

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

AQUARIAN FOUNDATION, INC.,

from a decision by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner Files:
MUP-23-011

Department Reference
3038146-LU

**ORDER ON
RECONSIDERATION RE
SUBPOENA**

Appellant Aquarian Foundation, Inc. requested reconsideration of the denial of subpoena issuance for Mr. Reilly, though he served as a Design Review Board member in reviewing the project now on appeal. Aquarian did not identify any error in the order denying the subpoena request as untimely.

There was no basis for waiving the timeliness requirements as Mr. Reilly's testimony cannot be required. An individual appointed to act as part of a body which issues recommendations cannot testify on a project's consistency with recommendation criteria. That individual's role is to impartially receive evidence. They cannot step from that role to serve as a fact witness to advocate for a party who came before them. Consistent with evidentiary and conduct rules, judicial privilege protects the witness against subpoena.

Washington's Rules of Evidence and of Judicial Conduct apply to judges and court proceedings, but to the extent consistent with this forum's rules, may serve as guidance.¹ The Rules of Evidence prohibit a judge from simultaneously adjudicating and serving as a witness.² Such a shedding of impartiality, whether on a matter the individual is directly adjudicating or on appeal, contradicts this forum's rules, which apply the Appearance of Fairness Doctrine,³ and also contradict the Code of Judicial Conduct.⁴

A judge shall not make any public statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending ... in any court.... A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.⁵

¹ See HER 1.03.

² Washington Rules of Evidence, ER 605; *Matter of Dependency of C.G.S.*, 24 Wn. App. 2d 1037, *10 (2022), unpublished.

³ HER 3.16.

⁴ See also *The Doctrine Of Judicial Privilege: The Historical And Constitutional Basis Supporting A Privilege For The Federal Judiciary*, 44 Wash. & Lee L. Rev. 213 (1987); *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018).

⁵ Washington Code of Judicial Conduct, Rule 2.10(A) and (B), internal citations omitted.

Issuing the requested subpoena would contravene these provisions. In addition, should remand occur, such activities could lead to disqualification, further proscribing the requested testimony.⁶ These principles have been deemed “essential to the maintenance of the independence, integrity, and impartiality of the judiciary,”⁷ and are appropriately applied here.

ORDER

The reconsideration request is **DENIED**.

Entered January 29, 2024.

A handwritten signature in black ink, appearing to read 'Susan Drummond', written over a horizontal line.

Susan Drummond
Deputy Hearing Examiner

⁶ CJC, Rule 3.1(A)-(C).

⁷ CJC 2.10, Cmt. 1.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date below I sent true and correct copies of the attached **ORDER ON RECONSIDERATION RE SUBPOENA** to each person below in **Aquarian Foundation, Inc.**, Hearing Examiner File **MUP-23-011** in the manner indicated.

Party	Method of Service
Appellant and Authorized Representative Reverend Jann Werner Aquarian Foundation, Inc info@aquarianfoundation.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel McCullough Hill PLLC Jessica Clawson jessica@mhseattle.com David P. Carpman dcarpman@mhseattle.com Isaac A. Patterson ipatterson@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department David Sachs SDCI david.sachs@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: January 29, 2024

/s/ Angela Oberhansly
Angela Oberhansly
Legal Assistant