

From: [John Galt](#)
To: [Deb Estrada](#)
Subject: FW: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance
Date: Saturday, October 28, 2023 2:10:19 PM
Attachments: [image002.jpg](#)
[image003.png](#)

Deb:

The following email string is Exhibit 9002.

John

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (425) 259-3144

From: John Galt
Sent: Wednesday, August 16, 2023 3:36 PM
To: 'Eileen Keiffer' <eileen@madronalaw.com>
Cc: 'Brent Irvin' <birvin888@gmail.com>; 'Andrea Larson' <andrea.larson@mercergov.org>; 'Bio Park' <bio.park@mercergov.org>; 'Mary Swan' <mary.swan@mercergov.org>; 'Tori Harris' <tharris@madronalaw.com>; 'Bailey McCoy' <bam@tbr-law.com>; 'Aric Bomsztyk' <asb@tbr-law.com>
Subject: RE: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Dear Principal Parties:

After consideration of your recent emails, I herewith set the **hearing in this appeal for Monday, October 30, 2023, starting at 10:00 a.m.** The hearing will be conducted remotely using the Zoom platform. The City will set up the Zoom session and will include the log-in information in the required hearing notice. It may also send a separate Zoom scheduling email to the principal parties. The Rule of Procedure 225 “shortened” evidence pre-filing procedure will be followed. (Please remember that the filing deadlines in the Rule are just that – deadlines. You may always file earlier if you wish.)

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (425) 259-3144

From: Eileen Keiffer
Sent: Monday, August 14, 2023 3:38 PM

To: John Galt <jegalt755@gmail.com>

Cc: 'Brent Irvin' <birvin888@gmail.com>; Andrea Larson <andrea.larson@mercergov.org>; 'Bio Park' <bio.park@mercergov.org>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>; Bailey McCoy <bam@tbr-law.com>; Aric Bomsztyk <asb@tbr-law.com>

Subject: RE: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Mr. Galt and counsel,

The City opposes any further continuances of this matter (to early November or beyond) and would request that a hearing on this matter be set for Oct. 30 (the City has previously advised that it is not available for hearing on Oct. 31).

Regardless of the location of the canine in question, delay harms the City's ability to prosecute its case, as delay makes it more likely that witnesses will not be available to testify or that memories of crucial events may fade. Indeed, the incident in question giving rise to the appealed notice occurred in June of this year. An October 30 hearing is already over four months removed from the incident in question. Accordingly, further delay of this proceeding would indeed work prejudice upon the City's case.

Thank you,

Eileen M. Keiffer, Member



14205 SE 36th Street
Suite 100, PMB 440
Bellevue, Washington 98006
Tel: (425) 201-5111, Ext. 1
Eileen@MadronaLaw.com
www.MadronaLaw.com

From: Aric Bomsztyk <asb@tbr-law.com>

Sent: Monday, August 14, 2023 3:04 PM

To: John Galt <jegalt755@gmail.com>; Eileen Keiffer <eileen@madronalaw.com>

Cc: 'Brent Irvin' <birvin888@gmail.com>; Andrea Larson <andrea.larson@mercergov.org>; 'Bio Park' <bio.park@mercergov.org>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>; Bailey McCoy <bam@tbr-law.com>

Subject: RE: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Mr. Galt and Counsel,

Unfortunately, I have a 7 day jury trial that is slated to start on October 16. While it should be done by the week of October 30, I cannot know for sure.

Thus, we could tentatively book October 30 or 31 with that proviso that I may still be in trial and then would have to reschedule. We could also consider dates in early November.

I can confirm that the canine Austin will remain in Arizona until the hearing date. Thus, there is no prejudice to any Party with the extended continuance.

ASB

Aric S. Bomsztyk
Attorney at Law

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From: John Galt <jegalt755@gmail.com>

Sent: Wednesday, August 9, 2023 4:53 PM

To: 'Eileen Keiffer' <eileen@madronalaw.com>

Cc: Aric Bomsztyk <asb@tbr-law.com>; 'Brent Irvin' <birvin888@gmail.com>; 'Andrea Larson' <andrea.larson@mercergov.org>; 'Bio Park' <bio.park@mercergov.org>; 'Mary Swan' <mary.swan@mercergov.org>; 'Tori Harris' <tharris@madronalaw.com>; Bailey McCoy <bam@tbr-law.com>

Subject: RE: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Dear Principal Parties:

First, the easy items. Yes, the hearing will be either entirely remote or hybrid. (See my July 28th letter, page 2, paragraph 3.) If hybrid, I intend to participate remotely and would encourage others to feel free to do so, too.

Ms. Keiffer is correct about the pre-filing schedule. As I said in my July 28th letter (page 2, paragraph 6), we will use the shortened pre-filing process. The difference between the standard and the shortened version is that in the shortened version the respondent and the appellant both pre-file their exhibits 7 days before the hearing.

Now, on to the scheduling situation. I am unwilling to force a hearing date for which I know (from prior correspondence) that one of the two appellants will not be able to be present due

th

to out-of-country work travel. That rules out September 6 . I am equally unwilling to hold a hearing on a date that the ACO cannot attend. That rules out September 20th.

In the interest of fairness to both parties, **I herewith *sua sponte* extend the 60-day hearing deadline contingent on “Austin” remaining out of Mercer Island until I have issued a Decision in this matter.** (Since MICC 7.04.235(D) authorizes me to enforce the potentially dangerous dog enclosure and physical control restrictions during the pendency of the appeal, I believe that requiring Austin to remain outside of Mercer Island during the pendency of the appeal will accomplish the same thing.)

I will return from my short vacation trip on the evening of October 11; I do not want to hold a hearing the very next day as I would not be properly prepared. My schedule for the rest of the month is currently quite open. I am available on Oct 13, 16, 17, 18 (afternoon only), 19, 20, 23, 24, 25, 26, 27, 30, and 31.

Please provide to me your availabilities within those dates not later than August 16th.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (425) 259-3144

From: Eileen Keiffer

Sent: Wednesday, August 09, 2023 7:51 AM

To: John Galt <jegalt755@gmail.com>

Cc: Aric Bomsztyk <asb@tbr-law.com>; Brent Irvin <birvin888@gmail.com>; Andrea Larson <andrea.larson@mercergov.org>; Bio Park <bio.park@mercergov.org>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>; Bailey McCoy <bam@tbr-law.com>

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The City's suggestion is that we proceed with the hearing on September 6, when the City Clerk will be available to run the video hearing. The City has never taken the position that delays of the hearing are warranted based upon a need by appellant's counsel for additional time to prepare. Further, I do believe Mr. Bomsztyk is misreading the rules—the 14 day provision typically applies to the City (as respondent), and in any event, the Examiner's scheduling letter has provided we are using the shortened pre-filing timelines set forth in rule 225.

Eileen M. Keiffer, Member



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Bellevue, Washington 98006
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Eileen@MadronaLaw.com
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From: John Galt <jegalt755@gmail.com>
Sent: Wednesday, August 9, 2023 7:42 AM
To: Eileen Keiffer <eileen@madronalaw.com>
Cc: Aric Bomsztyk <asb@tbr-law.com>; Brent Irvin <birvin888@gmail.com>; Andrea Larson <andrea.larson@mercergov.org>; Bio Park <bio.park@mercergov.org>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>; Bailey McCoy <bam@tbr-law.com>
Subject: Re: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Other suggestions?

On Wed, Aug 9, 2023, 7:39 AM Eileen Keiffer <eileen@madronalaw.com> wrote:

Good morning Mr. Galt and counsel,

Unfortunately, September 20 will not work from the City's scheduling perspective—both the animal control officer issuing the PDD notice, as well as the City Clerk (who runs the Zoom hearing) are unavailable that day.

Thank you,

Eileen M. Keiffer, Member



14205 SE 36th Street
Suite 100, PMB 440
Bellevue, Washington 98006
Tel: (425) 201-5111, Ext. 1
Eileen@MadronaLaw.com
www.MadronaLaw.com

From: Aric Bomsztyk <asb@tbr-law.com>

Sent: Tuesday, August 8, 2023 9:01 PM

To: John Galt <jegalt755@gmail.com>

Cc: Brent Irvin <birvin888@gmail.com>; Andrea Larson <andrea.larson@mercergov.org>; Bio Park <bio.park@mercergov.org>; Eileen Keiffer <eileen@madronalaw.com>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>; Bailey McCoy <bam@tbr-law.com>

Subject: RE: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Mr. Galt and Counsel,

I am getting up to speed on this case.

Am I correct that we can have this hearing via video conference? If so, Appellants would like to schedule this for September 20, 2023.

The reason being is that written submissions are due 14 days in advance (as I read the rule). Appellants would like to the opportunity to present written reports and other materials. In addition, to extent possible, once we prepare written reports and materials – we would like to attempt a negotiated resolution to this dispute. September 6 or 7, 2023 does not provide sufficient time. Finally, the canine at issue is in Arizona and will remain there for the time being.

Appellants would not oppose a hearing date after September 20, 2023. If all Parties stipulate, it is our position that the Hearing Examiner can set the date outside the prescribed window.

ASB

Aric S. Bomsztyk
Attorney at Law

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From: John Galt <jegalt755@gmail.com>

Sent: Monday, August 7, 2023 6:25 PM

To: Aric Bomsztyk <asb@tbr-law.com>

Cc: Brent Irvin <birvin888@gmail.com>; Andrea Larson <andrea.larson@mercergov.org>; Bio Park <bio.park@mercergov.org>; Eileen Keiffer <eileen@madronalaw.com>; Mary Swan

<mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>; Filing B <filing-b@tbr-law.com>

Subject: Re: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Received. Thank you.

On Mon, Aug 7, 2023, 4:02 PM Aric Bomsztyk <asb@tbr-law.com> wrote:

Mr. Galt & Counsel,

Attached please find my Notice of Appearance on behalf of Irvin/Quan.

ASB

Aric S. Bomsztyk
Attorney at Law

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From: John Galt <jegalt755@gmail.com>

Sent: Sunday, August 6, 2023 4:26 PM

To: 'Brent Irvin' <birvin888@gmail.com>

Cc: 'Andrea Larson' <andrea.larson@mercergov.org>; Aric Bomsztyk <asb@tbr-law.com>; 'Bio Park' <bio.park@mercergov.org>; 'Eileen Keiffer' <eileen@madronalaw.com>; 'Mary Swan' <mary.swan@mercergov.org>; 'Tori Harris' <tharris@madronalaw.com>

Subject: RE: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Dear Mr. Irvin:

I have added Mr. Bomsztyk to my email distribution list for this appeal in anticipation of receiving a Notice of Appearance from him.

I am also attaching my July 28th letter to the parties, the Rules of Procedure, and the Emergency E-filing Rule to ensure that he has them; the rest of you already have them.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (425) 259-3144

From: Brent Irvin

Sent: Sunday, August 06, 2023 8:31 AM

To: John Galt <jegalt755@gmail.com>

Cc: Andrea Larson <andrea.larson@mercergov.org>; Aric Bomsztyk <asb@tbr-law.com>; Bio Park <bio.park@mercergov.org>; Eileen Keiffer <eileen@madronalaw.com>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>

Subject: Re: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Adding Aric, who will represent us on this matter.

Brent

On Thu, Aug 3, 2023 at 3:28 PM Brent Irvin <birvin888@gmail.com> wrote:

I am finalizing counsel today/tomorrow, and assume can figure out scheduling after that. Apologies for the delay.

And one way or another I'll make timing work.

Brent

On Thu, Aug 3, 2023 at 2:33 PM John Galt <jegalt755@gmail.com> wrote:

Dear Principal Parties:

We apparently have a scheduling impasse. We have a fairly narrow "window of opportunity" for the hearing, I have limited availability during that window, one of the three days I suggested works for Respondent, but that day does not work for Appellant.

The applicable code section (MICC 7.04.235(C)) does not contain a provision allowing the parties to mutually waive the time limit for the hearing. Whether a Hearing Examiner has the inherent right to waive the time line has never been adjudicated to the best of my knowledge.

There are a number of factors for us to consider. As of the date the appeal was filed, "Austin" was not domiciled in Mercer Island (or even in Washington State); I do not know whether Austin is still out of state. Subsection 7.04.235(D) MICC provides that the restrictions applicable to a potentially dangerous dog (essentially enclosure and physical control requirements) are stayed during the pendency of an appeal unless I rule otherwise; an extended appeal process could lead me to conclude that Austin would need to be confined until the appeal had been concluded. And, obviously, the MICC does not contemplate longer appeal periods.

I realize that I could set a hearing date and, if Irvin/Quan failed to appear, simply rule against them. [MICC 7.04.235(C), last sentence] That would be my least-favored course of action.

I would very much like to hear from both parties regarding your thoughts on scheduling this appeal. Therefore, I will accept email comments through next Wednesday, August 9, 2023.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (425) 259-3144

From: Brent Irvin
Sent: Monday, July 31, 2023 10:58 AM
To: Eileen Keiffer <eileen@madronalaw.com>
Cc: Andrea Larson <andrea.larson@mercergov.org>; Bio Park <bio.park@mercergov.org>; John Galt <jegalt755@gmail.com>; Mary Swan <mary.swan@mercergov.org>; Tori Harris <tharris@madronalaw.com>
Subject: Re: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Thanks everyone. Although I am a lawyer, not this type of lawyer and not qualified in WA. So I may want to engage counsel. I should also note that I will be out of the country for work on September 6, so not sure if that works.

I will try to sort out counsel over next few days and then can figure out schedule from there?

Brent

On Mon, Jul 31, 2023 at 10:29 AM Eileen Keiffer <eileen@madronalaw.com> wrote:

Good morning Mr. Galt and all,

The City is available for a hearing in this matter on September 6.

Further, we consent to further service in this Hearing Examiner proceeding via email.

Thank you,

Eileen M. Keiffer, Member

[14205 SE 36th Street](#)
Suite 100, PMB 440
Bellevue, Washington 98006
Tel: (425) 201-5111, Ext. 1
Eileen@MadronaLaw.com
www.MadronaLaw.com

From: John Galt <jegalt755@gmail.com>

Sent: Thursday, July 27, 2023 1:03 PM

To: Andrea Larson <andrea.larson@mercergov.org>; Bio Park
<bio.park@mercergov.org>; Brent Irvin <birvin888@gmail.com>; Eileen Keiffer
<eileen@madronalaw.com>; Mary Swan <mary.swan@mercergov.org>; Tori Harris
<tharris@madronalaw.com>

Subject: APL23-005, Irvin/Quan v. Mercer Island ACO; Scheduling guidance

Please see attachments.

John E. Galt
Hearing Examiner/Officer
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