

James Pruett

From: Sabrina BRENNAN <sabrina@dfm.com>
Sent: Wednesday, September 16, 2020 5:10 PM
To: James Pruett
Cc: Sabrina Brennan
Subject: Sept 16, 2020 Harbor District Meeting
Attachments: District Attorney Report Brown Act Violations 2020.pdf

Hello Jim,

Please include the attached document on the Harbor District's website with the Sept 16, 2020 agenda regarding Item 1.

Thank you,
Sabrina



SAN MATEO COUNTY DISTRICT ATTORNEY'S OFFICE

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MISDEMEANOR REPORT

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Case 20-0706-04

OFFENSES	Offenses Brown Act Violation	Description Brown Act Violation	Fel/Misd Misd	Date Occurred 06/15/2020	Time Occurred	Incident #
				Date Reported 07/06/2020	Time Reported 1525	
	Related Cases					
	Date Printed 07/21/2020		Time Printed 14:19:47		Printed By 80202	
	Latitude 0.000000			Longitude 0.000000		
Location San Mateo County Harbor District, 504 Ave Alhambra, El Granada, CA 94018			Beat	Area	Disposition Case to DA for Review	
					Dispo Date 07/21/2020	
Location Type	Location of Entry	Method of Entry	Point of Entry	Alarm System	Means of Attack (Robbery)	
Reporting Party Brennan, Sabrina			Drivers License [REDACTED]	Cell Phone	Email	
Residence Address [REDACTED] Moss Beach, CA 94038			Notified of Victim Rights	Residence Phone	DOB [REDACTED]	Age 50
Business Name and Address			Business Phone	Height 5'6"	Wt 135	Sex F
Assistance Rendered/Victim Disposition			Transporting Agency	Means of Attack (Assaults)		
Description of Injuries			Other Information			
REPORTING PARTY Ullom, John Charles Jr			Drivers License [REDACTED]	Cell Phone [REDACTED]	Email redbonelogic@gmail.com	
Residence Address [REDACTED] Half Moon Bay, CA 94019			Residence Phone [REDACTED]	DOB [REDACTED]	Age 59	Sex [REDACTED]
Business Name and Address			Business Phone [REDACTED]	Height 6'	Wt 175	Hair BLN
Suspect Name			Action Taken	Charges		
Residence Address			Residence Phone	DOB	Age	Sex
Business Name and Address			Business Phone	Height	Wt	Hair
Identifying Features			Cell Phone	Drivers License		Arrest Number
Aliases						
VEHICLES	Status	Vehicle Make and Model		License/State	VIN	
INSPS	Prepared By 80210 - Raffaelli, Kevin		Date 07/06/2020	Assisted By		Approved By 80202 - Massey, Bill
	Date		Routed To	Date	Notes	



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SUBJ/PARTY	SUBJECT/PARTY	Drivers License	Cell Phone	Email			
	Residence Address	Residence Phone		DOB	Age	Sex	Race
	Business Name and Address	Business Phone		Height	Wt	Hair	Eyes



SUMMARY:

Alleged Brown Act Violation by the San Mateo County Harbor District Board of Directors.

INVESTIGATION:

On July 6, 2020, Assistant District Attorney Sean Gallagher received an email complaint from the Reporting Party, Mr. John Ullom. I reviewed the emails and documents provided by Reporting Party John Ullom.

Ullom listed three alleged Brown Act Violations occurring at the June 15, 2020 Harbor District Special Meeting;

- 1) Improper notice given of closed session.
- 2) Action taken on an un-agendized item.
- 3) The action that was taken was not reported out of closed session.

After review of the documents (attachments to this case), I watched the recorded Harbor District Special Session Board Meeting from June 15, 2020.

June 15, 2020 Meeting Reviewed:

Board President Reyering was in charge of the meeting and did properly notice that the meeting was a closed session and stated verbatim: "The agenda item is a closed session conference with legal counsel, regarding anticipated litigation, significant exposure to litigation pursuant to paragraph 2 of subdivision (d) of Government Code Section 54956.9, one case-claims brought by Sabrina Brennan."

Board Member Sabrina Brennan addressed the meeting stating the following, after discussion with the Board's legal counsel regarding parliamentary rules. "So, we are on the agenda item, correct? (Response from President Reyering 'we are'). Okay, so in 2019, I made a retaliation complaint against Commissioner Tom Mattusch, Nancy Reyering, and Virginia Chang-Kiraly. An investigation into my complaint is being conducted by the Shaw Law Group. Last week it is my understanding that the Shaw Law Group reached out to Commissioner Tom Mattusch, Nancy Reyering, and Virginia Chang-Kiraly to schedule interviews regarding the complaint, and it was a retaliation complaint to be clear. This closed session item is an attempt to shut down the retaliation investigation in advance of interviews with Commissioners. My complaint is not against management staff or anyone on the Harbor Patrol. It's my understanding that Commissioner Nancy Reyering called this Closed Session Special Meeting. I am recusing myself from Closed Session. Thank you."

Commissioner Larenas then addressed the Board advising, "Several Board members seem to have a conflict of interest going into this closed session, since it's against members of the Board. I've not seen the complaint, so I can only guess and if the Commissioners do not recuse themselves, I will join in on this meeting but under protest."

Prior to the closed session beginning, Citizen John Ullom called in and made a statement regarding the pending session.

President Reyering then stated the persons that will be present in the closed session were:" myself

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(President Reyering), Vice President Chang-Kiraly, and Commissioner Mattusch, and Commissioner Larenas, along with Trisha Ortiz, and Rebecca Green.

The Commissioners then went into closed session. Upon returning, President Reyering advised there was nothing to report out and the meeting ended.

After viewing the meeting, I called the Board Attorney, Trisha Ortiz. I advised Attorney Ortiz I was investigating a Brown Act complaint regarding the June 15, 2020 meeting. I asked Attorney Ortiz about the perceived conflict of interest related to the Commissioners named in the complaint and the reason for the closed session. Attorney Ortiz advised the closed session was for a discussion on how the Board wished to handle the complaint from Sabrina Brennan and considered it as pending litigation. The Board was going to discuss their internal policy as to whether to investigate the matter. The three Board Members did not recuse themselves because Attorney Ortiz felt the complaint was made against the commission as a whole and not the individual members. It was a strategy session where the Board made a decision not to finance an investigation, due to fiscal costs. Attorney Ortiz advised since the Board decided not to finance an investigation, Sabrina Brennan has other means to move forward and cause an investigation to occur which the Harbor District would not have the financial burden to incur. The strategy was not reported out since it was a strategy session and the General Manager was notified to respond to Sabrina Brennan. Attorney Ortiz's counsel was that the decision was not reportable.

I then reviewed the June 17, 2020 Regular Board Meeting. One of the agenda items was to move forward with a sanction against Sabrina Brennan for her actions at a previous Board Meeting. The matter was approved.

On July 8, 2020, I contacted Sabrina Brennan by telephone. I was returning her call regarding her concerns related to possible Brown Act violations. Brennan explained a series of concerns she has with the current Harbor District Board and how they conduct themselves. She advised she made a complaint in 2019 regarding being retaliated against by three sitting Board Members. The retaliation was she was forced out as Board President and she believes this took place because she filed a sexual harassment complaint against one Board Member for inappropriate material being sent to her via an email. That complaint did not result in any discipline.

Brennan believes recent conduct by the Board is in violation of the Brown Act. Sabrina Brennan cited the following three concerns:

- 1) Brennan stated she has submitted three emails in which she addressed some of the actions the Board has taken against her. She did these in a written format because she knew her speaking time at the Board Meetings would be limited. She has sent these emails to the General Manager and asked him to publish the emails as attachments to the Board Meeting notes. Two meetings have passed and the emails have not been published. Brennan stated she spoke with the General Manager who told her he was still deciding whether publishing the letters was appropriate, since they did not have a policy. Brennan said she believes past practice will show emails and correspondence has been posted and this is just a means to silence her.

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2) Brennan advised that at the June 4th Board Meeting, several citizens providing public comment were cut off by the Board President, prior to their allotted 2 minutes. The President told the citizens that they were talking off topic, and cut them off.

3) Brennan stated that her 2019 complaint regarding retaliation was being investigated and the district hired a firm, Shaw Group, to conduct the investigation. On May 20, 2020, Brennan said she was interviewed by the Shaw Group investigators. She spoke to the investigators again on June 5, 2020 and was told the investigators were setting up interviews with the three other Commissioners who she made the claim against. Brennan advised that soon thereafter, a Special Board Meeting was called for June 15, 2020, for the purpose of discussing the claim with the Board's attorney. Brennan said she recused herself since she was a party in the investigation, but the three subject members did not recuse themselves. The Board met in a closed session, then returned stating there was nothing to report out on. On the same date, the Board's attorney sent an email to the District's General Manager advising that the Board was canceling the contract with the Shaw Group. Brennan believed this would be a violation of the Brown Act since the Board did not make any report as to what occurred in the meeting, and the three Board Members who were the subject of the investigation should not be voting as to whether the investigation was to continue or not.

Sabrina Brennan forwarded to me several emails that she sent to General Manager Pruett regarding her above complaint (attached to the case file).

On July 8, 2020, I received a letter from Attorney Ortiz "recapping" our conversation of July 6, 2020. (attached to the case file). The letter stated:

"I am writing you to recap our discussion earlier this week. On July 6, 2020, you contacted me as the General Counsel for the San Mateo County Harbor District regarding a complaint from Mr. Ullom alleging Brown Act violations by the San Mateo County Harbor District Board of Commissioners during a special meeting on June 15th, 2020. My understanding of Mr. Ullom's allegations are as follows: (1) that the Board Agenda did not provide proper notice of their closed session, (2) that it was improper for the Board to consider the anticipated litigation matter, and (3) that the Board should have provided a report in the open session following the closed session. Based on Mr. Ullom's public comments at a July 2, 2020 meeting of the Board, it appears that Mr. Ullom believes that the Board met in closed session to discuss an investigation initiated by the General Manager in response to claims made by Commissioner Brennan against the Board. Further, Mr. Ullom asserts that any direction provided by the Board in connection with this investigation should have been reported in an open meeting.

For the purposes of discussing the Board's compliance with the Brown Act, I will accept Mr. Ullom's version of the facts as true. Under this set of facts, however, the Board did not violate the Brown Act. First, as provided under Government Code Section 54954.5, the agenda provided notice for a closed session to hold a conference with legal counsel about significant exposure to litigation pursuant to paragraph 2 of subdivision (d) of Section 54956.9. More specifically, as

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provided under paragraph 2 of subdivision (e) of Section 54956.9, the Board met for legal advice about responding to various claims made by Commissioner Brennan. The agenda provided notice about its discussion of these claims. Second, as the legislative body of the Harbor District, the Board acts on the District's behalf, including making decisions about potential litigation. For example, if the Board determines that any claims against the District, or the Board acting for the District, do not merit an investigation, the Board is the body that has the authority to terminate the investigation on behalf of the District. Third, Section 54957.1 prescribes the list of actions taken in closed session, which are subject to a public report in an open session. As important here, Section 54957.1 does not require a report about the Board's decisions on litigation strategy. So, assuming Mr. Ullom's statement of facts are true, to the extent that the Board directed staff to terminate a District investigation related to Commissioner Brennan's complaints, it would be the Board's assessment of the appropriate response to occurrences that might result in litigation. That type of litigation strategy does not fall within any of the specified actions to report under Section 54957.1.

Please contact me immediately if you have any further questions about the Board's actions or comments about this information. I sincerely appreciate your time and thoughtful review of this information".

On July 13, 2020, Assistant District Attorney Sean Gallagher and I spoke with Attorney Ortiz by telephone. Attorney Ortiz reiterated what was contained in her letter to me dated July 8, 2020. She stated regarding Ullom's complaints: the meeting was properly noticed, and the item was on the agenda. Attorney Ortiz also noted in regard to Ullom's complaint that the closed session was not publicly reported on. Government Code 54957.1, does not mandate publicly reporting what took place, according to Ortiz.

I asked Attorney Ortiz to address the concerns brought to me by Brennan, specifically: The Board President was cutting speakers off before their allotted time expired, and that document Brennan wish posted as part of the meeting notes had not been done. Attorney Ortiz stated at the subsequent meeting, the Board allowed the public to comment on any item which was posted prior to the meeting, including the censuring of Brennan, as the cure and correct. Although Attorney Ortiz advised what occurred at the previous meeting was not subject to a cure and correct, but that the Board felt it was appropriate to do so. Attorney Ortiz stated regarding publicly posting the emails Brennan wished to be published, Attorney Ortiz assured me the Board was in the process of doing so. The final complaint raised by Brennan was already covered in the Ullom response regarding the Closed Session.

On July 14, 2020, I received an email from Attorney Ortiz advising that the documents Brennan wished attached from the July 2, 2020 meeting has been posted on the website, as well as chat logs from the public from when the Zoom Meeting began due to the Covid-19 situation. She also advised that at the July 2 and July 15, 2020 meeting, the public has been allotted the specified 2 minutes to make public comment on the prior two meetings.

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NARRATIVE - Narrative

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DISPOSITION:

Forward for review to Assistant District Attorney Sean Gallagher.

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