

Summary of Washington Appearance of Fairness Doctrine Cases

Case	Body/Action	Conflict	Decision
<u>Smith v. Skagit County</u> , 75 Wn.2d 715, 453 P.2d 832 (1969)	Planning Commission/Rezone	Planning commission met with proponents and excluded opponents in executive session.	Violation of appearance of fairness doctrine. Amendments to zoning ordinance to create an industrial zone were void - cause remanded to the superior court for entry of such a decree.
<u>State ex. rel. Beam v. Fulwiler</u> , 76 Wn.2d 313, 456 P.2d 322 (1969)	Civil Service Commission/Appeal from discharge of civil service employee (chief examiner of commission)	Challenge to hearing tribunal composed of individuals who investigated, accused, prosecuted, and would judge the controversy involved.	An appellate proceeding before the commission would make the same persons both prosecutor and judge and the tribunal must, therefore, be disqualified. A fair and impartial hearing before an unbiased tribunal is elemental to the concepts of fundamental fairness inherent in administrative due process.
<u>Chrobuck v. Snohomish County</u> , 78 Wn.2d 858, 480 P.2d 489 (1971)	Planning Commission - Board of County Commissioners/Comprehensive plan amendment and rezone	Chairman of planning commission and chairman of county commissioners visited Los Angeles with expenses paid by petitioner. Chairman of county commissioners announced favorable inclination prior to hearing. New planning commission member previously testified on behalf of petitioner and signed advertisement to that effect, then participated to some extent at commission hearings but disqualified himself from voting.	Violation of appearance of fairness doctrine. Rezone set aside - land returned to original designation. Planning commission functions as an administrative or quasi-judicial body. Note: Cross-examination may be required if both parties have attorneys.
<u>Buell v. Bremerton</u> , 80 Wn.2d 518, 495 P.2d 1358 (1972)	Planning Commission/Rezone	Chairman of planning commission owned property adjoining property to be rezoned. Property could have been indirectly affected in value.	Violation of appearance of fairness doctrine. Overrules <u>Chestnut Hill Co. v. Snohomish County</u> . Action by city council rezoning property on planning commission recommendation improper.
<u>Fleming v. Tacoma</u> , 81 Wn.2d 292, 502 P.2d 327 (1972)	City Council/Rezone	Attorney on council employed by the successful proponents of a zoning action two days after decision by city council.	Violation of appearance of fairness doctrine. Rezone ordinance invalid. Overrules <u>Lillians v. Gibbs</u> .
<u>Anderson v. Island County</u> , 81 Wn.2d 312, 501 P.2d 594 (1972)	Board of County Commissioners/Rezone	Chairman of county commission was former owner of applicant's company. Chairman told opponents at public hearing they were wasting their time talking.	Violation of appearance of fairness doctrine. Reversed and remanded for further proceedings.
<u>Narrowview Preservation Association v. Tacoma</u> , 84 Wn.2d 416, 526 P.2d 897 (1974)	Planning Commission/Rezone	Member of planning commission was a loan officer of bank which held mortgage on property of applicant. Member had no knowledge his employer held the mortgage on the property.	Appearance of fairness doctrine violation; thus zoning ordinance invalid. Court also held, however, acquaintances with persons or casual business dealings insufficient to constitute violation of doctrine.

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<u>Byers v. The Board of Clallam County Commissioners</u> , 84 Wn.2d 796, 529 P.2d 823 (1974)	Planning Commission/Adoption of interim zoning ordinance	Members owned property 10-15 miles from area zoned and there was no indication that such property was benefited directly or indirectly by rezone.	No violation of appearance of fairness doctrine. Ordinance held invalid on other grounds.
<u>Local Union 1296 v. Kennewick</u> , 86 Wn.2d 156, 542 P.2d 1252 (1975)	Arbitration Board/Arbitration hearing	Arbitrator had drinks with union representative after oral decision but before written decision. Decision was unchanged.	Court found indiscretion on part of arbitrator but affirmed the arbitrator's decision. By statute appearance of fairness doctrine inapplicable because by statute can use only test of whether decision arbitrary and capricious.
<u>Seattle v. Loutsis Investment Co., Inc.</u> , 16 Wn. App. 158, 554 P.2d 379 (1976)	City/Certiorari to review findings of public use and necessity by court in condemnation action	Alleged illegal copy made of a key to the condemned premises and unauthorized entries by city employees and other arbitrary conduct by city employees violated appearance of fairness doctrine.	Court held appearance of fairness doctrine applies only to hearings and not to administrative actions by municipal employees. Cites <u>Fleming v. Tacoma</u> .
<u>King County Water District No. 54 v. King County Boundary Review Board</u> , 87 Wn.2d 536, 554 P.2d 1060 (1976)	Boundary Review Board/Assumption by city of water district	Alleged ex parte conversations between member of the board and persons associated with Seattle Water District and Water District 75 about the proposed assumption by city of Water District No. 54.	No appearance of fairness violation. Record does not indicate conversations took place (??) and court could not conclude there was any partiality or entangling influences which would affect the board member in making the decision.
<u>Swift, et al. v. Island County, et al.</u> , 87 Wn.2d 348, 552 P.2d 175 (1976)	Board of County Commissioners/Overruling planning commission and approving a preliminary plat	A county commissioner was a stockholder and chairman of the board of a savings and loan association which had a financial interest in a portion of the property being platted.	Violated appearance of fairness doctrine.
<u>Milwaukee R.R. v. Human Rights Commission</u> , 87 Wn.2d 802, 557 P.2d 307 (1976)	State Human Rights Commission Special Hearing Tribunal/Complaint against railroad for alleged discrimination	Member of hearing tribunal had applied for a job with the commission.	The board's determination held invalid because it had appearance of unfairness.
<u>Fleck v. King County</u> , 16 Wn. App. 668, 558 P.2d 254 (1977)	Administrative Appeals Board/permit to install fuel tank	Two members of the board were husband and wife.	Fact that two members of board were husband and wife created appearance of fairness problem.
<u>SAVE (Save a Valuable Environment) v. Bothell</u> , 89 Wn.2d 862, 576 P.2d 401 (1978)	Bothell Planning Commission/Rezone	Planning commission members were executive director and a member of the board of directors, respectively, of the chamber of commerce which actively promoted the rezone.	Violation of appearance of fairness. Trial court found that the proposed shopping center which would be accommodated by the rezone would financially benefit most of the chamber of commerce members and their support was crucial to the success of the application. The planning commission members' associational ties were sufficient to require application of the doctrine.

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<u>Side v. Cheney</u> , 37 Wn. App. 199, 679 P.2d 403 (1984)	Mayor/Promotion of police officer to sergeant	Mayor passed over officer first on civil service promotion list who had also filed for election for position of mayor.	Appearance of fairness doctrine does not apply to mayor who did not act in role comparable to judicial officer. Mayor's promotion decision was not a quasi-judicial decision.
<u>Zehring v. Bellevue</u> , 103 Wn.2d 588, 694 P.2d 638 (1985)	Planning Commission / Design review	Member of commission committed himself to purchase stock in proponent corporation before hearing held in which commission denied reconsideration of its approval of building design.	Appearance of fairness doctrine does not apply to design review because doctrine only applies where a public hearing is required and no public hearing is required for design review. Court vacates its decision in earlier case (<u>Zehring v. Bellevue</u> , 99 Wn.2d 488 (1983), where it held doctrine had been violated.)
<u>West Main Associates v. Bellevue</u> , 49 Wn. App. 513, 742 P.2d 1266 (1987)	City council/denial of application for design approval	Councilmember attended meeting held by project opponents and held conversation with people at meeting, prior to planning director's decision and opponent's appeal of that decision to council.	Appearance of fairness doctrine prohibits ex parte communications between public quasi-judicial decision makers only where communication occurs while quasi-judicial proceeding is pending. Since communication at issue occurred one month prior to appeal of planning director's decision to the council, it did not occur during the pendency of the quasi-judicial proceeding and doctrine was thus not violated.
<u>Snohomish County Improvement Alliance v. Snohomish County</u> , 61 Wn. App. 64, 808 P.2d 781 (1991)	County council/denial of application for rezone approval	Two councilmembers received campaign contributions during pendency of appeal.	Contributions were fully disclosed. The contributions were not ex parte communications as there was no exchange of ideas. RCW 42.36.050 provides that doctrine is not violated by acceptance of contribution.
<u>Raynes v. Leavenworth</u> , 118 Wn.2d 237, 821 P.2d 1204 (1992)	City council/amendment of zoning code	Councilmember was real estate agent for broker involved in sale of property to person who was seeking amendment of zoning code. Councilmember participated in council's consideration of proposed amendment.	Text amendment was of area-wide significance. Council action thus was legislative, rather than quasi-judicial. Appearance of fairness doctrine does not apply to legislative action. Limits holding of <u>Fleming v. Tacoma</u> , 81 Wn.2d 292, 502 P.2d 327 (1972) through application of statutory appearance of fairness doctrine (RCW 42.36.010), which restricts types of decisions classed as quasi-judicial.
<u>Trepanier v. Everett</u> , 64 Wn. App. 380, 824 P.2d 524 (1992)	City council/determination that environmental impact statement not required for proposed zoning ordinance	City both proposed new zoning code and acted as lead agency for SEPA purposes in issuing determination of nonsignificance (DNS).	Person who drafted new code was different from person who carried out SEPA review. In addition, there was no showing of bias or circumstances from which bias could be presumed in council's consideration of legislation proposed by executive.
<u>State v. Post</u> , 118 Wn.2d 596, 837 P.2d 599 (1992)	Community corrections officer/preparation of presentence report	Presentence (probation) officer is an agent of the judiciary; that officer's alleged bias is imparted to judge.	Probation officer is not the decisionmaker at sentencing hearing; judge is. Appearance of fairness does not apply to probation officer. In addition, no actual or potential bias shown.

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<u>Jones v. King Co.</u> , 74 Wn. App. 467, 874 P.2d 853 (1994)	County council/area-wide rezone	Action has a high impact on a few people and therefore it should be subject to appearance of fairness doctrine.	Area-wide rezoning constitutes legislative, rather than quasi-judicial action under RCW 42.36.010 regardless of whether decision has a high impact on a few people or whether local government permits landowners to discuss their specific properties.
<u>Lake Forest Park v. Shoreline Hearings Board</u> , 76 Wn. App. 212, 884 P.2d 614 (1994)	Shorelines Hearings Board/shoreline substantial development permit	Reconsideration of the record allegedly prejudiced the SHB against the city.	When acting in a quasi-judicial capacity, judicial officers must be free of any hint of bias. However, a party claiming an appearance of fairness violation cannot indulge in mere speculation, but must present specific evidence of personal or pecuniary interest.
<u>Bjarnson v. Kitsap County</u> , 78 Wn. App. 840, 899 P.2d 1290 (1995).	Board of County Commissioners approval of a rezone and planned unit development for a regional shopping center	Ex parte communications during the pendency of the rezone	Any appearance of fairness problems arising from allegedly improper conduct by a member of a decision-making board are cured if the remaining members of the board conduct a rehearing and there is no question of bias or the appearance of bias of the remaining members
<u>OPAL v. Adams County</u> , 128 Wn.2d 869, 913 P.2d 793 (1996)	Board of County Commissioners disapproval of application for an unclassified use permit for a proposed regional solid waste landfill and recycling facility	Ex parte communications between commissioners and an interested party	Challenger must demonstrate that the communication concerned the proposal which is the subject of the quasi-judicial proceeding. Also, the decisionmaker's failure to disclose ex parte communication does not render the administrative decision invalid if the communication has, in fact, been rebutted in the course of the proceedings.
<u>King County v. Central Puget Sound GMHB</u> , 91 Wn. App. 1, 951 P.2d 1151 (1998)	County council/ project permit approval	Councilmembers did not adequately disclose ex parte communications; project opponents allegedly did not have opportunity to rebut.	By not seeking recusal of the councilmembers who had offered what had been alleged as inadequate disclosure of ex parte contacts, the appearance of fairness challenge is waived.
<u>Bunko v. City of Puyallup</u> , 95 Wn. App. 495, __ P.2d __ (1999)	Civil Service Commission order affirming employment termination of police officer	Ex-parte communication with a key witness.	Statutory doctrine applied for first time to matter other than land use. The appearance of fairness doctrine is not violated when ex parte communications do not concern the matter before the quasi-judicial body.

Note: Adapted from a chart originally prepared by Lee Kraft, former City Attorney of Bellevue.
 Court's decision may have rested on grounds other than appearance of fairness doctrine alone, in some cases.

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<p><u>Westside Hilltop Survival Committee v. King County</u>, 96 Wn.2d 171, 634 P.2d 862 (1981)</p>	<p>County Council/Comprehensive plan amendment</p>	<p>Prior to modification of the comprehensive plan there were ex parte contacts between one or two councilmembers and officials of the proponent corporation and two councilmembers had accepted campaign contributions in excess of \$700 from employees of the proponent corporation. These councilmembers actively participated in and voted for adoption of the ordinance modifying the comprehensive plan to allow construction of an office building on a site previously designated as park and open space.</p>	<p>Comprehensive plans are advisory only and a local legislative body's action to determine the contents of such a plan is legislative rather than adjudicatory. Legislative action in land use matters is reviewed under the arbitrary and capricious standard and is not subject to the appearance of fairness doctrine.</p>
<p><u>Hogiam v. PERC</u>, 97 Wn.2d 481, 646 P.2d 129 (1982)</p>	<p>Public Employment Relations Commission (PERC)/Unfair labor practice complaint</p>	<p>Member of PERC was partner in law firm representing union.</p>	<p>Law firm's representation of the union did not violate the appearance of fairness doctrine where commissioner who was a partner in the law firm representing the union disqualified herself from all participation in the proceedings.</p>
<p><u>Dorsten v. Port of Skagit County</u>, 32 Wn. App. 785, 650 P.2d 220 (1982)</p>	<p>Port Commission/Increase of moorage charges at public marina</p>	<p>Alleged prejudgment bias of commissioner who was an owner or part owner of a private marina in competition with the port's marina.</p>	<p>The port's decision was legislative rather than judicial and the appearance of fairness doctrine did not apply.</p>
<p><u>Harris v. Hombaker</u>, 98 Wn.2d 650, 658 P.2d 1219 (1983)</p>	<p>Board of County Commissioners/Board's determination of a freeway interchange - adoption of six-year road plan</p>	<p>Alleged prejudgment bias of certain county commissioners.</p>	<p>Deciding where to locate a freeway interchange is a legislative rather than an adjudicatory decision and so the appearance of fairness doctrine does not apply.</p>
<p><u>Medical Disciplinary Board v. Johnston</u>, 99 Wn.2d 466, 663 P.2d 457 (1983)</p>	<p>Medical Disciplinary Board / Revocation of medical license</p>	<p>Challenge to the same tribunal combining investigative and adjudicative functions, and the practice of assigning a single assistant attorney general as both the board's legal advisor and prosecutor.</p>	<p>The appearance of fairness doctrine is not necessarily violated in such cases. The facts and circumstances in each case must be evaluated to determine whether a reasonably prudent disinterested observer would view the proceeding as a fair, impartial, and neutral hearing and, unless shown otherwise, it must be presumed that the board members performed their duties properly and legally. [In a concurring opinion, Justices Utter, Dolliver, and Dimmick asserted that the majority's analysis of the appearance of fairness doctrine merely reiterates the requirements of due process and thereby causes unnecessary confusion.] [In a dissenting opinion Justices Rosellini and Dore argued that the combination of investigative, prosecutorial, and adjudicative functions within the same tribunal constitutes an appearance of fairness violation.]</p>

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<u>Polygon v. Seattle</u> , 90 Wn.2d 59, 578 P.2d 1309 (1978)	City of Seattle, Superintendent of Buildings/Application for building permit denied	Announced opposition to the project by the mayor, and a statement allegedly made by the superintendent, prior to the denial, that because of the mayor's opposition, he would announce that the permit application would be denied.	The appearance of fairness doctrine does not apply to administrative action, except where a public hearing is required by law. The applicable fairness standard for discretionary administrative action is actual partiality precluding fair consideration.
<u>Hill v. Dept. L & I</u> , 90 Wn.2d 276, 580 P.2d 636 (1978)	Board of Industrial Insurance Appeals/Appeal by industrial insurance claimant	The chairman of the appeals board had been supervisor of industrial insurance at the time the claim had been closed.	No violation of appearance of fairness doctrine. The chairman submitted his uncontroverted affidavit establishing lack of previous participation or knowledge of the case.
<u>City of Bellevue v. King County Boundary Review Board</u> , 90 Wn.2d 856, 586 P.2d 470 (1978)	Boundary Review Board/Approval of annexation proposal	Use of interrogatories on appeal to superior court to prove bias of board members.	Holding that the use of such extra-record evidence was permissible under the specific circumstances present, the majority opinion observed: "Our appearance of fairness doctrine, though relating to concerns dealing with due process considerations, is not constitutionally based"
<u>Evergreen School District v. School District Organization</u> , 27 Wn. App. 826, 621 P.2d 770 (1980)	County Committee on School District Organization/Adjustment of school district boundaries	Member of school district board which opposed transfer of property to the proponent school district participated as a member of the county committee on school district organization.	Decision to adjust school district boundaries is a discretionary, quasi-legislative determination to which the appearance of fairness doctrine does not apply.
<u>Hayden v. Port Townsend</u> , 28 Wn. App. 192, 622 P.2d 1291 (1981)	Planning Commission/Rezone	Planning commission chairman, who was also branch manager of S & L which had an option to purchase the site in question, stepped down as chairman but participated in the hearing as an advocate of the rezone.	Participation of planning commission chairman as advocate of rezone violated appearance of fairness doctrine.
<u>Somer v. Woodhouse</u> , 28 Wn. App. 262, 623 P.2d 1164 (1981)	Department of Licensing/Adoption of administrative rule	During two rules hearings the Director of the Department of Licensing sat at the head table with the representatives of an organization which was a party to the controversy some of whom argued for adoption of the rule proposed by the department. The minutes of the rules hearings also bore the name of the same organization.	The appearance of fairness doctrine is generally not applicable to a quasi-legislative administrative action involving rule making.