of an administrative complaint. Although the comments are out of order concerning the hearing process, they warrant some response in advance of the hearing as in some respects the comments concern hearing procedures.

Appellant's comments are summarized and itemized with responses below:

1. No response concerning submitted exhibit list.

Both of the parties have untimely and improperly filed their exhibit/witness lists. Both parties within the past weeks have emailed their exhibit/witness lists to the OHE legal assistant. (1) Untimely filing: The parties requested a continuance of the hearing on July 26, 2019. The hearing date was rescheduled in response to this request. However, no mention was made by the parties of changing or extending the due dates identified in the pre-hearing order for submission of exhibit/witness lists which were set for dates in August, 2019. Since both parties ignored these dates, and have submitted exhibit/witness lists in advance of the December 4, 2019 hearing, there is no impact on the case. (2) Improper filing: The OHE does not accept email filing of case materials. All materials are required to be filed in person, or e-filed on the OHE e-file website. As a courtesy Mr. Edlund-Cho has e-filed both parties' exhibit/witness lists into the database for this case. No party is entitled to confirmation of filing. As both parties failed in this regard, and both have been equally accommodated to remedy the problem, there is no need for further action.

2. "Appellee Graves had many communications with Mr. Edlund-Cho, where he was provided legal advice, against policy."

A review of Mr. Edlund-Cho's computer shows only one email correspondence with Mr. Graves. That email concerned identifying a date for filing an exhibit/witness list by the Respondent (the reason for the confusion concerning the due date is identified above). Communications with parties about the hearing schedule does not constitute legal advice. If the Appellant has additional evidence to support the allegations that there were "many" communications in which legal advice was provided these communications should be submitted to the Hearing Examiner.

3. Rules of evidence.

The Appellant raised several issues/questions concerning rules of evidence. All matters before the Hearing Examiner are controlled by the Hearing Examiner Rules of Practice and Procedure ("HER"). HER 2.17 provides guidance concerning evidence, including hearsay evidence. Where the HERs do not provide adequate guidance, the "Hearing Examiner may look to the Superior Court Civil Rules for guidance," including rules of evidence. HER 1.03. As indicated by Mr. Edlund-Cho, the Federal Rules of Civil Procedure have no bearing on this process.

4. Admissibility of exhibits.

The Hearing Examiner determines the admissibility of evidence when it is submitted at the hearing. Authentication and establishing a foundation for admission of evidence is a central reason for the hearing.

5. Subpoena for witnesses.

Appellant indicates she "submitted her request for witnesses to appear at the hearing, noted on December 16, 2019," and argues that that should have been viewed as a motion for subpoena for the witnesses in question. "In the alternative, and with regards for the Hearing Examiners calendar; Appellant requests a Court Order for both witnesses, David Graves and Emily Griffith, to appear at the hearing."

Appellant's witness/exhibit list includes the statement "Appellant is asking to make David Graves and Emily Griffith available for the hearing as witnesses." It is wholly unclear from this statement whether it is directed to the OHE or the Respondent. Regardless, under HER 3.12 (a) and (b) a subpoena request must be submitted by motion, and there is no indication that this sentence imbedded in an improperly filed witness/exhibit list is a motion for subpoena. The term subpoena does not even appear in the document, and it was therefore not possible for the Hearing Examiner to divine Appellant's intent. Given the late date for the clarification by the Appellant as to her intent, and ongoing failure to file a motion for a subpoena, the Hearing Examiner declines to issue a subpoena or other related order. Mr. Graves has indicated that he will be in attendance at the hearing, and therefore may be called by Appellant as a witness. The Appellant is solely responsible for ensuring attendance by Emily Griffith as a witness.

The Hearing Examiner will not respond to or accept any additional comments outside the hearing process.

Thank you.

A handwritten signature in blue ink, appearing to read 'Ryan P. Vancil', with a large, stylized loop at the end.

Ryan P. Vancil
Hearing Examiner