

LAW OFFICES OF
GREGORY D. FERGUSON, PC
EMPLOYMENT, OPEN GOVERNMENT & CIVIL LITIGATION

March 15, 2016

Via Email and Regular Mail

Francine Reis
Director of Human Resources
Clark County, Washington
PO Box 5000
Vancouver, WA 98666-5000

Re: Oliver Orjako – Whistleblower and EEO Complaint

Dear Director Reis:

I write for the purpose of initiating a Local Government Whistleblower and discrimination and harassment complaint on behalf of my client, Community Planning Director Oliver Orjako. This complaint is being submitted to you in writing pursuant to County policy No. 23.0 and the County's policy No. 3.0 prohibiting discrimination and harassment in the workplace ("Equal Opportunity Employment and Harassment").

Whistleblower Complaint/Governmental Waste and Mismanagement

As you may be aware, Mr. Orjako has repeatedly voiced complaints that Councilor David Madore's solitary efforts to develop his proposed "alternative 4" have violated the Growth Management Act (GMA) and the County Charter. Councilor Madore has single-handedly commandeered the usual functions of the planning department, alienated staff and preempted public participation, thereby violating many of the basic tenants of the GMA and outlined in the Charter.

As many are aware, growth management in Washington took a notable turn with the passage of the GMA in 1990. The GMA, codified primarily in RCW Chapter 36.70A, was enacted in response to rapid population growth and concerns with unchecked suburban sprawl, environmental problems, quality of life and the impact of growth on rural areas. The GMA *requires* the fastest growing counties, like Clark County, to adhere to GMA goals regarding:

- Sprawl reduction
- Concentrated urban growth
- Affordable housing
- Economic development
- Open space and recreation
- Regional transportation
- Environmental protection

- Property rights
- Natural resource industries
- Historic lands and buildings
- Permit processing
- Public facilities and services
- Early and continuous public participation
- Shoreline management

Councilor Madore's efforts to unilaterally engage with and hire outside consultants and third parties who he hopes will deviate from the GMA—absent full public participation and transparency—has circumvented both letter of, and important public policies underlying, the GMA.¹ Moreover, his singular actions have contravened the Board's public participation resolution No. 2014-01-10. The ultimate consequence of Madore's gerrymandering has been the gross waste of government funds and a colossal waste of County staff time.

Further, in retaliation for my client's opposition to his efforts to circumvent the GMA, Councilor Madore has publicly harassed and demeaned Mr. Orjiako from the dais during board meetings demonstrating a clear abuse of authority. He has used his bully pulpit to target staff with reprisals and factual falsehoods. Accusations of fraud, deceit and pursuit of an "anti-rural growth agenda" have been leveled against my client with complete disregard of the mandates of the GMA and absent any objective factual basis.

Notably, Councilor Madore accused my client of spearheading a scheme of growth data manipulation during a time when Mr. Orjiako was on extended bereavement leave for nearly a month, residing with relatives in Africa. Though it was impossible for my client to have done what Madore claims, the specious allegations continue nonetheless. Most recently, he accused my client and his staff of criminal conduct in an effort to turn up the heat against those opposing his circumvention of the GMA.

County employees have not lied nor misled anyone. There is no such thing as an "anti-rural development agenda." Indeed, the statute itself embodies a strong public policy in favor of preserving the character of rural lands:

RCW 36.70A.011
Findings—Rural lands.

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

¹ An example is Peter Silliman, who was the subject of controversy last year when he was appointed with Madore's backing to his position with the board. Silliman is a former freeholder who led the campaign against the Home Rule Charter. As reported by *The Columbian*, he has no background in urban planning. Prior to working for the County, he was an engineer at CenturyLink.

The Legislature has dictated that preserving Washington's rural character² is not a choice, but a legal mandate. Washington public policy as expressed in the GMA affords protection from retaliation and termination for those like Director Orjiako who in good faith strive to uphold its mandate.

Mr. Orjiako requests the Board of County Councilors to adopt a resolution affirming that it will follow the GMA and its policy mandates in all respects. Additionally, Mr. Orjiako respectfully asks that an independent investigation be conducted into Councilor Madore's actions as outlined above and into his abuse of public office, official misconduct³ and perpetual conflicts of interest.⁴

Complaint of Discrimination and Harassment

From the outset, Councilor Madore was hyper critical of my client's work, and expressed visible irritation with Mr. Orjiako's formal communication style and Nigerian accent. Mr. Orjiako was often interrupted and verbally dismissed by Madore in public settings, and generally treated less favorably than other white male department heads possessing far less knowledge, experience and education.

² (15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

³ **9A.80.010**
Official misconduct.

- (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:
- (a) He or she intentionally commits an unauthorized act under color of law; or
 - (b) He or she intentionally refrains from performing a duty imposed upon him or her by law.
- (2) Official misconduct is a gross misdemeanor.

⁴ **42.23.070**
Prohibited acts.

- (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.
- (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.
- (3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
- (4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

Mr. Orjiako is one of the few (if not the only) department heads that Councilor Madore has decided to permanently remove from his meetings calendar. Rather than schedule in advance as is customary, he randomly drops by my client's office unannounced in a manner calculated to catch Mr. Orjiako unprepared and off balance. Mr. Orjiako's efforts are consistently undermined, and his work product is picked apart. He is a regular recipient of Madore's hostility and public ridicule. Indeed, Councilor Madore treats no other department head with such contempt. The evidence strongly suggests that race and national origin are a motivating factor in Madore's behavior toward my client. That behavior has resulted in a hostile working environment in direct violation of County policy.

Notably, Councilor Madore has a documented history of treating protected class members less favorably than white males. His rather recent unilateral hiring of Don Benton over a superior female candidate Anita Largent resulted a \$250,000.00 settlement and the loss of the proven talent she would have brought to the position. Contrary to his recent public attempts to re-write history, Councilor Madore did in fact "hire" Don Benton as Director of Environmental Services. The transcript of the County board time meeting wherein the decision was made is undeniable. Madore instructed then County Administrator Bill Barron to hire Mr Benton without a single minority or female candidate even being considered:

Barron: Just so you know, my interpretation is this [Benton's hiring] will devastate the organization, not only the department but this organization because this is bypassing every human resource process we have for hiring department heads, just so you know.

Madore: Bill, I heard what you said earlier and, um, I can assure you your fears are not going to come to pass.

Barron: I have no fears. I'm just telling you the reality
. . . I do what I am told.

See attached board time transcript, Ex. "A".

Councilor Madore's recent efforts to wave the flag of diversity while espousing the hire of a female "candidate" for a position that is not even yet open and available and who received over \$13,000.00 in campaign donations from Councilor Madore smacks of the same type of historical collusion and cronyism that truly will "get the county sued" yet again.

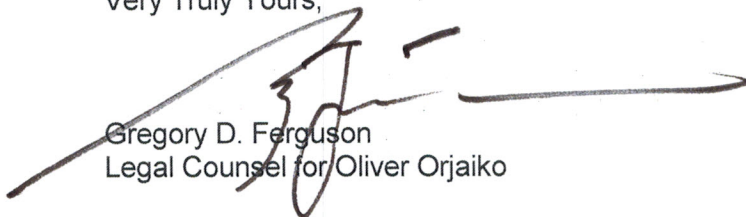
As I believe Mr. Barron often said, "Process is your friend." Yet, Councilor Madore casts process and policy aside when it comes to his treatment of Mr. Orjiako, while simultaneously beating the drum of equality when he believes process can be used to his personal advantage. Councilor Madore has not suddenly seen the light and embraced diversity. Rather he raises the subject only as a foil to direct public attention away from his discriminatory and retaliatory treatment of Director Orjiako.

Councilor Madore's public attacks and harassment of Mr. Orjaiko, a dual Nigerian-US citizen who for twenty-five (25) years has devoted himself to the service of Clark County and its citizens, is reprehensible, and occurs during a time where Clark County is lacking needed racial diversity.

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Mr. Orjiako requests a full investigation into Councilor Madore's conduct and requests protection from future retaliation as a consequence of his good faith report of discrimination and harassment.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory D. Ferguson', with a long horizontal flourish extending to the right.

Gregory D. Ferguson
Legal Counsel for Oliver Orjaiko

CC: Chris Horne, Chief Civil Deputy, Prosecuting Attorney's Office (via email)

EXCERPTS OF BOARD TIME PROCEEDINGS

DATE TAKEN: Wednesday, May 1, 2013

PLACE: 1300 Franklin Street, 6th Floor
Vancouver, Washington

COURT REPORTER: Cindy J. Holley, CCR

Rider & Associates, Inc.
360.693.4111

to pull together both sides of the aisle up there and pull together a coalition and have it hold during a very, very challenging time to me says that he knows how to work with people and get them to buy in. The people that work most closely with him have a lot of respect for him.

COMMISSIONER MIELKE: Okay.

COMMISSIONER MADORE: Bill, you have his resume. I invite you to communicate with him and give us your feedback.

BILL BARRON: Okay. Now I'm to do what? I'm to interview him --

COMMISSIONER MADORE: Yes.

BILL BARRON: -- or just start the process? I can't learn anything more than what you've already said about him, so there's no use in me interviewing him. If you want him as the job, I'll just start him through the process, start him through the process.

COMMISSIONER MADORE: Okay.

BILL BARRON: Because it does no good for me to interview him. You're obliterating every process that we've had in place for 14 years.

COMMISSIONER MIELKE: I think --

BILL BARRON: I've told you that.

COMMISSIONER MIELKE: -- you need to ask the question how he's going to deal with this, his other job, how he feels he's going to deal with the legislature --

have teachers, doctors, firemen, policemen. That's what the legislature is made up of.

COMMISSIONER MADORE: Yup

BILL BARRON: So I'll just have to communicate with him and tell him what then and have him come in to process for the job and I'll make an announcement to the department.

COMMISSIONER MIELKE: Okay. This will work out.

BILL BARRON: Just so you know, my interpretation is this will devastate the organization, not only the department but this organization because this is bypassing every human resource process we have for hiring department heads, just so you know.

COMMISSIONER MADORE: Bill I heard what you said earlier and um I can assure you your fears are not going to come to pass.

BILL BARRON: I have no fears. I'm just telling you the reality.

COMMISSIONER MIELKE: Okay

BILL BARRON: I do what I'm told.

COMMISSIONER MADORE: I care about this team and I will make sure that this team is going to be healthy.

BILL BARRON: Well I will assure you that it will have a grave impact on this team. Not even the personality we are not talking the person. I'm talking the process and I told you process