

MUNICIPAL COURT OF WASHINGTON STATE
IN AND FOR THE CITY OF SEDRO WOOLLEY

CITY OF SEDRO WOOLLEY,) No. **0**
PLAINTIFF,)
vs.) DEFENDANT'S AFFIDAVIT OF
) PREJUDICE; Appearance of fairness,
) JUDGE SMITH's recusal.
)
)
)
Defendant, pro se.)

STATE OF WASHINGTON)
) **ss.**
COUNTY OF KING)

COMES NOW, Defendant hereto, to enter his objections and declaration of prejudice against "JUDGE SMITH" having anything whatsoever to do with matters involving Defendant's case above captioned. Defendant above named has complained to the WA Comm'n on Judicial Conduct (Exhibit A hereto¹) for denial of counsel and for willful *ultra vires* exercise of jurisdiction on SMITH' part, and is seeking his removal from [office], the grounds for such represented in Defendant's motion(s) to vacate appended hereto.

Exhibits to said motions show SMITH to have engaged in precisely that conduct (denial of counsel as a matter of course) deemed wholly unacceptable to authorities in Washington state charged with policing the ranks of the judiciary. Such gross misconduct alone warrants recusal under this affidavit, but must be added to a long list of derelictions rightfully attributed to him

¹ Defendant sent a copy of this entire pkg. of pleadings to the CJC as a an exhibit to his complaint against SMITH, but his complaint appended hereto does not include a redundant copy of this pkg. of pleadings which were its exhibits.

under the above captioned case, his disdain and indifference for Rule and statute now lying bare and vulnerable to collateral attack for cause. This proves SMITH likely to engage in further misconduct to cover the tracks complained of here and in said motions, which shows Defendant's rights to fairness to reside in peril for as long as such be the dominion of a presiding officer such as SMITH.

A party claiming an appearance of fairness doctrine violation has the burden of showing it. *Lake Forest Part v. Hearing Board*, 76 Wn.App. 212, 217 (1994). This state's appearance of fairness doctrine is similar to the constitutional requirement of an unbiased tribunal mentioned above. But it goes farther than the impartiality requirement in that it not only requires an impartial decision maker to be fair, but requires the decision maker to also *appear* to be fair. See *Offutt v. US*, 348 U.S. 11, 14 (1954) (“[J]ustice must satisfy the appearance of justice”); *Medina v. California*, 505 US 437, 464 (1992)(Blackmun, dissent)(“In matters of ethics, appearance and reality often converge as one.”).²

Appearances of bias are damaging to the public's confidence in our legal system. *State v. Madry*, 8 Wn.App. 61, 70 (1972). The key question is how the proceeding appears to a reasonably prudent and disinterested person. *Brister v. Tacoma City Council*, 27 Wn. App. 474, 487, (1980); *Chicago, Minn., St. Paul & Pacific RR v. State Human Rights Comm'n*, 87 Wn.2d 802, 810 (1976); *Swift v. Island County*, 87 Wn.2d 348, 361 (1976).

Even when a possible conflict of interest or bias doesn't actually occur, but **appears** to occur, it is enough to trigger this doctrine. *Narrowview-Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 420 (1974); *Buell v. Bremerton*, 80 Wn.2d 518, 523 (1972). Adjudicators must be

² See also *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923) (“[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done”). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)(noting the importance of “preserv[ing] both the appearance and reality of fairness,” which “generat[es] the feeling, so important to a popular government, that justice has been done”) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)). *Litkey v. US*, 510 US 540, 565 (1994)”; *Press-Enterprise Co. v. Superior Ct.*, 487 US 1, 9, 13 (1986); *Vasquez v. Hillery*, 474 US 254, 271 (1986); *Globe Newspaper Co. v. Superior Ct.*, 457 US 596, 606 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 US 555, 595 (1980); *Marshall v. Jerrico*, 446 US 238, 242 (1980); *Estes v. Texas*, 381 US 532, 543 (1965) (“A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . [T]o perform its high function in the best way, “justice must satisfy the appearance of justice.” *Offutt v. US*, 348 U.S. 11, 14.”); *Kentucky v. Stincer*, 482 US 730, 751 (1987) (dissent); *Greenholtz v. Inmates of Nebraska Penal Complex*, 442 US 1 (1979) (dissent).

“free of entangling influences.” *Buell* at 523. And again, the mere possibility, rather than actuality, of a conflict of interest or bias is enough show a violation. *Id.* at 524.

Defendant has clearly identified and detailed extreme prejudice in the form of violations of Rule as well a statute, and has complained for SMITH’ admonishment, and this surely disposes of any such appearance. The deprivations visited upon the Defendant by SMITH are starkly manifest, and Defendant has addressed these to those able to sanction him for such. The officer who acts in kind to lend sanctuary to a denial of counsel as has been proven can likewise count on Defendant to complain of such in kind.

The appearance of fairness is lost, as it relates to SMITH’ involvement in this case, and this assures Defendant that his due process rights are those to another judge in this case.

VERIFICATION.

I, Joe Lunchbucket, do hereby declare under penalties of perjury that the exhibits attached hereto are accurately represented herein, and that the foregoing statements and claims are true and correct to the best of my knowledge, gained from examination of the record in this case, of court rules, and of applicable statutes. Executed this ____ day of the month of August, 2004.

Joe Lunchbucket, Affiant

The above affirmation was subscribed and duly sworn to before me, this ____ day of August, 2004 by Joe Lunchbucket.

I, _____, am a Notary under license from the State of Washington whose Commission expire _____, and be it known by my hand and my Seal as follows:

Notary signature

Presented by:

c/o General Delivery
Ashton, WA 98255