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The Honorable Michael Hayden

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF KING

COUNCIL HOUSE

v.

JEANNE (LAUREN) HAWK

NO. 05-2-19641-6 SEA

DEFENDANT’S TO RECUSE

Defendant Jeanne Hawk respectfully requests that Judge Michael Hayden recuse himself from the consideration of this case.

FACTS

The present case involves an attempt by Council House, Inc., to evict tenant Jeanne Hawk. One of her defenses is that she is being evicted from her federally subsidized apartment because of the exercise of her free speech rights to criticize the

DEFENDANT’S MOTION TO RECUSE

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1 management of Council House. Council House management believes that she may be in
2 league with Paul Trummel a former tenant who was a very active critic of Council House
3 policies. It has come to the attention of the undersigned that the Hon. Michael Hayden
4 presided over the eviction of Paul Trummel from Council House in 2002.

5 As noted in the Defendant's Trial Brief:

6 A name that has haunted these proceedings is that of Paul Trummel. The
7 notorious Council House v. Trummel case was reported in national and international
8 newspapers and even on King County Superior Court's own opinions page at
9 <http://www.metrokc.gov/kcsc/opinions.htm> . Mr. Trummel criticized Council House
10 management with flyers and a website, asserting that management is racist (among other
11 claims). Mr. Mitchell obtained an anti-harassment order against him. Mr. Trummel was
12 jailed for over three months for contempt of court based on statements he made on his
13 website. While in jail, Mr. Trummel was evicted by Council House.

14 Paul Trummel has appealed the anti-harassment order on First Amendment
15 grounds and the Supreme Court of the State of Washington accepted review this Spring
16 (Trummel v. Mitchell, WA. S.Ct. no. 75977-4).

17 A certain group of tenants is generally supportive of Paul Trummel and his First
18 Amendment right to express his opinion in his website regarding the management of
19 Council House. Another faction is opposed. The Trummel controversy remains very
20 much alive in Council House, and management even arranged a field trip to Olympia so
21 that tenants could watch the oral argument live on June 23, 2005.
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ARGUMENT

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2 Hawk’s defense raises numerous arguments that her eviction is constitutionally
3 invalid. These arguments were repeatedly raised by Paul Trummel. In these
4 circumstances, defendant respectfully submits that the appearance of fairness will be
5 severely compromised if Judge Hayden remains in a position to consider and decide the
6 issues in this proceeding. Judge Hayden may have obtained information about Paul
7 Trummel and/or Council House that may color his perception of the instant case, or give
8 that appearance.
9

10 As discussed in the trial brief, a party defending an eviction from federally
11 subsidized housing has the right to due process of law. Const. art. 1, 3; U.S. Const.
12 amends. 5, 14. An unbiased judge and the appearance of fairness are hallmarks of due
13 process. In re Murchison, 349 U.S. 133, 99 L. Ed. 942, 55 S. Ct. 623 (1955); Ward v.
14 Village of Monroeville, 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267 (1972); State v.
15 Cozza, 71 Wn. App. 252, 255, 858 P.2d 270 (1993). A request for a recusal require[s]
16 careful consideration” State v. Carlson, 66 Wn. App. 909, 916-17, 833 P.2d 463 (1992),
17 rev. denied, 120 Wn.2d 1022 (1993).
18

19 The Code of Judicial Conduct states that “[j]udges should disqualify themselves in
20 a proceeding in which their impartiality might reasonably be questioned.” CJC Canon
21 3(D)(1). The canon lists several specific instances where a judge's duty to recuse is "clear
22 and nondiscretionary." Carlson, at 918. Such instances include the situation where "the
23 judge has a personal bias or prejudice concerning a party.” Carlson, at 919 n.4 (citing
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1 former CJC Canon 3(C)(1)(a), recodified as CJC Canon 3(D)(1)(a). The canon also
2 recognizes that other situations may arise where the appearance of fairness might be
3 compromised by a judge's participation in the decision. See e.g. Carlson, at 918-19.
4 "[T]he critical concern in determining whether a proceeding satisfies the appearance of
5 fairness doctrine is how it would appear to a reasonably prudent and disinterested person."
6 Carlson, at 919 (emphasis added, quoting Chicago, M., St. P. & Pac. R.R. v. State Human
7 Rights Comm'n, 87 Wn.2d 802, 810, 557 P.2d 307 (1976)); see also Sherman v. State, 128
8 Wn.2d 164, 205-06, 905 P.2d 355 (1995) (stating the canon's "reasonable person"
9 standard and remanding the case to a different judge); State v. Romano, 34 Wn.App. 567,
10 569, 662 P.2d 406 (1983) ("Next in importance to rendering a righteous judgment, is that
11 it be accomplished in such a manner that no reasonable question as to impartiality or
12 fairness can be raised"); State v. Madry, 8 Wn.App. 61, 70, 504 P.2d 1156 (1972) ("The
13 law goes farther than requiring an impartial judge; it also requires that the judge appear to
14 be impartial").

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17 In Rice v. McKenzie, the Fourth Circuit held that a district court judge erred in not
18 recusing himself from consideration of a habeas petition where the judge had participated
19 in the West Virginia Supreme Court's rejection of the same claims. The court stated the
20 issue:

21 Our task, then, is to determine whether a reasonable person would have had a reasonable
22 basis for doubting the judge's impartiality. In the process of making such a determination,
23 we cannot be influenced by our own faith in the integrity of a particular judge. Congress
24 was concerned with the appearance of impartiality to the general public. Neither our faith
25 nor the imaginings of one highly suspicious of others are relevant. The inquiry begins and
ends with a determination whether a reasonable person would have had a reasonable basis
for doubting the judge's impartiality.

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1 Rice, at 1116-17 (emphasis added). The court analogized the situation to one where a
2 district court judge would sit on the appellate panel in the same case, a circumstance the
3 court condemned as "unbecoming", "to say the least." Rice, 1117. This case is
4 different—the earlier litigation involved a different defendant and a few different issues.
5 But the two cases are connected, and the earlier case is quite notorious and is now being
6 considered by the Washington Supreme Court.
7

8 This motion should not be misconstrued as a personal attack on Judge Hayden, for
9 whom the undersigned has the utmost respect. However, counsel has reason to believe
10 that should Ms. Hawk lose the case, she is likely to perceive that she did not have a fair
11 chance to present her case from the beginning. The purpose of CJC Canon 3(D)(1) is to
12 prevent that doubt from infecting public confidence in the judiciary.
13

14 Should Council House file an answer to this motion, it might contend that there is no
15 proof of actual bias or actual prejudice. As the Rice cases recognizes, the absence of
16 proof of actual bias or actual prejudice will almost universally be the case, absent some
17 public statement that a judge cannot be fair to a litigant. It is the appearance of bias or
18 prejudice that the cited cases condemn.
19

20 **CONCLUSION**

21 To preserve Ms. Hawk's Due Process rights, and the appearance of judicial fairness and
22 impartiality, this Court should grant the requested relief.
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Respectfully submitted this ____ day of August, 2005,

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