

March 10, 2022

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

**ORDER OF DISMISSAL IN V22012900 AND
PREHEARING ORDER AND NOTICE OF REMOTE HEARING IN V22012899**

SUBJECT: Regional Animal Services of King County file nos. **V22012899** and **V22012900**

WAI HAN POON

Animal Services Enforcement Appeal

Activity no.: A22000516

Appellant: **Wai Han Poon**

Seatac, WA 98168

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Rebecca Smokoska**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskappeals@kingcounty.gov

Having held a pre-hearing conference on March 9, 2022, we order as follows:

1. **Dismissal of V22012900.** Animal Services seeks Lucky's removal under KCC 11.04.290.B.2, as an animal that "bites, attacks or attempts to bite one or more persons two or more times within a two-year period." The removal order (V22012900) was flawed in two respects. First, in its list of animal offense history, it pointed to a 2013 case, but neglected to mention

V21011965, the case last year where we sustained Lucky’s designation as a vicious dog. More importantly, in V21011965, we did not find—nor was there even an allegation that—Lucky attacked or attempted to bite a human; instead Lucky attacked and injured another dog.

At our March 9 conference, Animal Services admitted that the removal order was invalid, that Lucky had not bit or attempted to bite a person on two separate occasions, and that it meant to issue a removal order on a *different* legal basis.

For a \$50 nuisance fine, whether the officer should have cited the dog for, say, running at large within the county v. running at large in a park, does not seem like that big a deal. Animal Services officers issue thousands of tickets every year upon the fly. If the field officer rights in the wrong code subsection occasionally, that seems par for the course.

Removal orders are decidedly different. They break “the bond between animal and human and the intrinsic and an estimable value a companion animal” provides. *Repin v. State*, 198 Wn. App. 243, 284, 392 P.3d 1174 (2017) (Fearing, C.J., concurring). A field officer may not issue a removal order, nor even may a supervisor. Instead, they must come straight from the director. There is plenty of time to double check and triple check a removal order before it gets issued.

We would not come down so hard on Animal Services were this the first or even second time the director issued removal order that was faulty on its face. But it is at least the third. Animal Services needs to get its ducks in a row before it issues a removal order. Today we dismiss V22012890 *without* prejudice, meaning Animal Services may reissue a removal order listing the correct past violations and asserting the proper code subsection. If it happens again we may dismiss the removal order *with* prejudice, meaning Animal Services would be barred from refiling.

If Animal Services serves a new removal order to Ms. Poon, it should send us a copy and we will postpone our April 6 hearing on V22012899. If Animal Services does not issue a removal order, we will proceed to hear V22012899 on April 6.

2. **Notice of Hearing on V22012899.** A remote hearing on this matter will begin at:

10:30 a.m. on Wednesday, April 6, 2022

Parties should join by Zoom video. Persons unable to join by Zoom may join by telephone by dialing **+1 (253) 215-8782** and entering the meeting ID and passcode below.

Join Zoom Hearing:

Meeting URL: <https://kingcounty.zoom.us/j/83589441329>

Meeting ID: 835 8944 1329

Passcode: 216789

Please refer to our website listed on the first page of this notice for additional guidance on *Zoom Technical Guidelines* and *Zoom Hearing Procedural Protocols*.

A Cantonese interpreter will be available.

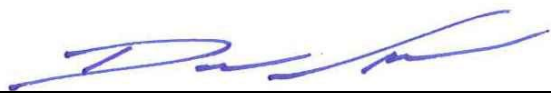
3. **Rescheduling.** Any party wishing to reschedule the hearing must obtain the other party's written concurrence and email this to hearingexaminer@kingcounty.gov. (Other persons likely to be directly and substantially affected by this proposal may request "party" status by petitioning to intervene. *See* Examiner Rule X.B.) Absent such an agreement, the examiner will only grant a request upon a showing of good cause.

Agreement by the parties to this continuance constitutes a waiver of the affected dates for processing this appeal.

4. **Unease with Remote Hearing.** Anyone concerned with proceeding by video/phone, or who needs a special accommodation, should inform us of this by **March 21, 2022**, via (206) 477-0860 or hearingexaminer@kingcounty.gov. We will be conducting system tests by request, to check for audio and video capabilities, provide an overview of Zoom features, and answer any procedural questions. The presiding examiner does not participate. The system test will not be recorded. Contact our office by **March 21, 2022** to request a system test.
5. **Appeal Issues.** The issue here is purely the penalty amount. Ms. Poon does not contest that Lucky was running at large on January 31; there is no question that Lucky got loose and approached a person. Because in 2021 Lucky had been declared vicious, the default penalty is not the normal \$50 for a dog running at large but a \$500 penalty for a *vicious* dog running at large. Ms. Poon has asked for reduction in that penalty. Hopefully the parties can settle the dollar amount without needing a hearing on April 6. And if they cannot, we can listen to the testimony and argument and decide the matter.
6. **Exhibits.** All materials must be provided via email. The examiner's rules (provided below our signature line) govern email transmission protocols. Take time to familiarize yourself with those rules well before the filing deadlines; call or email promptly with any questions or concerns.
- A. By **March 23, 2022**, each party shall email to each other and to hearingexaminer@kingcounty.gov any exhibits it intends to present at hearing. The department shall label its exhibits D-1, D-2, etc. Appellant(s) shall label exhibits A-1, A-2, etc. As noted in the "E-filing Documents with the Examiner" instructions after the signature block, when possible, a submission should be organized as a single electronic document.
- B. By **March 30, 2022**, each party shall email to each other and to hearingexaminer@kingcounty.gov any rebuttal exhibits it intends to present at hearing, with the same labeling.
7. **Expert Witnesses**
- A. By **March 23, 2022**, each party shall email to each other and to hearingexaminer@kingcounty.gov a list of any expert witnesses the party plans to call. Include the name, mailing address, email address, telephone number, and qualifications of each expert, along with a summary of each expert's expected testimony.

- B. By **March 30, 2022**, each party shall email to each other and to hearingexaminer@kingcounty.gov the same information for any rebuttal expert witnesses.
- C. We note that in most examiner cases, no expert witnesses are offered. This subparagraph is not giving legal advice about how you should prepare your case, nor speaking to the specifics of this or any case. It is only to note that because we set *deadlines* for expert witnesses, there is not necessarily an expectation that any will be offered in a specific case.
8. **Discovery.** Discovery in an examiner proceeding is not as robust as civil litigation, but limited discovery may be authorized under section IX of the Examiner's Rules (available at <https://www.kingcounty.gov/independent/hearing-examiner/rules.aspx>). Any such requests shall be submitted as soon as the need is known.
9. **Parties' Representatives and Service.** For exchanging documents and information, contact information for party representatives is listed on the first page of this document. Rules for service and filing are reproduced below.
10. **Order of Presentation.** The hearing will generally follow the order set forth in section XI.C of the Examiner's Rules. At our hearings, because the department carries the burden of proof, it puts on its case first (see [Examiner Rule XI](#)). Usually this involves the department introducing exhibits previously submitted; appellants may offer objections why particular department exhibits should not be admitted (see [Examiner Rule XII](#)). Then the department typically offers testimony; appellants may question any witness. Note, questioning time is not the time for appellants to offer evidence. Rather, when the department concludes its presentation, then it is the appellant's turn to introduce any exhibits previously submitted and to offer any testimony, with the department raising objections or asking appellants questions. Afterwards, we typically allow parties time for rebuttal, before closing statements.
11. **Amendments.** If Appellant would like to modify the issues or matters raised in the appeal statement, email that to hearingexaminer@kingcounty.gov by **March 21, 2022**. If not, the issues for hearing will be those stated above and or contained in the original appeal statement.

DATED March 10, 2022.



David Spohr
Hearing Examiner

To learn more about the process, please follow this [link](#). You may want to specifically review: Hearing Examiner Rule XI—Order and Conduct of Proceedings.



Communication in alternate formats is available.
Please call TTY (206) 296-1024.

DS/lo

HEARING EXAMINER RULES OF PROCEDURE

IV. FILING REQUIREMENTS

E. Filing and Service

1. Overview

The following default rules apply to filing and service after the agency submits an application or appeal to the examiner (as described in III.C.). The examiner may set alternative requirements for a particular case. Limited, technical assistance is available by emailing hearingexaminer@kingcounty.gov or by calling (206) 477- 0860. Call or email well in advance of a filing deadline.

2. Definitions Applicable to this Section

- a. “Document” refers to the aggregate submittal, not to each individual component. For example, a motion, plus any affidavits and other evidence in support of that motion, qualifies as a single document. Similarly, multiple exhibits due on a given day should be separately numbered, but the exhibits in total are considered a single document.

However, when truly separate items are due on the same day (e.g., exhibits and a witness list), each counts as a separate document.

- b. “Electronic document” is an electronic version of information otherwise filed in paper form.
- c. “E-filing” means emailing electronic documents to the examiner via hearingexaminer@kingcounty.gov.
- d. “File” (when used as a verb) or “filing” means submitting documents to the examiner.
- e. “Hardcopy” is a physical (non-electronic) copy of a document.
- f. “Postmark” means the official postal marking on a piece of mail showing the post office date of mailing.
- g. “Serve” or “Service” means submitting documents to named parties.

3. E-filing Documents with the Examiner

- a. Responsibility: It is the sender’s responsibility to confirm receipt of an e-filing. Requesting a confirmation receipt email is recommended. It is a sender’s responsibility to confirm that the examiner can read, view, and/or listen to an e-filing, lest the submission be excluded from the record.
- b. Format: Email attachments must be in the following readable formats:

<i>File type</i>	<i>Format</i>
Documents	.pdf (preferred); .doc, .docx, .xls, and .xlsx (acceptable)
Audio	.mp3

Video .mp4

- c. Names: Emails and any attachments should reference the case number, party name, and document title, e.g., V-1234_Smith_Motion.pdf. When an electronic document must be broken into components (see [IV.E.3.e.](#)), the attachment titles should clearly reflect the intended order, e.g., V- 1234_Smith_Motion_A.pdf; V-1234_Smith_Motion_B.pdf; etc.
- d. Multiple Attachments Discouraged: As much as practicable, a submission (such as a motion and its supporting evidence, including any images) should be organized as a single electronic document. There are exceptions: to meet email megabyte limits (see [IV.E.3.e.](#)); truly separate filings (e.g., “motion” is one document and “expert witness list” is a separate document); or when the examiner provides specific, alternative directions. Multiple attachments, especially if not organized in a logical sequence, may result in the examiner ordering the sender to reformat and re-submit.
- e. Size: There are two size restrictions.
 1. Emails are limited to ten (10) megabytes (MB) per email. Participants may break electronic documents into smaller pieces and send multiple emails to meet the MB limit (see [IV.E.3.c.](#)). Emails larger than ten (10) MB will bounce back and will not be considered filed.
 2. For all documents, e-filing is encouraged. ~~However, documents exceeding fifty (50) pages (see [IV.E.2.a.](#)), must also be filed in hardcopy (see [IV.E.5.b.2.](#)).~~ *Suspended, by Examiner order*
- f. ~~Sealing: All documents must be printable in hardcopy on standard, 8.5”x11” sized paper. Documents that cannot be printed on this size must also be filed in hardcopy (see [IV.E.5.b.2.](#)).~~ *Suspended, by Examiner order*
- g. Signatures: Digital signatures are not required, but emails should reference the sender’s name, address, and phone number.
- h. Timing: Emails the examiner receives on County holidays, weekends, or after 4:00 p.m. are considered filed on the next County business day.

4. Serving Documents on Named Parties

- a. A person filing a document with the examiner must contemporaneously serve that document on the named parties. However, an agency providing the examiner advance copies of a large case file (or portions of the case file) the agency intends to introduce at hearing (such as a preliminary plat file) need not serve those documents on other parties, so long as the materials only contain documents that were available for public inspection on the date of the agency’s hearing notice (for an application) or on the date of the decision being appealed (for an appeal); the agency must contemporaneously serve more recent documents on all other named parties.
- b. ~~Unless the examiner orders otherwise, the default rule is that a person filing a document with the examiner must serve that document on named parties in hardcopy. To promote easier sending and quicker receipt, the named parties may agree to alternative service arrangements among themselves. See [IV.E.5.](#)~~

~~5. Hardcopy Filing and Service~~ *Suspended, by Examiner order*

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V22012899 and V22012900**

WAI HAN POON

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL IN V22012900 AND PREHEARING ORDER AND NOTICE OF REMOTE HEARING IN V22012899** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED March 10, 2022.



Lauren Olson
Legislative Secretary

Han Poon, Wai

Hardcopy

Smokoska, Rebecca

Regional Animal Services of King County

Westerdahl, Denise

Hardcopy

Wong, Sauchen Mr.

Hardcopy