
State Water Resources Control Board

March 13, 2023

RULING ON MOTION FOR CONTINUANCE AND MOTION TO DISQUALIFY BY BLOOMINGCAMP WATER SYSTEM

TO ALL PARTIES:

On December 30, 2022, the State Water Resources Control Board's (State Water Board or Board) Administrative Hearings Office (AHO) issued a Notice of Public Hearing on the proposed revocation of Bloomingcamp Water System's (Bloomingcamp's) Domestic Water Supply Permit No. 2018-03-017. The notice set a hearing in the matter for March 3, 2023.

Motion for Continuance

On February 2, 2023, Bloomingcamp filed a motion for continuance of the hearing. On February 14, 2023, the Prosecution Team filed an opposition to the motion. The AHO hearing officer issued a Notice of Continuation of Hearing on February 17, 2023, which ruled, in part, on Bloomingcamp's motion for continuance and continued the hearing to a date on or after April 10, 2023.

In its motion, Bloomingcamp raises the following arguments in support of a continuance of the hearing in this matter until at least July 2023:

1. As of the date of the motion, Bloomingcamp had only recently retained legal representation in this matter.
2. The hearing issues in the December 30, 2022 Notice of Public Hearing are broad and complex.
3. Bloomingcamp seeks an opportunity to obtain and review documents and evidence necessary to fairly defend itself.
4. A continuance is necessary for Bloomingcamp to have a meaningful opportunity to be heard.
5. A continuance would allow for settlement discussions between Bloomingcamp and the Prosecution Team.
6. There is no present urgency to conduct the hearing.
7. Resolution of the question about a potential conflict of interest between the hearing officer and a member of the Prosecution Team requires additional time.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

The AHO hearing officer granted a continuance of the proceeding from March 3 to a date on or after April 10, 2023, to allow additional time for Bloomingcamp's counsel to prepare for the hearing, for Bloomingcamp to request and obtain public records from the Division of Drinking Water, for the parties to conduct settlement discussions, and for the hearing officer to address Bloomingcamp's motion to disqualify.

After considering Bloomingcamp's motion for continuance and the Prosecution Team's opposition, I am setting a hearing in this matter for April 19, 2023. Bloomingcamp was first notified of the Division of Drinking Water's intent to revoke Domestic Water Supply Permit No. 2018-03-017 and the bases for the intended revocation by letter dated August 17, 2022. The Executive Director of the State Water Board issued a memorandum assigning the hearing in this matter to the AHO on October 24, 2022. And the AHO issued a Notice of Public Hearing on December 30, 2022. Bloomingcamp has been on notice for nearly seven months of the impending action by the Board to consider whether to revoke its domestic water supply permit and the hearing notice issued by the AHO provided more than two months' notice of the initially intended hearing date. Continuance of the hearing from March 3 to April 19, 2023, allows Bloomingcamp an additional 47 days to prepare for the hearing in this matter.

Bloomingcamp has had ample time to retain counsel and prepare for the hearing. Bloomingcamp has not made any specific arguments about the legal or factual complexity of the issues in this proceeding that would justify further delay in the hearing and Bloomingcamp has not identified any specific documents or information relevant to its defense that it has requested and has not yet been able to obtain from the Division. Bloomingcamp has provided no other evidence that it would be unable to meaningfully be heard in opposition to the revocation of its domestic water supply permit in a hearing on April 19. Although the hearing officer encourages settlement discussions between Bloomingcamp and the Prosecution Team, any settlement discussions may continue during the next several weeks leading up to the hearing. Finally, the hearing officer is acting in this ruling on Bloomingcamp's motion to disqualify, so there is no longer any outstanding procedural motion to justify further delay in the hearing.

For these reasons, Bloomingcamp's motion for continuance is granted in part and denied in part, and the hearing in this matter is set for April 19, 2023.

Motion to Disqualify

On February 14, 2023, Bloomingcamp filed a motion to disqualify Laura Mooney as a member of the Prosecution Team in this matter and to exclude from the proceeding any work produced by Ms. Mooney. In the alternative, Bloomingcamp seeks my recusal as the hearing officer in this matter. On February 17, 2023, the Prosecution Team filed an opposition to Bloomingcamp's motion to disqualify.

Bloomingcamp seeks to disqualify Ms. Mooney as a member of the Prosecution Team because of a past professional relationship between Ms. Mooney and I. I disclosed the facts about this past relationship in an e-mail to the parties on January 9, 2023. As stated in that e-mail:

During the spring semester of 2020, Ms. Mooney was a student in an online graduate-level course that I teach at McGeorge School of Law. In the fall

of 2022, I served as a personal reference for Ms. Mooney, based on her performance in my course, in her application for a position as an attorney with the Office of Enforcement of the State Water Resources Control Board. I understand that she was hired for and is currently serving in this position.

(2023-01-09 AHO E-mail to Parties.)

Bloomingcamp argues that Ms. Mooney should be disqualified from participation in the proceeding because this “special, limited” relationship between Ms. Mooney and I, as professor-student and reference-applicant, creates a “probability of personal bias.” (Bloomingcamp’s Motion to Disqualify, pp. 5 & 6.) The Prosecution Team objects that Bloomingcamp has offered no evidence establishing bias or a probability of bias. (Prosecution Team’s Objection to Motion to Disqualify, p. 2.)

Due process guarantees a neutral and unbiased decisionmaker in adjudicatory proceedings. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234 [“The contention that a fair hearing requires a neutral and unbiased decision maker is a fundamental component of a fair adjudication.”].) To show a due process violation due to bias of the decisionmaker, the party asserting bias “must come forward with specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias.” (*Today’s Fresh Start, Inc. v. Los Angeles County Office of Ed.* (2013) 57 Cal.4th 197, 221.)

Bloomingcamp cites *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022 (*Woody’s Group*), for the principle that “an unacceptable probability of actual bias” requires disqualification of the decisionmaker and cites footnote 23 of the court’s opinion in *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234 (*Breakzone*), for the proposition that a “personal” bias against or in favor of a party requires disqualification of a decisionmaker. (See Bloomingcamp’s Motion to Disqualify, p. 5.)

I conclude that neither case supports Bloomingcamp’s motion for disqualification in this instance. In *Woody’s Group*, a city councilmember stated that he was “strongly” opposed to the approval of a particular application by the planning commission, filed an appeal to the planning commission’s decision, and sat on the decision-making body acting on that appeal. (*Woody’s Group, supra*, 233 Cal.App.4th at pp. 1022-23.) The court of appeals concluded that these facts demonstrated a violation of the basic principle that “[y]ou cannot be a judge in your own case.” (*Id.* at p. 1016.) The court’s holding in *Woody’s Group* does not apply here because there is no evidence, and Bloomingcamp has not argued, that I have any personal interest in the outcome of the public hearing on Bloomingcamp’s domestic water supply permit. In *Breakzone*, the petitioner alleged that it was denied a fair hearing in part because four members of the city council had received campaign contributions from an interested party to the proceeding and a member of the city council filed the appeal of the underlying planning commission decision. (*Breakzone, supra*, 81 Cal.App.4th at p. 1220.) Again, these facts suggest a personal interest by the decisionmakers in the outcome of the proceeding. Even so, the court of appeals rejected the petitioner’s contentions and found that the petitioner failed to show that it was denied a fair hearing. The court

explained that disqualification for bias is necessary if the circumstances “strongly suggest a lack of impartiality,” (*Id.* at 1237) but emphasized that a “unilateral perception of an appearance of bias” is not grounds for disqualification and “[a] mere suggestion of bias is not sufficient to overcome the presumption of integrity and honesty” (*Id.* at 1236) afforded to a decisionmaker.

In this instance, my past professional relationship with Ms. Mooney suggests only that I have a favorable opinion of Ms. Mooney’s abilities as an attorney, not that I have any personal interest in the outcome of the proceeding or bias against or in favor of any party. My relationship with Ms. Mooney (1) was limited in scope and duration, (2) was purely professional, and (3) has diminished with the passage of time since I served as her professor almost three years ago and as a personal reference for purposes of an employment application over six months ago. The California Supreme Court explicitly rejected in *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, a standard that would require disqualification solely because an “adjudicator may have formed a favorable opinion of the abilities of one of the litigating attorneys through some previous social or professional interaction....” (*Id.* at p. 1148.) In another example, the California Supreme Court concluded in *People v. Carter* (2005) 36 Cal.4th 1215, 1243, that a judge had no obligation to recuse herself due to a prior professional and casual social relationship with the prosecutor.¹

My limited professional relationship with Ms. Mooney does not objectively demonstrate any probability of bias for or against any party to this proceeding or raise any reasonable doubt as to my impartiality. (See 2023-01-09 AHO E-mail to Parties [“My past professional relationship with Ms. Mooney would not affect my ability to serve as an impartial and unbiased decisionmaker in this proceeding.”].) Therefore, I conclude that I am not required to recuse myself, and similarly, there would be no basis to disqualify Ms. Mooney from fully participating in this proceeding as a member of the Prosecution Team. For these reasons, I deny Bloomingcamp’s motion to disqualify.

I opined in my January 9 e-mail that “to avoid any potential appearance of partiality ... a one-year ‘waiting period’ [would be] appropriate before a former student or person for whom I serve as a personal reference appears before me in an adjudicative proceeding.” (2023-01-09 AHO E-mail to Parties.) I based this opinion on the common practice of judges to impose a waiting period on former law clerks appearing before them. For example, the Advisory Committee on Judicial Conduct for the District of Columbia Courts advises, as a general rule of thumb, that law clerks should not appear before the judges for whom they clerked within a year after the end of the clerkship. (District of Columbia Advisory Committee on Judicial Conduct Advisory Opinion No. 13 (2014).) New Jersey and the United States Bankruptcy Court for the District of Delaware impose only a six-month waiting period on former law clerks appearing before

¹ The court’s decision in *Carter* was based on California Code of Civil Procedure, section 170.1, subdivision (a)(6), which imposes a heightened standard for recusal than necessary to satisfy due process or the California Administrative Procedure Act. Section 170.1 requires recusal, among other bases, if “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”

a judge for whom they clerked. (New Jersey Revised Code of Judicial Conduct Rule 3.17(B)(4)(f); Delaware Conflict of Interest Policies for Law Clerks.²)

My relationship with Ms. Mooney was much less intimate than the privileged relationship between a judge and his or her clerk. Although Bloomingcamp alleges that she may have obtained “special insights and knowledge about the hearing officer’s views on certain aspects of law that are unknown to Bloomingcamp” as a student in my course, any such insight would be limited to the content of the course (which focused on administrative practice and procedure) and would certainly be less than the insight a law clerk typically has about the views of his or her judge. (Bloomingcamp’s Motion to Disqualify, p. 5.) In addition, nearly three years have passed since Ms. Mooney was a student in my course and more than six months have passed since I served as a reference for her employment. Finally, there is the practical circumstance that no other hearing officer with the Administrative Hearings Office will be available within a reasonable time to preside over a hearing in this matter. The State Water Board and the AHO have a strong countervailing interest in conducting this hearing without further delay and bringing this matter to a timely resolution, particularly because the complaint involves an allegation of a potential threat to public health and safety. Therefore, in the exercise of my discretion as the Presiding Hearing Officer with authority to assign matters to hearing officers and reassign matters as convenience and necessity require (Wat. Code, § 1111, subd. (c)(2) & (3)), I will not, at this time, reassign this proceeding to another hearing officer.

March 13, 2023
Date

/s/ Nicole L. Kuenzi
Nicole L. Kuenzi
Presiding Hearing Officer
Administrative Hearings Office

² The Delaware Conflict of Interest Policies for Law Clerks is available at https://www.deb.uscourts.gov/sites/default/files/Final%20Conflict%20of%20Interest%20Policy%20for%20Law%20Clerks%20%28December%201%202022%29_1.pdf.

SERVICE LIST
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