

PASTORI BALELE,
Complainant,

v.

**Secretary, DEPARTMENT OF
ADMINISTRATION, Secretary,
DEPARTMENT OF EMPLOYMENT
RELATIONS, and Administrator,
DIVISION OF MERIT RECRUITMENT
AND SELECTION,**
Respondents.

**RULING ON
COMPLAINANT'S
REQUEST FOR
SUBSTITUTION OF
HEARING EXAMINERS**

Case No. 00-0104-PC-ER

Complainant requested substitution of hearing examiners by letter dated February 2, 2001, stating as shown below:

I have just received a notice that you (Commissioner Rogers) will be the presiding officer in the hearing of the above case. I am asking that Commission (sic) substitute you with any other Commission's official. The reason is that I do not believe that Commissioner you (sic) will be an impartial decision maker in this particular case. Attached is my affidavit to that effect. Thanks.

The full text of the referenced affidavit is shown below:

I, Pastori M. Balele, duly sworn under oath, state that I do not believe Commissioner Judy Rogers will be an impartial hearing officer in this particular case. I am therefore asking the Commission to substitute her with another Commission's (sic) official.

The Commission's rules allow for substitution of examiners under certain conditions.

The text of §5.01(4), Wis. Adm. Code is shown below:

If a party deems the presiding authority to be unqualified for reasons of conflict of interest or bias, the party may move in a timely manner for substitution of a different examiner or disqualification of the commissioner. The motion shall be accompanied by a written statement setting forth the basis for the motion. If a

hearing examiner does not grant a motion for substitution, it shall be referred to the commission, which shall determine the sufficiency of the ground alleged.

Commissioner Rogers determined that Mr. Balele's motion should not be granted and, accordingly, has brought the matter to the full Commission for resolution.

The Commission agrees with Commissioner Rogers' assessment that Mr. Balele's motion should not be granted. The sole reason advanced by Mr. Balele for his motion is his belief that Commissioner Rogers would not be impartial in this case. He has not provided any explanation of what underpins his alleged belief and his motion, accordingly, is insufficient under §PC 5.01(4), Wis. Adm. Code.

The Commission further notes that complainant has attempted to disqualify this same hearing examiner in *Balele v. UW System, et al.*, 98-0159-PC-ER, 11/4/98. The Commission denied the motion and noted as shown below (footnote omitted).

Mr. Balele has a history in this Commission of personally attacking those who disagree with him including opposing attorneys, administrative decision-makers and judges. He previously filed a complaint against Commissioner Murphy about which the BAPR [Board of Attorneys Professional Responsibility] Administrator concluded that Mr. Balele's "grievance does not appear to allege conduct that constitutes a potential violation of the Rules of Professional Conduct." Also, Mr. Balele previously wrote all three present Commissioners suggesting they resign (see letter dated August 25, 1997, filed in case numbers 97-0075-PC-ER and 97-0095-PC-ER which is entitled "Potential Substitution of Commissioners"). He commented about federal judges in the letter, as noted below showing the same emphasis as contained in the original document:

David Rice (an attorney with the Department of Justice (DOJ)) should be aware of what I told the six Federal Court Appeal judges recently when they proposed to ban me from filing lawsuits in the federal district court. DOJ . . . quoted case laws to back up the six judges proposition. When I read the case laws, I discover that actually courts are *prohibited* from banning anybody from filing lawsuits, however frivolous the filing may be. I called the six judges as bullies of Black people, and I asked them to resign for such gross illegal proposition. The six judges have vowed to write their decision to ban me within a week, but it is now more than a year since they wrote their proposition. They have chickened. The same kind of behavior is what I am detecting in you three (Commissioners) .

Mr. Balele also moved for substitution of Chairperson McCallum as hearing examiner, a request denied by the Commission. *Balele v. DATCP, et al.*, 98-0199-PC-ER, 2/11/00.

Commissioner Rogers has determined she is able to preside over the hearing in the present case in an impartial manner. Accordingly, the Commission concludes she is not required to recuse herself under §PC 5.01(3), Wis. Adm. Code.

ORDER

Complainant's request for substitution of Commissioner Rogers as hearing examiner is denied.

Dated: February 8, 2001.

STATE PERSONNEL COMMISSION

Laurie R. McCallum, Jr.
LAURIE R. McCALLUM, Chairperson

Judy M. Rogers
JUDY M. ROGERS, Commissioner