

## A Petitioner Speaks Out - Why We Are Not to Blame for the Legal Fees

One issue in the upcoming election will be the high legal fees incurred by the District. Among them were the fees associated with defending the Writ. Below I present facts to show that had the Board acted appropriately that none of these legal expenses were necessary.

In May 2013 the state appellate court decided in favor of the Board in the anti- SLAPP motion which they had filed against us regarding our Petition for a Writ of Mandamus. As one of the petitioners, I was not happy with the decision, for reasons I will give below. But, to end the matter, I have kept quiet, and not spoken out. However the persistent and misleading harping on the issue by several Board members has prompted me to speak out to correct the misinformation they are giving. I note that in recent years, there have been many appellate court rulings which I, and, I suspect, even members of this Board consider totally wrong: rulings dealing with campaign financing , abortions, voting rights.

Unfortunately the appellate decision was based on facts which the Board & its lawyers have selectively used, while ignoring others. Because of the anti- SLAPP motion no hearing was made to fully present all the facts, and the appellate court was not the place to do this. Since not all of the facts have been presented and argued, the appellate court was in no position to comment whether the case had merit.

1. One of the reasons for granting the appeal was that the petition specifically named 3 of the Board members. Yet in March, 2013, before the anti-SLAPP motion was filed in April, petitioner attorney Metcalf offered to drop the 3 named Directors; this offer was ignored. The specific naming of the 3 Board members was one of the reasons for granting the appeal.

2. In their arguments, the Board attorneys only mentioned the 10 pm unanimous vote to extend the meeting 15 minutes. But no mention was made of the 9:45, 10:15 and 10:30

votes which failed to garner the 4/5 vote needed. I presume that the court ruled that the case had no merit based on only the 10 pm vote. [As an aside, Director Toombs, when asked, refused to say whether or not he was aware of the 4/5 requirement. He surely was aware, as he knew that a vote to extend was necessary. So why did he ignore it?]

3. The Board argues that we filed the Petition because of their votes. We have stated many times that we are objecting to the process used, a process which ignored procedural rules, in spite of notifications that the procedure was not followed: shortly after the July, 2012, meeting, the Board Chair and the law firm were each advised TWICE that the Board's P&P were not followed, and they were all ignored. [I wonder if this was bad legal advise, and one reason to vigorously fight the Writ was to obscure this. Or was it just the possibility to generate more legal fees?] The Petition only asked that the vote be set aside. That is all a Writ of Mandamus can ask. Nothing in the Petition prevents the matter from being revisited, hopefully in a legal manner.

In August, 2013, the Petitioners offered to dismiss the petition if the Board would amend the P&P to state that they "govern." The offer was rejected. This offer has always been out there. Most of these legal fees could have been avoided by this simple action by the Board. The Board has maintained that P&P are merely advisory. Yet 'rule of law' is the cornerstone of our democracy. It is totally reasonable for citizens to expect their governing bodies to follow their own adopted procedures, and for them to seek redress if needed. When P&P are only advisory, the question is – "At whose discretion are P&P selectively administered?" When rules are at the discretion of a government official, we essentially have a dictatorship by that official. When the Board was revising their P&P, it declined to accept that they govern, claiming that there may be times when they need to act contrary to them. Certainly an emergency may require that, but then there can be a clause to suspend them in that case.

Note also, that the attorneys for the petitioners were working pro bono, because they believe that we have a valid case. The ACLU was also on our side – they filed a Friend of

the Court Brief in the appeal in support of us, and filed a brief to depublish the decision.

Do I regret that I was among those who asked the the KPPSCD Board act in accordance with their Policies & Procedures? No. It was time to speak out against the disrespect to the citizens who asked questions about the management of their community.

Do I regret that so much has been spent on legal fees? Yes, for sure. But the fees are there because Board members chose to fight using public money rather than admit that they did not follow their own procedures.